

**RESPONSE OF THE WESTERN AUSTRALIAN  
GOVERNMENT**

**TO THE**

**WESTERN AUSTRALIAN LEGISLATIVE ASSEMBLY**

**EDUCATION AND HEALTH STANDING COMMITTEE**

**IN RELATION TO**

**THE CAUSE AND EXTENT OF LEAD POLLUTION IN  
THE ESPERANCE AREA**

**November 2007**



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Letter from Professor Alison L Jones, Professor of Medicine and Clinical Toxicology

## **GLOSSARY**

|       |  |
|-------|--|
| DEC   | Department of Environment and Conservation       |
| DOH   | Department of Health                             |
| DOCEP | Department of Consumer and Employment Protection |
| EIA   | Environmental Impact Assessment                  |
| EPA   | Environmental Protection Authority               |
| ERMP  | Environmental Review and Management Plan         |
| HIA   | Health Impact Assessment                         |

## **1.0 INTRODUCTION**

It is the intention of the Government Response, to acknowledge the failings of Government and Industry, accept responsibility, and determine a way forward. This involves remediating the impact on the Esperance community and strengthening processes to safeguard against the repeat of such instances in the future.

The Education and Health Standing Committee has produced a valuable report that identifies areas where there were shortcomings and makes constructive and useful recommendations on how to safeguard against such occurrences in the future. The Committee is to be commended for its work.

In this response the State Government outlines the steps it will take to lift standards and to better manage the transport and export of potentially dangerous goods through WA Ports.

The State Government has acted quickly and positively to protect the health of the people and the environment of Esperance, and will continue to work with the community to complete the job.

## **2.0 BACKGROUND**

In the period April 2005 to March 2007, the Esperance Port Authority exported lead carbonate. This material was mined at the Magellan mine near Wiluna some 900 km north of Esperance by Magellan Metals Pty Ltd and railed to Esperance.

The Esperance Port Authority handled this material in bulk, and there were lead emissions from the Port and contamination of the town site and adjacent environs. The extent of those emissions and any contamination of the town site are matters that are currently the subject of prosecution by the DEC.

In December 2006 to January 2007, hundreds of dead birds were collected and these numbers were extrapolated to several thousand dead birds in and around the Esperance townsite. These were predominantly nectar eating birds. Subsequent testing by the Department of Environment and Conservation [DEC] showed that the bodies of these birds had high lead levels. These results became known to the DEC on 9 March 2007, and were made public the same day.

Subsequent testing of rainwater tanks in Esperance showed that many of these had levels of lead and nickel exceeding the maximum levels specified in the 2004 Australian Drinking Water Guidelines published by the National Health and Medical Research Council. Blood lead levels in the population were also found to be elevated.

On 12 March 2007, the Board of the Esperance Port Authority put an immediate stop to any further shipments of lead carbonate through the Port. On 15 March, DEC issued a prevention notice prohibiting the transport of lead carbonate into and out of the Port of Esperance. This Notice is still in place. Approximately 9000 thousand tonnes of lead carbonate remain within the Port precinct.

On 4 April 2007, Parliament commissioned the Education and Health Standing Committee to inquire into the cause and extent of the lead pollution in Esperance. The Parliamentary Inquiry sought submissions and conducted an extensive series of hearings including government officers, board members of the Esperance Port Authority, senior officers of the Port Authority, representatives of Magellan Metals Pty Ltd, the Councillors and staff of the Shire of Esperance and members of the Esperance community.

The report of the Parliamentary Inquiry was tabled in the Legislative Assembly on 6 September 2007. The report included 46 Recommendations and 192 Findings.

This Report sets out the Government Response to the Parliamentary Inquiry report. It focuses on the response to the recommendations of the Parliamentary Inquiry report and sets out the actions that have been taken, and are intended to be taken to resolve this issue, and to put into place measures to safeguard against such an incident happening again.

### **3.0 KEY ISSUES**

#### **3.1 RESPONSE TO LEAD AND NICKEL CONTAMINATION IN ESPERANCE**

##### **Relevant recommendations 2, 34, 41, 42, 43, 44, 45, 46**

The Government's first priority in responding to the lead and nickel contamination in Esperance has been to assess the extent and significance of that contamination and to remediate that contamination. This work has been in the following areas:

##### **i. Blood lead testing**

Particular emphasis has been placed on identifying those individuals, particularly young children, in the Esperance community who have been affected by lead emissions.

The international intervention level for blood lead levels, as promulgated by the World Health Organisation and the United States Center for Disease Control and Prevention, is 10ug/dL. There is no current Australian standard. Given community concerns about chronic lead exposure at levels lower than 10ug/dL, in children less than 5 years of age the DOH established a precautionary intervention level of 5ug/dL and has followed up all children tested at, or above, this level.

The Esperance-Goldfields Public Health Unit has carried out free blood lead testing for the Esperance community. As of 18 September 2007, the Esperance clinic had tested 2919 blood samples for lead levels. Of those tested, 33 had blood lead levels above 10ug/dL. This is the largest blood lead survey ever conducted in Western Australia.

Professor Alison Jones, Professor of Medicine and Clinical Toxicology at the University of Newcastle, the independent toxicologist identified by the DOH, has visited Esperance on several occasions and provided advice to parents of young children and community members about lead toxicity.

Children have been especially targeted for blood lead testing, particularly those aged 5 years and under. Any child with blood lead levels of 5ug/dL or greater has been followed through by the Public Health Unit and their parents have been strongly encouraged to present the child for further testing. Repeated blood lead testing of these children has been on a 3 monthly basis, with the first repeat testing in July 2007. Further testing was carried out in October 2007 (results set out on page 6).

Re-testing of any person with elevated blood lead levels will stay in place until blood lead levels are considered to be acceptable by Professor Alison Jones.

The September 2007 results of follow up testing of children aged less than 5 years is set out in Table 1 on page 6.

| <b>All children (tested March-June)</b>                   |       |
|---|-------|
| Number tested   | 390   |
| Number eligible for re-testing ( $\geq 5\mu\text{g/dL}$ ) | 83    |
| <b>Follow-up Children (tested July)</b>                   |       |
| Number re-tested  | 55    |
| Percentage of eligible children re-tested                 | 66%   |
| Average BLL of first test ( $\mu\text{g/dL}$ )            | 7.1   |
| Average BLL of second test ( $\mu\text{g/dL}$ )           | 4.3   |
| Number with lower BLL                                     | 52    |
| Percentage with lower BLL                                 | 94.5% |

\* Children aged less than 5 yrs with initial BLL  $\geq 5\mu\text{g/dL}$

**Follow-up Blood Lead Levels (BLL) for children\* in the Esperance Community carried out in October 2007 are as follows:**

| <b>Follow-up Blood Lead Levels (BLL) for children* in the Esperance Community</b><br>Results as at 8th November 2007 |            |
|--|------------|
| Number of children $\geq 5\mu\text{g/dL}$ on first test  | 83         |
| Number of children with 3 tests  | 40 (48%)   |
| Number of children with only 2 tests   | 27 (33%)   |
| Number of children not retested  | 16 (19%)   |
| <i>81% of eligible children have had at least one re-test</i>  |            |
| Average BLL 1st Test - all children (n=83)   | 6.8        |
| Average BLL 2nd Test (n=67)  | 4.1        |
| Average BLL 3rd Test (n=40)  | 4.1        |
| Number with lower BLL on second test   | 62 (92.5%) |
| Number whose BLL dropped between 2nd & 3rd tests   | 21 (52.5%) |
| BLL at last test for the 67 children that have had at least one retest:  |            |
| <5 $\mu\text{g/dL}$  | 51 (76%)   |
| 5 $\mu\text{g/dL}$   | 10 (15%)   |
| 6 $\mu\text{g/dL}$   | 1 (1.5%)   |
| 7 $\mu\text{g/dL}$   | 2 (3%)     |
| 8 $\mu\text{g/dL}$   | 1 (1.5%)   |
| >10 $\mu\text{g/dL}$   | 2 (3%)     |

\* Children aged less than 5 years with initial BLL 5 or more  $\mu\text{g/dL}$

The cumulative blood lead results for all age groups for the period 19 March to 28 August is set out in Table 2 below.

| <b>Table 2: Cumulative lead blood levels for Esperance community members<sup>†</sup> from 19 March to 28 August 2007</b> |                             |                             |                              |                              |                                      |              |
|--|-----------------------------|-----------------------------|------------------------------|------------------------------|--------------------------------------|--------------|
| <b>Age group (years)</b>   | <b>0 to &lt; 5* (years)</b> | <b>5 to &lt; 10 (years)</b> | <b>10 to &lt; 20 (years)</b> | <b>20 to &lt; 40 (years)</b> | <b>&gt; 40 (years)</b>               | <b>TOTAL</b> |
| Number of tests  | 404                         | 259                         | 319                          | 565                          | 1372                                 | 2919         |
| Average lead level (µg/dL)   | 3.0                         | 2.4                         | 1.8                          | 1.9                          | 3.0                                  | 2.6          |
| Number with lead level in range 5-9 µg/dL  | 76                          | 21                          | 5                            | 24                           | 203                                  | 329          |
| Number with lead level ≥ 10 µg/dL** (values)   | 7*<br>(11,12x3,13,20,22)    | 0                           | 0                            | 4<br>(10,15,16,18)           | 22<br>(10x5,11x7,12x4,13x3,14,16,21) | 33           |

<sup>†</sup>Community members only (individuals identified with occupational exposure to lead from the Port are not included in the table). Repeat tests not included.

\* Children aged 0 to < 5 years (83 children) with a blood lead level of 5 µg/dl or greater will be followed up until levels have dropped on two consecutive occasions

\*\* World Health Organisation (WHO) guidelines recommend blood lead levels < 10 µg/dl

It has been a priority to clean the homes of those children with elevated blood lead levels to reduce their ongoing exposure. This has occurred in two stages. After the initial blood lead testing program, the DOH contacted all parents of children under 5 years of age with blood lead levels above 10µg/dL and offered to have their homes professionally cleaned.

Following the second round of blood lead testing, a similar offer was made to parents to professionally clean homes of children under 5 years of age with blood lead levels of 5µg/dL and over. [Recommendation 42 refers].

