



Government of **Western Australia**  
Department of **Commerce**

# Work Health and Safety Regulations for Western Australia

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## *Discussion Paper*

A discussion paper outlining recommendations to amend the model Work Health and Safety Regulations for the Western Australian workplace environment.

**This document is no longer current and is available on the website for historical purposes only.**

*1 June 2016*

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## Introduction

On 23 October 2014, the Hon Michael Mischin MLC, the Minister for Commerce, introduced the Work Health and Safety Bill 2014 (the WHS Bill 2014) into Parliament as a 'green bill' for a public consultation period that ended on 30 January 2015. In his speech introducing the WHS Bill 2014, Minister Mischin advised the Legislative Council that:

*...the paramount consideration for a responsible state government is to have a regulatory regime that serves the best interests of Western Australians...*

The Minister is considering information provided by the Department of Commerce – WorkSafe Division (WorkSafe) in relation to the modifications for Western Australia's proposed WHS Bill 2014.

The WHS Bill 2014 provides the overarching duties of workplace participants in relation to health and safety in the workplace similar to those provided in the *Occupational Safety and Health Act 1984* (the OSH Act). Detailed requirements related to specific hazards are provided in the model Work Health and Safety regulations (the model WHS regulations) in a similar fashion to the requirements of the Occupational Safety and Health Regulations 1996 (the OSH regulations).

The *Regulation Impact Statement: Model Work Health and Safety Regulations and Codes of Practice in Western Australia* report (the MJA RIS) was prepared by independent consulting firm Marsden Jacob Associates and released in December 2012. The MJA RIS noted:

*the level of net benefits to the state of Western Australia could clearly be improved by amending and fine-tuning the package of proposed changes and the content of specific proposed changes.*

WorkSafe has developed recommendations to adapt the model WHS regulations to Western Australia using the approach outlined by the Minister in relation to the WHS Bill 2014 and supported by the MJA RIS. The focus of the recommendations has been to minimise prescription and keep the burden of compliance at an acceptable level.

The recommendations provided in this Discussion Paper have been developed by WorkSafe for the purpose of public consultation and do not represent the settled position of the Government.

## Background

In July 2008, the Council of Australian Governments (COAG) formally committed to harmonising the occupational safety and health laws in Australia by signing the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*. The harmonised legislation, regulations and codes were intended to cover both general industry and the mining industry.

The WA Government has committed to the principle of national harmonisation of work health and safety (WHS) subject to some amendments.

The model WHS Regulations developed as part of the harmonisation process and first stage codes of practice were finalised by the national tri-partite working party in November 2011. The model WHS Regulations are intended to complement and support the primary duties under the model Work Health and Safety Act (the model WHS Act). They include provisions on such matters as: representation and participation at the workplace; general workplace management; hazardous work; plant and structures; construction; hazardous chemicals; major hazard facilities; and compliance.

As with the WHS Bill 2014, the intention is the subordinate regulations will predominantly mirror the provisions of the model WHS regulations with amendments suitable for the Western Australian working environment. The new regulations will replace the existing OSH Regulations.

It is anticipated that the model codes of practice and other guidance material will be adopted in Western Australia with appropriate modifications.

## Approach

The model WHS regulations have been reviewed to identify where they can be modified to minimise prescription and keep the burden of compliance at an acceptable level.

Unamended, the model WHS regulations introduce significant new responsibilities for workplace participants and WorkSafe. Examples include:

- prescribing the training required to be considered a competent person;
- licensing assessors to conduct clearance inspections for licensed asbestos removal work; and
- requirements to create and retain specified records.

Implementation