Professor Alison Jones has confirmed that these results are positive and that the existing strategy is working. In her letter [Attachment 1] to residents of Esperance, Professor Jones states:

*“Virtually all the results show significant improvements, as expected, and that is good news! Even someone working on the very cautious side would be pleased with these results and they do not indicate the need for concern or for upgrading what we are collectively doing. The majority of the children have levels of 5 ~g/dL or below, even if a few have reached a plateau, and we can live with these levels happily. Further routine screening of blood lead levels is therefore not required for the majority of children in Esperance. However, I would advise people not to become complacent and therefore particularly for parents to keep hand washing and wet mopping practices when they can to make sure their child gets best chance of not picking up further lead. It is a lifestyle habit and there are many other health benefits of these practices e.g. bacterial reduction, reduced allergens exposure etc.*

*A very few children have kept relatively higher levels of lead and we are working with these families to find out where that lead comes from, and to provide maximum support to try to deal with this issue, and for ongoing blood lead level monitoring and surveillance. Interestingly, the origin in most of these cases indicates non-Magellan sources which have been co-incidentally picked up in this monitoring programme. It is strange to realise that if the lead testing programme had not been established in Esperance, these may otherwise have not have come to light. The fact they have been picked up gives us a chance to improve things for these children. Other possible sources of lead in the home include lead paint, lead in water, lead in dust, ceramic ware, snooker chalk, lead sinkers and toys (especially Chinese ones). I am working with staff from the WA Department of Health to help identify the source of lead in these cases and provide the best follow-up arrangements.”*

## **ii Rainwater tank cleaning and monitoring**

Sampling of rainwater tanks in Esperance, and GPS mapping of the lead and nickel analyses has enabled the Government to determine the areas or zones of greatest contamination [the impact zone] to those areas less affected by emissions.

The lead has been characterised by isotopic labelling to differentiate between that originating from the Magellan lead carbonate and lead from other sources.

On the basis of these data, the Government has arranged cleaning of rainwater tanks in Esperance. This cleaning program has been contracted through the Esperance Port Authority. 423 rainwater tanks have been cleaned under this program. In addition, 271 water filters have been provided to residents of the community.

Re-testing of 12 cleaned rainwater tanks has been carried out by the DOH in conjunction with the Shire of Esperance. 8 of these tanks were selected because their initial results were high. These tanks were close to the port. The remaining 4 tanks were selected at random. The results showed that 4 of these tanks had lead levels marginally above the National Health & Medical Research Council Drinking Water Guidelines and these tanks were located close to the port.

Following retesting of the 12 rainwater tanks, an expanded retesting program is underway at the time of writing this response. This survey will examine lead and nickel levels in rainwater tanks randomly selected from a 1 km square grid over the study area resulting in 25 cells. The proportion of tanks randomly selected from each cell will vary according to the number of rainwater tanks initially tested.

A total of 190 samples (approximately 23% of original samples collected) were selected from tanks, which have been further stratified by the following groups:

- i. Initial sample exceeding the Guideline levels, professionally cleaned
- ii. Initial sample exceeding the Guideline levels, not professionally cleaned
- iii. Initial sample below the Guideline levels

The methodology for this investigation is being overseen by the University of Western Australia, School of Population Health. Details of this re-testing



program will be made available to each selected householder individually, and the Esperance community generally.

The following preliminary information on retesting of rainwater tanks has been noted:

- 78% either remained the same or decreased for lead levels
- 94% either remained the same or decreased for nickel levels
- 20.5% continue to exceed the Australian Drinking Water Guidelines for lead
- 7.4% continue to exceed the Australian Drinking Water Guidelines for nickel
- 4.5% continue to exceed the Australian Drinking Water Guidelines for both lead and nickel.

The majority of rainwater tanks have decreased in both lead and nickel levels.

However, the fact that 20.5% of samples continue to exceed the Australian Drinking Water Guidelines is of considerable concern and more detailed analysis is underway to examine the cause.

Additional information obtained at the time of sampling is now being examined by UWA. This includes determining whether any patterns exist to retesting results based on age and type of tank structure, distance from the Port, roof types etc. Additional information will be provided as it becomes available.

Further remediation action may follow review of these results.

### **iii. Soil and surface testing**

DEC has carried out extensive sampling and analysis throughout the community with special emphasis on kindergartens, primary schools, high schools, vacant lots in residential areas and one industrial site adjacent to the Port.

The highest lead reading recorded of 380mg/kg came from bare soil beside the quarantine station next to the Port and the railway line. The trigger level for further investigation of such sites under the commercial health standard is 1500mg/kg for lead.

The trigger levels for residential areas and parks and schools are 300mg/kg and 600mg/kg respectively. The highest recorded at these sites was 88mg/kg and the majority were less than 10mg/kg.

Nickel levels were also low with the exception of 3 areas within 200 metres of the Port entrance. The environmental trigger level is 60mg/kg for nickel and the human health trigger level for residential land use is 600mg/kg. The majority of samples recorded levels less than 10mg/kg.

All of these data have been provided to the consultants conducting the health and ecological risk assessment of the Town of Esperance.

### **iv. Cleaning of homes, schools and playgrounds.**

Government agencies and the Shire of Esperance have undertaken a series of initiatives to remove contaminated soils, and dust from in and around public play areas, schools and homes, or have assisted the community to do so.

These initiatives can be summarised as follows:

- Children's playground equipment in more than 20 parks has been pressure cleaned by the Shire of Esperance and, where appropriate, soft sand has been replaced.
- The DOH undertook a comprehensive sampling program of lead and nickel contamination in Esperance homes. Samples were taken from both inside and outside of homes and results provided to householders. In the absence of national standards or guidelines, the DOH recommended that clean up goals for lead dust of  $0.4\mu\text{g}/\text{cm}^2$  on surfaces accessed by adults and  $0.04\mu\text{g}/\text{cm}^2$  for surfaces accessible by young children. Sample results have been provided to householders.
- The DOH produced notes to householders on cleaning of homes to remove lead and nickel residues. These notes were provided to all householders via newsletters. High Efficiency Particulate Air (HEPA) vacuum cleaners were provided free of charge to the community. DOH also prepared a DVD on 'Managing Lead Dust around the Home' and this has been made available to residents through numerous outlets in Esperance.
- The DOH, in conjunction with the Department of Education and Training, has conducted extensive sampling in and around schools within the Esperance townsite. These analyses show low levels of contamination in these premises which do not present a risk to the health of the attending children.
- The DOH has sampled numerous ceiling voids of homes in the Esperance townsite. Elevated levels of both lead and nickel have been found in some ceiling voids. The DOH considered that dusts containing lead and nickel were contained in a closed area and, under normal circumstances there is no pathway for this material to enter into the homes. The only exception is in those situations where people enter the roof-space for maintenance etc. The DOH has developed guidelines to provide advice to home owners of the steps they should take if they or tradespeople enter the roof cavity. All data on ceiling voids has been provided to the Consultant conducting the health and ecological risk assessment.

**v. Sampling along the transport route**

Government agencies have undertaken sampling of rainwater tanks and soils along the rail transport between Leonora and Esperance.

With the exception of one sample only, all of the rainwater tanks showed levels of lead and nickel well within the NH&MRC Drinking Water Guidelines. The one exceedence was not significant and DOH considered this did not pose a risk to human health. DOH continues to liaise with locally-based environmental health workers to ensure local indigenous groups are not placed at risk from traditional activities.

DEC carried out screening of soils along the transport route. All soil readings for lead along the railway line, rail road crossings and adjacent residential areas were below relevant Health Investigation Levels. Some contamination was found at transport depots and transfer yards, which exceeded the relevant soil Health Investigation Level for commercial and industrial premises (HIL-F). DEC served a Notice requiring clean-up of the lead kibble wash down area of the Leonora loading facility where elevated lead levels were identified.

A local indigenous leader has confirmed that indigenous people do not hunt or travel on land adjacent to the Wiluna minesite, 34 Kms West of Wiluna. The Department of Consumer and Employment Protection, who inspect the minesite, has raised no concern over the potential for off-site contamination. In addition, soil sampling and rain water tank tests along the transport corridor between Leonora and Esperance by both the Departments' of Health, and Environment and Conservation confirm little off-site impact.

On the basis of these analyses, it was not necessary to carry out specific testing of traditional foods and medicines for Aboriginal people as was suggested in Recommendation 2 of the report.

**vi. Removal of the remaining Magellan lead carbonate in the Esperance Port**

Magellan Metals Pty Ltd has prepared a Risk Management Plan to remove the 9,000 tonnes of lead carbonate held at the Port of Esperance under a DEC Pollution Prevention Notice (PPN). This Risk Management Plan sets out a means of removing this material using bulka bags. The process will be fully monitored and auditable by regulators.

Currently, the proposal is under scrutiny by the Esperance Port Authority and, when this is considered to be satisfactory, the Port Authority will submit the plan to DEC. When the proposal is received from the Esperance Port Authority by DEC, it will be checked against the comments previously submitted by DOH, DOCEP and DEC. If these issues have been satisfactorily addressed, DEC will release the proposal for public comment for a period of 21 days. Further comments will also be requested from DOH and DOCEP at that time. DEC will then consider the submissions and make a decision whether or not to approve the proposal. If it is approved, DEC will revoke its earlier Section 73A Notice to prohibit the export of lead from Esperance and issue a new Section 73A Notice allowing the removal of the lead carbonate in accordance with the proposal.

The projected date of removal of the lead carbonate is March/April 2008.

**vii Health and Ecological Risk Assessment**

In August 2007, DEC appointed independent consultants to carry out a health and ecological risk assessment of the impacts of the emissions from Esperance Port Authority operations on the Town of Esperance. The work is in three phases as follows:

1. To collate existing health and ecological data to build a conceptual site exposure model, and to identify any gaps from the sampling already completed by DOH and DEC, combined with other available data. This phase is likely to be completed by the end of 2007 and will be used to determine whether further investigation is required.
2. To complete a health and ecological risk assessment in Esperance associated with emissions from Esperance Port Authority operations.
3. To recommend to Government, ecological and public health risk management measures and remedial options for the Esperance area, in relation to Port activities.

The Esperance community has been invited to actively participate in this assessment. The Government will consider the consultants' recommendations when these are available. [Recommendation 44 refers.]

**viii Environmental Protection Measures**

DEC has issued 3 Environmental Protection Notices (EPN) to the Esperance Port Authority under Section 65 of the *Environmental Protection Act 1986*. The first EPN was issued on 9 October 2007, requiring further cleaning of Port facilities to remove lead carbonate residues. The second EPN was issued on 25 October 2007 requiring the Esperance Port Authority to provide fully interpreted air quality monitoring data collected since February 2007 and to prepare a comprehensive air quality monitoring program for future operations. The third EPN is being prepared at the time of writing this report and requires the Esperance Port Authority to assess and complete engineering works to further improve mineral ore bulk loading infrastructure. The Esperance Port Authority's licence conditions are also being revised and strengthened. [Recommendation 34]

In addition, DEC has issued Environmental Field Notices (EFN) to the Esperance Port Authority to remove lead contamination and make interim improvements to loading facilities to reduce dust emissions during nickel loading. [Recommendation 34]

**ix. Initiatives to minimise contamination by nickel concentrates**

Whilst the Terms of Reference of the Parliamentary Inquiry did not include reference to issues pertaining to nickel emissions from the Port, it is relevant to note the actions taken by the Government on this matter. There are 2 different forms of nickel concentrate. Nickel sulphide is currently exported in bulk. Nickel hydroxide will be exported in sealed stainless steel sea containers.

Those initiatives may be summarised as follows:

- DEC commenced monitoring each nickel shipment in April 2007 with a specialist Pollution Response Officer in attendance during loading operations to ensure that dust and odour emissions were contained within the Port. EFNs were issued to stop loading if emissions were considered to pose a risk to the community. DEC also conducts random checks of train unloading operations to ensure that environmental requirements are being met.
- The Minister for Planning and Infrastructure wrote to all nickel exporters asking for a critical analysis of all options for the transport, handling and loading of nickel concentrates [particularly nickel sulphide concentrates], a health and environmental risk assessment of nickel sulphide and an assessment of how xanthate residues [which has led to community complaints about odour] could be reduced.
- Several meetings between nickel exporters, government officers, representatives of the Esperance Port Authority and the Chamber of Minerals and Energy have been convened to establish an understanding of the issues to be addressed and how nickel will be exported without impacting adversely on the environment or the public health of the Esperance community.

- Nickel exporters have responded to the request from the Minister and have prepared an analysis of the transport options.
- There have been a series of measures taken to reduce both dusts and odours from nickel sulphide concentrates. For example, xanthate residues in nickel sulphide concentrate have been significantly reduced.
- Moisture specifications and pH levels now are rigorously monitored prior to despatch from the mine sites and on receipt at the Port. Two train loads of nickel concentrate which did not meet these specifications were rejected by the Port Authority in October 2007 and returned to the mine.
- A series of points of agreement have been reached with nickel exporters. Current projections are that Esperance will continue to be a major port for the export of nickel concentrates into the future. It has been agreed that nickel exporters and government need to be confident that best practices are in place, that the future of nickel exports is assured and that there is zero harm on public health and the environment for the foreseeable future.
- A series of engineering improvements have been made to the existing infrastructure at the Esperance Port. These include a scrubber on conveyor CV3, a shroud between the wharf and the ship to prevent spillage into the sea, improvements in the transport of nickel concentrates by improving the covering and standard of kibbles, and repairs to CV3. Both DEC and the Esperance Port Authority are working on further improvements to the existing nickel loading infrastructure to further reduce emissions.
- A full engineering audit of the existing infrastructure has been conducted, together with an estimation of the cost to totally replace this system with a new and fully enclosed system. The Government and the Esperance Port Authority are committed to upgrading or replacing the existing infrastructure and procedures used for the handling of bulk nickel sulphide concentrate. This work is ongoing. [Recommendation 41 refers.]

**x. Community consultation**

The Government has recognised the need to consult with the community of Esperance over the lead and nickel contamination issue and to provide ongoing and timely advice on actions being taken.

A summary of the initiatives relevant to this aspect are set out below:

- Establishing the Esperance Community Reference Group (ECRG) to provide ongoing dialogue on the remediation of Esperance and to provide a conduit for information flow between Government agencies the Esperance Shire, and the local community, including Locals for Esperance Development (LED) and Local Environmental Action Forum (LEAF),
- Engaging Coakes Consulting to obtain and collate community views on issues relevant to the lead contamination of Esperance,
- Distributing newsletters to Esperance residents on issues and progress,
- Convening Open Days to enable residents to speak directly to government officers and experts,

- Providing a full time Esperance Response Co-ordinator located in Esperance to respond to community concerns, and
- Facilitating the visits to Esperance of independent experts Professor Alison Jones and Professor Michael Moore, who visited Esperance to discuss lead and nickel toxicology with the ECRG, community groups, Esperance Port Authority workers, the Chamber of Minerals and Energy, and government officers.
- Committing to publishing all air monitoring results on the Esperance Port Authority Website, [www.esperanceport.com.au](http://www.esperanceport.com.au)

### 3.2 ENFORCEMENT ACTIONS:

**Relevant recommendations: 15, 30, 33, 34, 35, 36, 37, 38, 39,**

Government agencies have considered those recommendations of the Parliamentary Inquiry that relate to enforcement of statutory functions within their responsibility. A summary of these assessments and actions is set out below:

- DEC has reviewed the Committee's findings and has determined that those findings corroborate the facts obtained by DEC's investigation into lead contamination of the Esperance townsite. DEC has laid charges against the Esperance Port Authority for alleged breaches of the *Environmental Protection Act 1986*. [Recommendation 33.]
  - i. The Resources Safety Division of DOCEP has reviewed the Committee's findings concerning workplace, storage and related practices adopted by Magellan Metals Pty Ltd to determine if there were potential breaches of relevant legislative obligations. The State Solicitor's Office is advising on possible breaches of the *Explosives and Dangerous Goods Act 1961*, the *Dangerous Goods (Transport) Act 1998* and Regulations. [Recommendation 39.]
- DEC is investigating potential action under Part IV of the *Environmental Protection Act 1986* against Magellan Metals for failure to undertake annual roadside sampling of rainwater tanks within 50 metres of the transport route on an ongoing basis. [Recommendation 15.]
  - i. Main Roads Western Australia cancelled BIS Industrial Logistics' approval to cart lead under the concessional loading scheme, effective 16 September 2007. [Recommendation 36]
  - ii The Resources Safety Division of DOCEP has investigated the matter. Any non compliances by Magellan Metals under the *Mines Safety and Inspection Regulations 1995* were dealt with using other enforcement measures under the Resources Safety Enforcement and Prosecution Policy. [Recommendation 35]
  - iii The Resources Safety Division of DOCEP has investigated this matter and decided that prosecution action should not be taken against the Esperance Port Authority under the dangerous goods legislation. [Recommendation 38]
  - iv. WorkSafe has reviewed the Committee's findings and has completed an investigation into BIS Industrial Logistics workplace practices. The investigation determined there were no breaches of the *Occupational Safety and Health Act 1984* or associated Regulations. The Resources Safety Division of DOCEP similarly investigated the company's transport practices and decided that, in accordance with Resources Safety Enforcement and Prosecution Policy, prosecution action will not be taken against BIS Industrial Logistics under the *Dangerous Goods (Transport) Act 1998*. [Recommendation 37]

### 3.3 STRENGTHENING THE CAPACITY OF THE ESPERANCE PORT AUTHORITY

**Relevant recommendations: 21, 23, 29.**

Under the *Environmental Protection Act 1986*, the Esperance Port Authority is responsible for complying with its licence conditions, as well as with the general provisions of the Act, including preventing pollution and environmental harm.

Since the lead contamination in Esperance, the Government and the Esperance Port Authority have made significant changes designed to strengthen the capacity of the Port Authority in environmental matters and to improve infrastructure and procedures. These are summarised below:

**i. Environmental officers**

During the lead event there was one part-time environmental officer in the Esperance Port Authority who was employed; - [0.6 FTE]. The Government has strengthened this capacity and the current staffing is now 2.6 FTE with the addition of a full time Environmental Manager and a full time Environmental Officer. These positions have been filled.

**ii. Improved Environmental Monitoring**

Environmental monitoring at the Port and within the adjacent community has been upgraded significantly [relevant to Recommendation 21]. The current monitoring is summarised as follows:

- 9 depositional dust gauges - 2 within the Port boundary and 7 located in the Esperance community
- 3 High Volume (HiVol) dust monitors have been located at the yacht club, in Panorama Place and at the intersection of Emily and Corry Streets. The Esperance Port Authority has recently purchased 4 HiVol dust samplers which will be located in positions agreed to by agencies and the community.
- 3 Tapered Element Oscillating Microbalance [TEOM] dust monitors have been located on the berth at the Port, in Bostock Street and on the yacht club groyne.
- The turnaround time for receipt of environmental monitoring results has been significantly improved, especially on lead and nickel data.
- Contextual information will be provided to enable interpretation of the analytical data. This will include such information as prevailing wind conditions, relevant ship loading and other significant activities which may have impact on the analytical results, and a discussion on what the results of analyses show.
- Reports will be provided on a regular basis to the Port Consultative Committee (PCC) and posted on the Esperance Port Authority website at the same time as these reports are provided to DEC.
- The Esperance Port Authority has engaged an air quality consultant to develop an Air Quality Management Plan (which will be presented to government agencies for comment and approval) and to oversee the monitoring program, plan and interpret the results. This will meet the requirements of the EPN issued on 25 October 2007 by DEC.



### **iii. Auditing of environmental monitoring**

The Esperance Port Authority has engaged consultants to undertake an audit of all the environmental monitoring at the port and in particular:

- Audit of emissions controls- this will be in 3 stages. Stage 1 covering the nickel concentrates handling and infrastructure has already been completed. Stage 2 will focus on iron ore emissions and controls, and Stage 3 will review sulphur emissions and controls.
- To review the Port's environmental licence and compliance with the *Mines Safety and Inspection Act 1994*.

### **iv. Engineering solutions to dust emissions**

As indicated above (3.1(ix)), the Esperance Port Authority has carried out a series of engineering improvements to the infrastructure used for the transport, handling, storage, conveying and loading of all materials handled by the Port and particularly metal concentrates [such as nickel sulphide] and iron ore.

The Esperance Port Authority has received an engineering audit of the overall infrastructure at the port. This is currently being assessed.

DEC has required considerable work to be undertaken to improve the environmental capacity of the ship loader and conveyor systems used for handling nickel concentrates. The belt scraping units have been re-conditioned, a wet scraper system and a negative dust collection unit has been introduced on CV3 along with repair and recladding of both CV2 and CV3.

The Government has reinforced the need for these actions to be taken with DEC providing recommendations on further engineering improvements to the nickel loading infrastructure. These are summarised as follows:

- That the shed where kibbles are unloaded should be under negative pressure to minimise emissions to the outside environment.
- Further improvements should be made to the ship loader and conveyor CV3 to reduce emissions.
- The shroud now used between the ship and the wharf should be reviewed and refined to better contain spillages.
- The possibility of dusts and material emanating from the ship loader should be reviewed and redesigned to eliminate emissions
- The immediate vicinity around CV1 should be reviewed to minimise dusts.
- Further maintenance work should be carried out to address the return cycle of the conveyor CV3.

The Esperance Port Authority is currently implementing all of these recommendations.

However, the medium term aim of the Government and the Esperance Port Authority is to completely replace the current 'heavy metal' infrastructure which was used to handle and convey the lead carbonate and is still used for nickel sulphide concentrates. A completely sealed system or containerisation of the material is envisaged, and this will ensure emissions are prevented.

**v. Marine sediment sampling and analysis**

The Esperance Port Authority has engaged consultants to carry out a marine sediment and analysis plan for the Esperance Port. Sediment sampling of over 50 sites has been undertaken. This work will provide a detailed and systematic assessment of the heavy metal concentration in the port and its immediate vicinity.

The report has been provided to DEC and is currently being assessed.

**vi. Installation of waste water system**

A waste water system has been installed in conjunction with the heavy metals facility to ensure that all waste water is recycled and not discharged.

**3.4 IMPROVING ACCOUNTABILITY AND TRANSPARENCY BETWEEN THE ESPERANCE PORT AUTHORITY AND THE COMMUNITY**

**Relevant recommendations 6, 25**

The Government has sought to improve the accountability and transparency between the Esperance Port Authority and the community. Those initiatives taken include:

- Improved consultation mechanisms. Soon after the lead and nickel contamination was identified in Esperance, the Government established the ECRG to provide a conduit between the Esperance community and government agencies. The ECRG was envisaged to have a limited time frame until the contamination was resolved and a normal situation could be established. However, some of the principles employed in setting up the ECRG have been applied to the existing consultative mechanisms referred to in Recommendation 6.
- Accordingly, a new Port Consultative Committee (PCC) is being established and will replace the existing Port Development Consultative Committee.
- The PCC will have defined terms of reference, governance principles, increased representation from community groups and will provide advice to the Esperance Port Authority on dissemination of information to the community. The PCC will be chaired by a Director of the Esperance Port Authority Board.
- A Draft Charter between the Esperance Community and the Esperance Port Authority has been developed. This Charter sets out a set of guidelines and commitments between the Esperance Port Authority and the Esperance Community. This Charter will be further developed by the PCC.

The Government will progress these initiatives with other ports throughout Western Australia by amending the *Port Authorities Act 1999*. When adopted, this will require all Port Authorities to establish advisory committees similar to the PCC and that the minutes of the proceedings to be posted on port websites.

**3.5 STRENGTHENING THE LEGISLATIVE PROVISIONS**

**Relevant Recommendations 1, 5, 6, 9, 10, 40,**

**i. Health Impact Assessment**

The Government recognises the need for DOH to have an active role as an integral part of the Development Assessment Process. The role of Health Risk Assessment within approvals processes is well understood. The proposed new Public Health Act

will mandate Health Impact Assessment (HIA) in approvals processes. A Discussion Paper on the issue was distributed for public consultation. Comments are now being assessed by DOH. Proponents will be required to conduct a HIA where there is the potential for adverse and beneficial health impacts arising from implementation of the proposal. DOH will assess the need for an HIA. Appropriate legislative amendments will ensure that DOH input is considered as a component of proposals.

The Board of the Esperance Port Authority has also determined that an application for any new material, intended for export or import through the Port of Esperance, must be accompanied by an HIA.

**ii. Amendments to Port Authorities Act**

The Government is currently completing a review of the *Port Authorities Act 1999*. These amendments along with a number of further initiatives recommended by the Parliamentary Inquiry will be incorporated into a single Amendment Bill and brought to Parliament next year.

The issues that will be addressed through legislation are:

- To include the requirement, that Port Authorities must ensure that public health is not adversely impacted by their operations. [Recommendation 5]
- To require that all Port Authorities establish port community consultative committees, similar to the Esperance Port Consultative Committee. These advisory committees will provide the opportunity and appropriate governance for direct dialogue with the local community, and further, that the minutes of the proceedings of these advisory committees will be posted on port websites. [Recommendation 6]
- To increase the permissible number of positions on Port Authority Boards from 5 to 6 members. This will enable the opportunity for a greater range of expertise.

**iii. Adopting the UN recommendations into the Dangerous Goods Code**

The Government has recognised the need to strengthen the provisions relating to dangerous goods.

The regulations have been revised and a new suite of Dangerous Goods Regulations are scheduled for proclamation on 1 March 2008. These regulations incorporate updated transport requirements from the Australian Dangerous Goods Code 7<sup>th</sup> Edition. This will align the new WA regulations with UN recommendations

The Resources Safety Division of DOCEP has also established a procedure to review the dangerous goods classification of all relevant mineral products in Western Australia.

### **3.6 STRENGTHENING AGENCIES AND IMPROVING PROCEDURES-**

**Relevant recommendations 7, 8, 11, 12, 13, 14, 16, 18, 19, 20, 22, 24, 26, 27, 28, 32.**

#### **i. Improving the resourcing of DEC**

The Government has recognised that DEC needs to be appropriately resourced in order to meet its inspection targets and so ensure that the environment is protected. A summary of the initiatives that have been undertaken on this issue are as follows:

- Government increased industry licence fees in the 2007-2008 budget. The fee increases will provide an extra \$2.7 million in 2007/08 increasing to \$4 million per annum the year after. These increases aim to recover the full cost of industry regulation. The additional funds will be used to increase inspection and compliance monitoring. The Government has since approved a further increase specifically for bulk handling in ports. This additional increase in fees for ports will generate a further revenue increase of \$330,000 per year for industry regulation of port activities. [Recommendation 7]
- The revenue will provide for an additional 25 staff with 12 staff deployed to the regions. 17 staff will work on improving licensing and inspection targets. The remainder will strengthen governance and technical support for industry regulation. [Recommendation 34]
- DEC is currently considering introducing fees to fund increased resources for compliance monitoring of projects assessed and approved under the *Environmental Protection Act 1986*. This will require amendments to the Act. [Recommendation 8]
- DEC has established a new position for the Esperance district and is currently in the recruitment process. In the meantime, DEC is sending Perth-based staff from the Environmental Regulation Division and Pollution Response Unit to Esperance to monitor dust associated with ship loading. [Recommendation 24]
- DEC is establishing a special inspection and compliance branch to improve compliance and enforcement throughout the State. [Recommendation 34]

#### **ii. Strengthening licence conditions**

DEC is revising the Esperance Port Authority licence to strengthen dust management and environmental monitoring and reporting provisions. DEC is also reviewing licences of all Port Authorities in Western Australia with bulk mineral loading facilities to ensure that the licence conditions incorporate up to date standards of environmental management and monitoring

DEC has, since the Esperance Port Authority's licence was amended in 2004, established policies and procedures to ensure that key environmental issues relating to facility operation, emissions and discharges are covered by licence conditions. However, these policies and procedures are being reviewed as a consequence of the Inquiry findings and will be further strengthened if necessary.

Emissions targets and limits are now being introduced into licences, and licensees are required to take necessary measures to ensure they operate within these conditions.

Should it be appropriate to specify other commitments, these will be contained within Environmental Management Plans rather than licence conditions, as licence conditions set the performance conditions for the premises. [Recommendation 19]

DEC is revising its policy for air emissions from prescribed premises and developing standard licence conditions to ensure that the requirements for hazardous dust emissions are based on HRA. [Recommendation 22]

The review of the Esperance Port Authority's Licence and the Port Review Programme for other ports in Western Australia have identified strengthened monitoring requirements appropriate for bulk handling of mineral ores. These will form the basis for hazardous dust monitoring from prescribed premises within ports and will be applied to other similar premises. [Recommendation 23]

DEC will complete a comprehensive review of Western Australian ports bulk handling hazardous minerals, in December 2007. DEC will initiate amendments of port authority licences in accordance with the findings of the review following the revision of the Esperance Port Authority's licence. Appropriate management and monitoring with the updated standards will be applied as required. [Recommendation 17]

DEC is reviewing the Schedule of Prescribed Premises to improve category descriptions and definitions to ensure they provide a suitable regulatory framework for modern industrial practices. The description of open and closed bulk material handling systems will be improved in the revised regulations to ensure that fugitive dust emissions are contained. [Recommendation 16]

### **iii. Requiring improved environmental monitoring**

DEC has sought to improve the environmental monitoring by the Esperance Port Authority by the following:

- Use of a combination of depositional dust gauges, high volume sampling [HiVol] and Tapered Element Oscillating Microbalance [TEOM] sampling techniques. These changes have been implemented. The optimum placement of these gauges and samplers has been reviewed in association with DOH, the Esperance Shire and the community. An additional 4 HiVol units are being purchased by the Esperance Port Authority. DEC has incorporated the requirement for this sampling program as part of a Section 65 EPN issued to the Esperance Port Authority. This sampling regime will also be incorporated into the licence of the Port Authority. [Recommendation 21]
- DEC Air Quality Management Branch has developed a guideline for the management of dust generated by land development and remediation of contaminated site activities. This guideline is being expanded to include bulk materials handling and storage facilities. The guideline sets out the minimum monitoring requirements of DEC, equipment and methods which can be used together with health and environmental targets which must be achieved. [Recommendation 23]
- DEC encourages all licensees to publish all monitoring data on their web sites and will develop a guideline to assist licensees to understand their obligations. DEC will

continue to share environmental monitoring data with relevant agencies. [Recommendation 28]

#### iv. **Improving Departmental Procedures and Policies**

A summary of the initiatives taken by Government are set out below:

- DEC has commissioned an independent review of its inspection and compliance functions, and will make any improvements based on the recommendations of this review. This review is expected to be completed by the end of January 2008. [Recommendation 34].
- The EPA is undertaking a review of its procedures, including the form and content of recommended conditions that it provides to the Minister for the Environment in its report and recommendations under Section 44(2) of the *Environmental Protection Act 1986*. This review takes into account matters such as the clarity and auditability of conditions. The review will include external consultation and will be completed and implemented in early 2008. [Recommendation 11]
- The EPA is strengthening its procedures to ensure that where applications for a variation to a proposal have been assessed including presenting a risk to public health, that these are subject to public consultation. [Recommendation 13]
- The EPA, in consultation with the DOH, is strengthening its policies and procedures to ensure that the level of assessment and public consultation provides adequate provision for public concern to be expressed. [Recommendation 14]
- DEC has recently developed a policy to address changes to licences that are requested after the initial advertising of applications. This will be published on the DEC website by December 2007.
- There are circumstances of change where public consultation should be undertaken, and the EPA's procedures are being strengthened to ensure appropriate further consultation takes place. [Recommendation 20]

### **3.7 STRENGTHENING THE CAPACITY OF OTHER WA PORTS**

#### **Relevant recommendations 3, 4, 17, 23, 31,**

The recent events in Esperance have had a flow-on effect to other Western Australian ports particularly with respect to environmental monitoring, licensing and structural aspects. A summary of the initiatives taken by Government is set out below:

- **Assessment of existing monitoring, facilities and operations of all WA ports:-** DEC, DOH and DOCEP have embarked on a State-wide assessment of all WA ports handling bulk mineral exports. This includes assessment of the materials handled, the suitability of the existing infrastructure for handling those materials, sampling and analysis of soils, local rainwater tanks and other environmental monitoring. Where appropriate, improvement plans will be put in place to ensure ports operate to modern requirements.
- **Licensing:-** DEC is reviewing the existing licence arrangements, practices and facilities at ports and determining whether these are meeting current operational

standards and the demands of the State's resources boom. DEC will tighten licence provisions, including a requirement to develop and adhere to Environmental Improvement Plans.

- **Rapid Response:-** DEC is establishing a special inspection and compliance branch of properly trained and equipped staff dedicated to inspecting licensed premises throughout the State, to ensure compliance with licence conditions and that risks to the environment are being managed appropriately.
- **Ensuring the management of WA ports has the capacity to address the complexity of economic, environmental and public health aspects of modern business:-** It should be acknowledged since we came to Government, considerable emphasis has been placed on bringing Port Boards under the direction of Chairs who have senior business experience. This has had considerable flow-ons in modernising and strengthening the general administration of port activities. Esperance had been the last port to be restructured in this way so shortcomings in practices were not addressed earlier.

Notwithstanding this, the Minister for Planning and Infrastructure has instructed each Port Authority to immediately undertake a review of their environmental operations, and to ensure that they were operating in accordance with their environmental licence. All Port Authorities have completed a review of their operations.

The Minister further requested that each port look at how they might continue to improve their environmental management, including the engagement of an environmental consultant to assist the port in improving environmental standards, and considering moving towards the environmental industry standard ISO 14001. This will assist ports to minimise environmental impact caused by their activities and to achieve continual improvement of their environmental performance.

These initiatives are summarised as follows:

- Engaging independent environmental consultants for all Port Authorities to:
  - Review the environmental management plan which forms part of each port's annual strategic development plan,
  - Advise on the suitability of established environmental standards for the port's ongoing operations
  - Audit and report to the Boards on compliance with those standards, and to the Minister.
  - Provide independent advice to the Boards on the details of the Port Authority's performance in relation to environmental regulation, as is required to be included in the Annual Directors' Report.

As each Port Authority has its own unique operating environment, the scope of work undertaken by the environmental consultants will vary to suit the needs of each Port.

All Port Authorities which are not already ISO 14001 certified are now moving toward this industry standard.

The Western Australian Port Authorities Association has been engaged in facilitating and implementing these initiatives and ensuring sharing of best practice measures.

The Government will also increase the permissible number of positions on Port Authority Boards, which will enable the opportunity for greater expertise on Boards, and provide for increased community representation.

- **Improved accountability and transparency to WA port communities:-** The Committee has proposed in Recommendation 6 that all WA ports establish an advisory committee such as the Esperance Port Consultative Committee and this be a requirement of the *Port Authorities Act 1999*.

Most Port Authorities have a similar type of community consultation group already in place. However, it is acknowledged that these groups could be better formalised and that each port will now move to establish a community consultation committee with Terms of Reference, and formal membership.

As has been set out in Item 3.4 of this response, significant improvements to the existing consultative arrangements have been made between the Esperance Port Authority and the Esperance community. The Government intends to apply this model to all WA ports so that the community is well informed of the respective port's operations, ongoing environmental monitoring program and its likely future operations.



#### 4.0 SPECIFIC RESPONSES TO RECOMMENDATIONS

| Recommendation   | Responsibility Agency | Response Action/Comments   | Timing     |
|--|-----------------------|--|------------|
| <p><b>Recommendation 1</b> Page 14</p> <p>The Committee recommends that the approvals processes for, and the regulatory regimes applicable to, the transport and handling of dangerous goods such as lead concentrate in Western Australia be strengthened.</p>  | DOCEP                 | <p>The Government <b>supports</b> this recommendation.</p> <p>New Dangerous Goods Regulations will be presented to Executive Council on 4 December 2007. These Regulations incorporate updated transport requirements from the Australian Dangerous Goods Code 7<sup>th</sup> Edition.</p> <p>DOCEP has also established a procedure to review the dangerous goods classification of all relevant mineral products in Western Australia</p>  | Early 2008 |
| <p><b>Recommendation 2</b> Page 32</p> <p>The Committee recommends that, if current studies demonstrate that there has been substantial contamination along the transport route for the lead concentrate from Wiluna to Esperance, specific testing of traditional foods and medicines be undertaken. If contaminated, targeted strategies should be developed to inform affected Aboriginal communities of the risks and how to manage those risks.</p> | DEC & DOH             | <p>The Government <b>supports</b> this recommendation</p> <p>DEC and DOH have completed the investigation into possible contamination along the transport route from Wiluna to Esperance.</p> <p>All soil readings for lead along the railway line, rail road crossings and adjacent residential areas were below relevant Health Investigation Levels. Some contamination was found at transport depots and transfer yards, which exceeded the relevant soil Health Investigation Level for commercial and industrial premises (HIL-F). DEC served a notice requiring clean-up of the lead kibble washdown area of the Leonora loading facility where elevated lead levels were identified.</p> <p>In addition, DOH [in conjunction with relevant local governments] monitored rainwater tanks along the transport corridor. All rainwater tanks tested were below the Drinking Water Guidelines, with the exception of one</p> | N/A        |

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| <p><b>Recommendation 3</b>      <b>Page 63</b></p> <p>The Committee recommends that the role of the Western Australian Port Operations Task Force, the Sea Freight Council of Western Australia, and the Department for Planning and Infrastructure's Marine Pollution Unit be included in a review of the management of ports in Western Australia (refer to Recommendation 4).</p> |   | <p>tank which marginally exceeded the Guideline for lead.</p> <p>DOH and DEC consider that there is no risk to human health or the environment and no further investigation will be carried out. The reports have been referred to the independent consultants conducting the health and ecological risk assessment.</p> <p>DOH continues to liaise with locally-based environmental health workers to ensure local indigenous groups are not placed at risk from traditional activities.</p> |             |
|  | <p>Minister for Planning and Infrastructure</p> | <p>The Government <b>acknowledges</b> the intent of this recommendation. While the Government believes the principle of Boards managing Port Authorities is sound, the Government will review the role that the Department of Planning and Infrastructure and the Western Australian Port Authorities Association can play in ensuring best practice models are shared.</p>   | <p>2008</p> |

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| <p><b>Recommendation 4</b>      <b>Page 65</b></p> <p>The Committee recommends that the Minister for Planning and Infrastructure develop and implement a model for the management of ports that ensures that the management structure reflects the economic value and complexity of the ports' business or, alternatively, consider increasing the role of Departmental supervision and assistance.</p> | <p>Minister for Planning and Infrastructure</p> | <p>The Government acknowledges the need for Ports to have a management structure that reflects the economic value and complexity of the ports' business.</p> <p>In 2002, the Minister for Planning and Infrastructure began a process of significantly up-skilling Port Authority boards, to ensure that they had the necessary level of expertise, particularly in the role of Port Authority Chair. As greater management skills have been provided at Board level, substantial improvements in Port management and operation have been seen. A new Chair had been appointed in August 2006 and a strategic review of Esperance Port was underway when the incident occurred.</p> <p>A number of initiatives have already been taken to address the need for all ports to appropriately manage their responsibilities especially those concerning environmental management, public health and occupational health.</p> <p>These initiatives include:</p> <ol style="list-style-type: none"> <li>1. Engaging independent environmental consultants for all Port Authorities to: <ul style="list-style-type: none"> <li>• Review the environmental management plan which forms part of each port's annual strategic development plan,</li> <li>• Advise on the suitability of established environmental standards for the port's ongoing operations</li> <li>• Audit and report to the boards on compliance with those standards, and to the Minister.</li> <li>• Provide independent advice to the boards on the details of the port authority's performance in relation to environmental regulation, as is required to be included in the Annual Directors' Report.</li> </ul> </li> </ol> | <p>Already initiated</p> |
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| <p><b>Recommendation 5</b>      <b>Page 66</b></p> <p>The Committee recommends that section 30 of the <i>Port Authorities Act 1999</i> (WA) be amended to include a specific function that a port authority be required to ensure that public health is not adversely impacted by its conduct.</p>   |                     | <p>2. Increasing the number of positions on port authority boards from five to six members. This will enable the opportunity for greater expertise on port authority boards, and</p>   |  |
| <p><b>Recommendation 6</b>      <b>Page 69</b></p> <p>The Committee recommends that there should be a legislative requirement in the <i>Port Authorities Act 1999</i> that ports establish an advisory committee such as the Esperance Port's Community Development Consultation Committee. The Act should include the committees' terms of reference and membership criteria, including a provision that the local shire be represented on the consultative committee. To ensure transparency and accountability to their communities, the minutes of the proceedings of such port consultative committees should be required to be posted publicly on port websites.</p> | <p>DPI<br/>/DOH</p> | <p>The Government <b>supports</b> the recommendation that public health is not placed at risk through the activities of local ports. Advice is being sought whether this is best achieved by amending the <i>Port Authorities Act 1999</i>, or by incorporating the requirements into amendments to the proposed new Public Health Act.</p>  | <p>Mid 2008</p>  |
| <p><b>Recommendation 7</b>      <b>Page 85</b></p>   | <p>DPI</p>          | <p>The Government <b>supports</b> this recommendation.</p> <p>As indicated in the response to recommendation 5, the <i>Port Authorities Act 1999</i> is currently under review and this amendment will be incorporated into that review. This will require that all port authorities establish such advisory committees, that the minutes of the proceedings are posted on port websites.</p> <p>Since the lead incident in Esperance the terms of reference, membership and governance protocols for the Esperance Port Consultative Committee have been reviewed and strengthened to give greater accountability of the port to the Esperance community and transparency of operations. In addition, a charter between the Esperance Port Authority and the Esperance community has been developed. This will provide a model for other ports.</p> | <p>Dependent upon Parliamentary legislative timetable</p> <p>Already implemented</p> |
| <p><b>Recommendation 7</b>      <b>Page 85</b></p>   | <p>Govt/DEC</p>     | <p>The Government <b>supports</b> this recommendation.</p>   | <p>Industry fee</p>  |

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| <p>The Committee recommends that the Department of Environment and Conservation should be adequately funded to allow the Department to cover the true cost of its industry regulation function. This should include meeting its inspection targets and for these targets to appropriately reflect the degree of risk associated with licensed premises. Funding should be either by a policy of full cost recovery or in part augmented from consolidated revenue.</p> |                 | <p>Government increased industry licence fees in the 2007-2008 budget. The fee increases will provide an extra \$2.7 million in 2007/08 and \$4 million per annum thereafter. These increases aim to recover the full cost of industry regulation. The additional funds will be used to increase inspection and compliance monitoring. The Government has since approved a further increase specifically for bulk handling in ports. This additional increase in fees for ports will generate a further revenue increase of \$330,000 per year for industry regulation of port activities. This will provide for an additional 25 staff with 17 to work on licensing and inspection targets.</p> | <p>increase completed. Ports fee increase will be effective from December 2007</p> |
| <p><b>Recommendation 8 Page 87</b></p> <p>The Committee recommends that compliance monitoring of those projects assessed as likely to have a significant environmental impact under Part IV of the <i>Environmental Protection Act 1986</i> should be adequately funded.</p>   | <p>Govt/DEC</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC is currently considering introducing fees to fund increased resources for compliance monitoring of projects assessed and approved under Part IV of the <i>Environmental Protection Act 1986</i>. This will require amendments to the Act. Government has approved additional funding of \$1.32 million per annum for 10 additional staff to increase compliance monitoring.</p>  | <p>Dependent on Parliamentary legislative timetable</p>                            |
| <p><b>Recommendation 9 Page 90</b></p> <p>The Committee recommends that the Department of Health review the adequacy of existing legislative provisions available to the Department to respond to public health emergencies in light of its experiences in responding to lead pollution in the Esperance area. Its findings should be reported to the Minister for Health, with a view to</p>  | <p>DOH</p>      | <p>The Government <b>supports the intent</b> of this recommendation.</p> <p>A review is presently underway and provisions will be included in the proposed new Public Health Act, intended to be presented to the Lower House next year, to ensure that health impacts, such as those which occurred in Esperance, could appropriately be determined to be a “public health emergency” defined under the legislation.</p> <p>With respect to the absence of a national guideline for assessment of blood lead levels, the Australian Health Protection Committee has agreed to</p>   | <p>Spring 2008</p>   |

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| <p>initiating legislative amendment processes if required.</p>   |                | <p>formally request the National Health and Medical Research Council to reinstate its previous guideline, in the interim, and, in the longer term, establish a review process to develop new guideline levels which reflect the findings of scientific and medical research.</p>   |  |
| <p><b>Recommendation 10</b> Page 94<br/>The Committee recommends that there be a legislative requirement for the Department of Health to conduct a health impact assessment as part of the Environmental Assessment Process.</p> | <p>DOH/EPA</p> | <p>The Government <b>supports the intent</b> of the recommendation relating to the need for a health impact assessment [HIA] to form part of the Development Assessment Process and a senior manager has been appointed in the DOH to progress the issue.</p> <p>The introduction of HIA is now well advanced. The proposed new Public Health Act mandates health impact assessments. A Discussion Paper on the issue has been distributed for public consultation. Comments are now being assessed. Under the proposal, proponents would be required to prepare a health impact assessment where the health risk assessment justifies the need. DOH will assess these and advise the EPA. Appropriate legislative amendments will ensure that DOH advice is considered in any approval granted.</p> <p>The proposed new Public Health Act is intended to be introduced into Parliament in the Spring session of 2008.</p> <p>Government has approved additional resources in order to undertake health risk assessments as was recommended in the report of the Parliamentary Inquiry into the Bellevue Fire and in this Parliamentary Inquiry. The requirements for DOH are for 3 FTE, at a cost of \$370,000 per annum.</p> | <p>Spring 2008</p> <p>January 2008</p> |
| <p><b>Recommendation 11</b> Page 108<br/>The Committee recommends that the</p>   | <p>EPA</p>     | <p>The Government <b>supports</b> this recommendation.</p> <p>The EPA is undertaking a review of its procedures, including the form and</p>  | <p>Early 2008</p>                      |

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| <p>Environmental Protection Authority review its procedures. It should ensure that any measure of significant environmental consequence, identified as part of its assessment of a proposal, is included in the Ministerial conditions or proponent commitments, together with a precise definition of the terms used. This will ensure that there is no ambiguity about the significance of the measure and also that compliance can and will be audited by the Department of Environment and Conservation audit officers.</p> |            | <p>content of recommended conditions that it provides to the Minister for the Environment in its report and recommendations under section 44(2) of the <i>Environmental Protection Act</i>. This review takes into account matters such as the clarity and audit ability of conditions. The review will include external consultation and will be completed and implemented in early 2008.</p>                      |                  |
| <p><b>Recommendation 12</b>      <b>Page 109</b></p> <p>The Committee recommends that all variations to Ministerial Statements should be posted on the Environmental Protection Authority's website.</p>  | <p>EPA</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>This has been implemented.</p>  | <p>Immediate</p> |
| <p><b>Recommendation 13</b>      <b>Page 110</b></p> <p>The Committee recommends that when there is an application to the Environmental Protection Authority varying a proposal to export a substance from one port through a different port, replication of any original public consultation process must occur as a minimum requirement.</p>  | <p>EPA</p> | <p>The Government <b>supports the intent</b> of this recommendation.</p> <p>Most applications for a variation under Section 45C are minor and need not go through such a public process.</p> <p>The EPA is strengthening its procedures to ensure that where applications for a variation to a proposal have been assessed as presenting a risk to public health that these are subject to public consultation.</p> | <p>Immediate</p> |

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| <p><b>Recommendation 14</b>      <b>Page</b><br/><b>110</b></p> <p>The Committee recommends that the potential for public concern about the likely impacts on the environment and health should be specific factors considered in the exercise of discretion under the relevant provisions of Part IV of the <i>Environmental Protection Act 1986</i>.</p>  | EPA | <p>The Government <b>supports</b> this recommendation.</p> <p>The EPA in consultation with the DOH is strengthening its policies and procedures to ensure that the level of assessment and public consultation provides adequate provision for public concern to be expressed.</p>   | Immediate                            |
| <p><b>Recommendation 15</b>      <b>Page</b><br/><b>113</b></p> <p>The Committee recommends that the Environmental Protection Authority consider what action should be taken as a result of the failure by Magellan Metals Pty Ltd to undertake annual roadside monitoring surveys and sampling of rainwater tanks within 50 metres of the proposed route '<i>initially and ongoing</i>'. It committed to do this in the Health, Hygiene and Environment Management Program; a program required under the Ministerial Statement allowing the Magellan proposal to be implemented.</p> | DEC | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC is responsible for monitoring compliance with Ministerial conditions set under Part IV of the <i>Environmental Protection Act 1986</i>. DEC is investigating alleged breaches of Part IV of the <i>Environmental Protection Act 1986</i>. Enforcement action will be considered in accordance with DEC's Enforcement and Prosecution Policy.</p> | December 2007                        |
| <p><b>Recommendation 16</b>      <b>Page</b><br/><b>124</b></p> <p>The Committee recommends that the Department of Environment and</p>  | DEC | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC is reviewing the schedule of Prescribed Premises to improve category descriptions and definitions to ensure they provide a suitable regulatory</p>   | Prescribed Premises review June 2008 |



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| <p>Conservation review the terminology used in its port licences, in particular the reference to 'open' and 'closed' handling systems, to ensure that these are not misleading.</p>   |            | <p>framework for modern industrial practices. The description of open and closed bulk material handling systems will be improved in the revised regulations.</p>  |                   |
| <p><b>Recommendation 17</b>      <b>Page 125</b></p> <p>The Committee recommends that, as part of its current review of ports, the Department of Environment and Conservation review port environmental licences to ensure that the licensing conditions incorporate current standards relating to environmental management and monitoring.</p>   | <p>DEC</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC will complete the review of Western Australian ports bulk handling of hazardous minerals in February 2008. DEC will initiate amendments of port authority licences in accordance with the findings of the review and the revision of the Esperance Port Authority's licence. Appropriate management and monitoring consistent with the updated standards will be applied as required.</p> | <p>April 2008</p> |
| <p><b>Recommendation 18</b>      <b>Page 130</b></p> <p>The Environmental Protection Authority's view is that there is a legal obligation to comply with all commitments made by a proponent in correspondence seeking a variation to a Ministerial Statement.</p> <p>The Committee recommends that, unless the Environmental Protection Authority has already done so, it seek legal advice on the issue of whether all commitments made by a proponent in correspondence seeking a variation to a Ministerial</p> | <p>EPA</p> | <p>The Government <b>supports the intent</b> of this recommendation.</p> <p>The issue will be addressed through the review of conditions referred to in response to Recommendation 11.</p>  | <p>Early 2008</p> |

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| <p>Statement are legally enforceable.</p> <p>If the Environmental Protection Authority's view is supported, proponents should be advised that all their undertakings made in correspondence seeking a variation to a Ministerial Statement are legally enforceable.</p> <p>If the Environmental Protection Authority's view is not supported, it should review its procedures to ensure that all proponent commitments that it intends to be legally enforceable are incorporated into the Ministerial Statement, together with a precise definition of the terms used so that auditing of compliance can be effectively undertaken.</p> |            |  |  |
| <p><b>Recommendation 19</b>      <b>Page 134</b></p> <p>The Committee recommends that the Department of Environment and Conservation review its procedures to ensure that any significant commitment made in an application for, or an application to vary, an environmental licence is included in the conditions of the licence, together with a precise definition of the terms used. This will ensure that there is no ambiguity about</p>   | <p>DEC</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC has, since the Esperance Port Authority's licence was amended in 2004, established policies and procedures to ensure that key environmental issues relating to facility operation, emissions and discharges are covered by licence conditions. However, these policies and procedures are being reviewed as a consequence of the Inquiry findings and will be strengthened if necessary.</p> <p>Emissions targets and limits are now being introduced into licences, and licensees are required to take necessary measures to ensure they operate within these conditions.</p> | <p>December 2007 and ongoing core operational policy</p> |

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| <p>the significance of the commitment and also that compliance with these commitments can and will be inspected by the Department of Environment and Conservation licensing officers.</p>   |                | <p>Should it be appropriate to specify other commitments, these will be contained within environmental management plans rather than licence conditions, as licence conditions set the performance conditions for the premises.</p>  |                      |
| <p><b>Recommendation 20</b><br/><b>Page 140</b></p> <p>Where reliance is placed on public consultation in applications to either the Environmental Protection Authority or the Department of Environment and Conservation and the information provided to the public is subsequently superseded, proponents should be required to replicate the initial consultation process.</p> | <p>EPA/DEC</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC advertises licence applications for public comment when these are received. Where a significant change to the advertised application is subsequently provided, DEC requires the application to be re-advertised. Under the <i>Environmental Protection Act 1986</i>, DEC is required to seek comments thereon from any public authority or person which or who has, in the opinion of the CEO, a direct interest in the subject matter of that application. To assist this process, DEC requires consultation to be completed by proponents and has published a guideline "<i>Interim Industry Guide to Community Involvement, 2003</i>" to assist proponents to consult with the community.</p> <p>DEC has recently developed a policy to address late changes to licences following the initial advertising of applications. This will be published on the DEC website by December 2007.</p> <p>There are circumstances of change of proposals where public consultation should be undertaken for Part IV proposals and the EPA's procedures are being strengthened to ensure appropriate further consultation takes place.</p> | <p>December 2007</p> |
| <p><b>Recommendation 21</b><br/><b>Page 154</b></p> <p>The Committee recommends that the</p>  | <p>DEC</p>     | <p>The Government <b>supports</b> this recommendation.</p> <p>This recommendation has been included in the licence review of the</p>  | <p>December 2007</p> |

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| <p>Esperance Port Authority licence include a condition that its dust monitoring program utilise a combination of depositional dust gauge sampling, high volume sampling and Tapered Element Oscillating Microbalance (TEOM) sampling. The data should be reported to the Department of Environment and Conservation within a specified timeframe after each sampling period or, in relation to TEOM sampling, be available as live stream on the Port's website (refer to examples in Appendix 7).</p> |            | <p>Esperance Port Authority and stronger monitoring and reporting requirements will be included in the amended licence.</p> <p>In the interim DEC, in consultation with DOH and DOCEP, has issued the Esperance Port with a Section 65 notice under the <i>Environmental Protection Act 1986</i> requiring the Port to undertake monitoring and reporting in a specified manner. This covers a combination of depositional dust gauges, high volume sampling [Hi Vol] and TEOM sampling together with contextual information [such as ship loadings, prevailing weather conditions etc] to enable interpretation of the results. The monitoring requirements within the Section 65 notice will be incorporated into the revised licence.</p> |                      |
| <p><b>Recommendation 22</b>      <b>Page 155</b></p> <p>The Committee recommends that the Department of Environment and Conservation review all licences that it has issued with the condition <i>'The licensee shall take measures to prevent or minimise the emission of visible dust past the boundary of the premises'</i>, otherwise known as the <i>'visible dust'</i> licence condition, and allow it to remain in the licence only if the probable hazard posed is nuisance dust.</p>           | <p>DEC</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC will be revising its policy for air emissions from prescribed premises and developing standard licence conditions to ensure that the requirements for hazardous dust emissions are based on health risk assessment. Also refer to the response to Recommendation 23.</p>   | <p>June 2008</p>     |
| <p><b>Recommendation 23</b>      <b>Page 156</b></p> <p>The Committee recommends that the</p>   | <p>DEC</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>The review of the Esperance Port Authority's Licence and the Port Review Programme have identified strengthened monitoring requirements</p>  | <p>December 2007</p> |

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| <p>Department of Environment and Conservation incorporate its finding that <i>'sensitive monitoring equipment identified dust emissions and levels which were not visible to inspectors and would not have been detected without the use of equipment'</i> into all port environmental licences where dust emissions have potential detrimental impacts beyond nuisance relating to their <i>'soiling'</i> characteristics.</p> |            | <p>appropriate for bulk handling of mineral ores. These will form the basis for hazardous dust monitoring from prescribed premises within ports and will be applied to other similar premises.</p> <p>DEC Air Quality Management Branch has developed a guideline for the management of dust generated by land development and remediation of contaminated site activities. This guideline is being expanded to include bulk materials handling and storage facilities. This guideline sets out the minimum monitoring requirements of DEC including equipment and methods which can be used to ensure health and environmental targets are achieved.</p> | <p>December 2007</p> |
| <p><b>Recommendation 24</b>      <b>Page 159</b></p> <p>The Committee recommends that the Department of Environment and Conservation be allocated adequate resources to ensure that effective and timely responses to the Esperance Port Authority's dust monitoring results can be guaranteed.</p>   | <p>DEC</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC has already established a new position for the Esperance district and is currently in the recruitment process. In the meantime, DEC is sending Perth-based staff from the Environmental Regulation Division and Pollution Response Unit to Esperance to monitor dust associated with ship loading. Also refer to the response to Recommendation 7.</p>  | <p>November 2007</p> |
| <p><b>Recommendation 25</b>      <b>Page 163</b></p> <p>The Esperance Port Authority licence should include a condition that all dust monitoring results must be made publicly available on its website. This should occur at the same time as these are due to be reported to the Department of Environment and Conservation (refer</p>  | <p>DEC</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>The Minister for Planning and Infrastructure gave a commitment, at the time of release of the report, that dust monitoring results would be available to the Esperance community and posted on the Esperance Port Authority website when these reports are made available to DEC. This has been implemented and will be reinforced in the amended licence.</p>  | <p>Immediate</p>     |

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| <p>to Recommendation 21).</p> <p><b>Recommendation 26</b>      <b>Page</b><br/><b>176</b></p> <p>The Environmental Protection Authority and the Department of Environment and Conservation should include testing of inner harbours as a means for the early detection of contamination trends when establishing marine sediment monitoring conditions for ports.</p> | <p>DEC</p>     | <p>The Government <b>supports</b> this recommendation.</p> <p>This issue has already been identified in the review of the Esperance Port Authority's licence and will be a requirement of the amended licence. DEC has required the Port to undertake a detailed marine sediment investigation to determine the need for remediation and this will form the basis for amendments to the Port Authority's licence.</p> <p>This is also being considered in the Port Review Programme and other port licenses will be amended appropriately.</p>  | <p>December 2007</p> <p>June 2008</p> <p>Not applicable</p> |
| <p><b>Recommendation 27</b>      <b>Page</b><br/><b>176</b></p> <p>In determining the appropriate environmental standards for monitoring marine sediment within the boundary of an operation such as the Esperance Port Authority, consideration should be given to the proximity of population centres, recreational and tourism facilities, and other uses.</p>     | <p>DEC</p>     | <p>The Government <b>supports the intent</b> of this recommendation.</p> <p>Appropriate environmental standards to protect marine ecosystems are contained in the Australian and New Zealand Environment and Conservation Council (ANZECC) and Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) (2000) <i>Australian and New Zealand Guidelines for Fresh and Marine Water Quality</i> and the consequential <i>State Water Quality Guidelines</i> adopted by the EPA. These guidelines are for the protection of fresh and marine water ecosystems and are applied across Australian waters.</p> <p>Separate standards exist for food quality based on the contaminant concentrations in the species being consumed.</p> | <p>June 2008</p>  |
| <p><b>Recommendation 28</b>      <b>Page</b><br/><b>177</b></p> <p>The Environmental Protection Authority and the Department of Environment and</p>   | <p>EPA/DEC</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC already shares environmental monitoring results with relevant agencies. DEC encourages all licensees to publish all monitoring data on their websites and will develop a guideline to assist licensees to understand</p>  | <p>June 2008</p>  |

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| <p>Conservation should include a requirement in relevant approvals and licences that the results of any marine sediment and related testing by ports are sent to relevant agencies. These results should also be publicly available by way of posting on the ports' websites within a specified period after the testing is conducted.</p>                            |                                 | <p>their obligations.<br/>The EPA will implement this recommendation where applicable.</p>   |                                |
| <p><b>Recommendation 29</b>      <b>Page 195</b><br/>The Committee recommends that the Esperance Port Authority implement all infrastructure and other improvements necessary to address the potential for benthic contamination as a result of the Port's operations.</p>  | <p>Esperance Port Authority</p> | <p>The Government <b>supports</b> this recommendation.<br/><br/>The Esperance Port Authority has commissioned an Engineering Report designed to replace the existing heavy metals infrastructure at the Port, including the conveyor and ship loader. This is currently under consideration and discussions are occurring with exporters to ensure that the transport, storage, handling, loading of metals concentrates or other materials at the Esperance Port do not impact on the public health of Esperance residents or on the environment.</p> | <p>Implemented and ongoing</p> |
| <p><b>Recommendation 30</b>      <b>Page 195</b><br/>The Committee recommends that the Department of Environment and Conservation review the Committee's findings relating to benthic lead levels in the Esperance harbour and conduct an investigation into the practices of the Esperance Port Authority with a view to determining if the Port has potentially</p> | <p>DEC</p>                      | <p>The Government <b>supports</b> this recommendation.<br/><br/>DEC has completed its investigation into alleged breaches of the <i>Environmental Protection Act 1986</i> and has laid charges against the Esperance Port Authority. DEC has also directed the Esperance Port Authority to prepare and implement a sediment investigation program to determine the extent of sediment contamination and the need for remediation.</p>  | <p>Completed</p>               |

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| <p>breached its obligations under the <i>Environmental Protection Act 1986</i> and the conditions of its environmental licence.</p>  |              |   |                  |
| <p><b>Recommendation 31</b>      <b>Page 209</b></p> <p>The Committee recommends that the Minister for Planning and Infrastructure review and make changes to the existing structure of port authority boards to ensure that there is effective representation of the port workforce at this level of port operations.</p> | <p>DPI</p>   | <p>The Government will review the consultative mechanisms available to the Port workforce and in particular how the interface with the Boards can be improved.</p>  | <p>2008</p>      |
| <p><b>Recommendation 32</b>      <b>Page 250</b></p> <p>The Committee recommends that the Resources Safety Division review its monitoring of the CONTAM system to ensure that there is greater compliance with its quota allocations.</p>  | <p>DOCEP</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>The Resources Safety Division of DOCEP has reviewed the CONTAM monitoring procedures and will be making changes to the database to improve industry compliance levels.</p>  | <p>Immediate</p> |
| <p><b>Recommendation 33</b>      <b>Page 263</b></p> <p>The Committee recommends that the Department of Environment and Conservation review the Committee's findings relating to whether the Esperance Port Authority exercised its responsibilities in relation to the potential lead pollution and conduct an</p>        | <p>DEC</p>   | <p>The Government <b>supports</b> this recommendation.</p> <p>DEC has reviewed the committee's findings and has determined that those findings corroborate the facts obtained by DEC's investigation into lead contamination of the Esperance town site. These findings formed the basis of the charges laid against the Esperance Port Authority for alleged breaches of the <i>Environmental Protection Act 1986</i>.</p> | <p>Completed</p> |



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| <p>investigation with a view to determining if the Port has potentially breached its obligations under the <i>Environmental Protection Act 1986</i> and the conditions of its environmental licence.</p> | <p><b>Recommendation 34</b>      <b>Page 289</b></p> <p>The Committee agrees with the Esperance community that it has been seriously let down by the Department of Environment and Conservation. It recommends that the Department's efforts to implement a more robust regulatory approach be given critical priority so that its officers will be effective in ensuring that the public is adequately protected from pollution and environmental harm.</p> | <p>DEC</p> | <p>The Government acknowledges this point and <b>supports</b> this recommendation.</p> <p>DEC acknowledges that some aspects of its administration and regulation were deficient at the time in managing the Esperance Port and its operation and has taken action to address these deficiencies as presented in the responses to these recommendations.</p> <p>DEC has allocated considerable resources to take enforcement action in respect of alleged breaches of the Act, to ensure that the Port Authority remediates the environment impacted by lead contamination and that it comes into compliance with a robust revised licence.</p> <p>DEC has commissioned an independent review of its inspection and compliance functions, and will make any improvements based on the recommendations of this review.</p> <p>DEC is establishing a special inspection and compliance branch to improve compliance and enforcement throughout the State. Industry regulation training is being strengthened and will be expanded by the appointment of an additional dedicated training officer.</p> <p>The revenue from the licence fee increase will provide for an additional 25 staff with 12 staff deployed to the regions. 17 staff will work on improving licensing and inspection targets. The remainder will strengthen governance and technical support for industry regulation.</p> | <p>Ongoing</p> <p>December 2007</p> <p>January 2008</p> <p>November 2007</p> |
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| <p><b>Recommendation 35</b>      <b>Page</b><br/><b>299</b></p> <p>The Committee recommends that the Resources Safety Division of the Department of Consumer and Employment Protection review the Committee's findings in relation to Magellan Metals Pty Ltd with a view to determining if it potentially breached its legal obligations under the <i>Mines Safety and Inspection Regulations 1995</i>.</p> | <p>DOCEP</p>      | <p>DEC is reviewing and strengthening the industry regulation function to address the findings of the Inquiry.</p>   | <p>2007 &amp; 2008</p>             |
| <p><b>Recommendation 36</b>      <b>Page</b><br/><b>305</b></p> <p>The Committee recommends that Main Roads Western Australia review the Committee's findings in relation to the conduct of BIS Industrial Logistics with a view to determining whether further</p>  | <p>Main Roads</p> | <p>The Government <b>supports</b> this recommendation and it has been actioned.</p> <p>The Resources Safety Division of DOCEP has reviewed the Committee's findings, investigated the matter. Any non compliances by Magellan Metals under the <i>Mines Safety and Inspection Regulations 1995</i> were dealt with using other enforcement measures under the Resources Safety Enforcement and Prosecution Policy. These included record book entries by inspectors at the Magellan Metals mine site, plus improvement notices and other written directions issued by inspectors to the company.</p> | <p>December 2007<br/>Completed</p> |
| <p><b>Recommendation 36</b>      <b>Page</b><br/><b>305</b></p> <p>The Committee recommends that Main Roads Western Australia review the Committee's findings in relation to the conduct of BIS Industrial Logistics with a view to determining whether further</p>  | <p>Main Roads</p> | <p>The Government <b>supports</b> this recommendation and it has been actioned.</p> <p>Main Roads Western Australia cancelled BIS Industrial Logistics' approval to cart lead under the concessional loading scheme, effective 16 September 2007.</p>  | <p>Already<br/>Actioned</p>        |

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| <p>action in relation to BIS Industrial Logistics' cartage permits is warranted.</p>  |              |   |                  |
| <p><b>Recommendation 37</b><br/><b>Page</b><br/><b>307</b><br/>The Committee recommends that WorkSafe and the Resources Safety Division of the Department of Consumer and Employment Protection review the Committee's findings concerning the workplace and transport practices adopted by BIS Industrial Logistics to determine if there were potential breaches of relevant legislative obligations.</p> | <p>DOCEP</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>WorkSafe has reviewed the Committee's findings and has completed an investigation into BIS Industrial Logistics workplace practices. The investigation determined there were no breaches of the Occupational Safety and Health Act 1984 or associated Regulations.</p> <p>The Resources Safety Division of DOCEP similarly investigated the company's transport practices and decided that, in accordance with Resources Safety Enforcement and Prosecution Policy, prosecution action will not be taken against BIS Industrial Logistics under the Dangerous Goods (Transport) Act 1998. It was determined that the consignor, Magellan Metals Pty Ltd had not provided accurate shipping documentation to BIS Industrial Logistics. This did not enable the transport company to reasonably determine they were carrying dangerous goods.</p> | <p>Completed</p> |
| <p><b>Recommendation 38</b><br/><b>Page</b><br/><b>311</b><br/>The Committee recommends that the Resources Safety Division of the Department of Consumer and Employment Protection review the Committee's findings concerning workplace, storage and related practices adopted by the Esperance Port Authority to determine if there were potential breaches of relevant legislative</p>                    | <p>DOCEP</p> | <p>The Government <b>supports</b> this recommendation.</p> <p>The Resources Safety Division of DOCEP has reviewed the Committee's findings; investigated this matter and decided that prosecution action should not be taken against the Esperance Port Authority under dangerous goods legislation. It was determined that storage of the lead concentrate at the Esperance Port was the primary responsibility of Magellan Metals Pty Ltd.</p>  | <p>Completed</p> |

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| <p><b>Recommendation 39</b>      <b>Page</b><br/> <b>317</b></p> <p>The Committee recommends that the Resources Safety Division of the Department of Consumer and Employment Protection review the Committee's findings concerning workplace, storage and related practices adopted by Magellan Metals Pty Ltd to determine if there were potential breaches of relevant legislative obligations.</p>  | DOCEP | <p>The Government <b>supports</b> this recommendation.</p> <p>The Resources Safety Division of DOCEP has investigated this matter and is liaising with the State Solicitors Office in relation to possible breaches of the <i>Explosives and Dangerous Goods Act 1961</i>, the <i>Dangerous Goods (Transport) Act 1998</i> and Regulations.</p>  | Ongoing    |  |
| <p><b>Recommendation 40</b>      <b>Page</b><br/> <b>319</b></p> <p>The Committee recommends that the Ministers representing Western Australia on the Australian Transport Council give consideration to initiating a review of the Council's processes to determine whether a more streamlined approach could be implemented to adopt revisions of the United Nations Recommendations on the Transport of Dangerous Goods into the Australian Dangerous Goods Code.</p> | DOCEP | <p>The Government <b>supports</b> this recommendation.</p> <p>The 7<sup>th</sup> edition of the Australian Dangerous Goods Code will be incorporated in the New Dangerous Goods Transport Regulations which are scheduled for proclamation on 1 March 2008.</p> <p>The 7<sup>th</sup> edition of the Australian Dangerous Goods Code incorporates relevant amendments to align it with UN Recommendations.</p> | March 2008 |  |
| <p><b>Recommendation 41</b>      <b>Page</b><br/> <b>324</b></p> <p>The Committee recommends that there</p>  | DOH   | <p>The Government <b>supports</b> the intent of this recommendation.</p> <p>Professor Michael Moore, internationally recognised toxicologist, has advised DOH on nickel health risks and has visited Esperance to discuss</p>  | Ongoing    |  |

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| <p>be a study of the health effects of nickel exposure, upon which an assessment of the adequacy of current nickel mining, transport and handling practices can be made.</p>   |            | <p>nickel toxicology with the Esperance Community Reference Group [ECRG], community groups, Esperance Port Authority workers, the Chamber of Minerals and Energy, and government officers.</p> <p>DOH and DEC required a health and environmental risk assessment of nickel sulphide to be conducted by nickel exporters for consideration by the Esperance Port Authority and Government agencies.</p> <p>The Esperance Port Authority has engaged consultants to provide an engineering report of options to replace the existing heavy metals infrastructure [conveyor and ship loader] at the Esperance port.</p> <p>DEC, on advice from DOH and DOCEP, is amending the Port's licence to meet recommended health and environmental standards and require appropriate monitoring and reporting to demonstrate compliance with those standards.</p> |                          |
| <p><b>Recommendation 42</b><br/><b>331</b></p> <p>The Committee recommends that for all children with blood lead levels above five micrograms per decilitre, the Department of Health should test household dust for lead contamination and, if present, fund the professional cleaning of the dwelling.</p> | <p>DOH</p> | <p>The Government <b>supports</b> this recommendation and actioned this recommendation on the release of the report.</p> <p>Testing of dust levels in all households where children with blood lead levels above 5 micrograms per decilitre reside has been completed several months ago. Senior DOH officers and medical officers also personally visited every home where these children reside to assess, provide information and advise parents how to manage the situation.</p> <p>In addition, the Government initially arranged for the Esperance Port Authority to professionally clean every home where blood lead levels of children 5 years of age and under exceeded 10 micrograms per decilitre. This program is now completed.</p> <p>As a second phase, the Port Authority has offered to professionally clean the</p>                  | <p>Already actioned.</p> |

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| <p><b>Recommendation 43</b>      <b>Page</b><br/><b>331</b></p> <p>The Committee recommends that its concerns about the adequacy of the government response to the lead pollution be drawn to the attention of the agency contracted, by the Department of Environment and Conservation, to conduct a Health and Ecological Risk Assessment for the Esperance townsite area and transport route.</p>   | <p>DEC</p>  | <p>houses of all children under 5 years whose blood lead were 5 micrograms per decilitre and over after repeat testing. This cleaning process is now underway.</p> <p>The Government <b>supports</b> this recommendation.</p> <p>DEC, DOCEP and DOH are providing the consultant who is undertaking the Health and Ecological Risk Assessment, with all relevant data and have drawn the Inquiry's concerns to its attention.</p> | <p>October 2007</p>  |
| <p><b>Recommendation 44</b>      <b>Page</b><br/><b>332</b></p> <p>The Committee recommends that government commit to funding the full cost of any additional remediation actions that are identified as a result of the Department of Environment and Conservation Health and Ecological Risk Assessment for the Esperance townsite area and the transport route.</p> <p>The Committee is also of the view that government should pursue responsible parties to recoup the costs associated with any remedial action, as appropriate.</p> | <p>GOVT</p> | <p>The Government <b>supports the intent</b> of these recommendations.</p> <p>The Government will consider the recommendations of the Health and Ecological Risk Assessment and take appropriate action to mitigate identified risks.</p> <p>The Government will ensure that any remedial actions will be properly funded and that appropriate costs are recouped from responsible parties.</p>                                   | <p>December 2007</p> |
| <p><b>Recommendation 45</b>      <b>Page</b></p>   | <p>DOH</p>  | <p>The Government <b>supports</b>, in principle, the recommendation to conduct</p>  | <p>Mid 2008</p>      |

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| <p><b>336</b></p> <p>The Committee recommends that the Department of Health develop, implement and maintain a voluntary medical register of individuals who were exposed to the effects of the lead pollution. The register needs to:</p> <ul style="list-style-type: none"> <li>• contain evidence of exposure to the effects of the lead pollution;</li> <li>and</li> <li>• include any pre and post-incident exposure to potentially hazardous material.</li> </ul> |             | <p>long-term health surveillance of selected individuals exposed to the effects of the lead pollution.</p> <p>The proposed medical register would principally focus on children and their blood lead levels, body burden, exposures to lead pollution and symptomatology (if any).</p> <p>It is noteworthy that Professor Alison Jones, nationally and internationally recognised expert on the effects of blood lead levels, provided independent advice to the DOH and the Esperance community that, at the blood lead levels found in the children, the impact was likely to be small and subtle. Provided the exposure to lead was significantly reduced in the short term, the long-term effects may be so small or statistically insignificant as to be immeasurable.</p> <p>The Government believes that implementation of a positive parenting program, designed by relevant experts and which would apply to all Esperance children, will provide a markedly greater benefit. The feasibility of implementing this program is being assessed.</p> |  |
| <p><b>Recommendation 46</b>      <b>Page</b></p> <p><b>337</b></p> <p>The Committee recommends that government consider establishing an alternative for individuals who are adversely affected by lead pollution in the Esperance area rather than requiring them to pursue compensation for demonstrable loss through adversarial legal proceedings in the courts.</p>  | <p>GOVT</p> | <p>The Government <b>supports</b> this recommendation, and is in the process establishing such a process.</p>  |  |

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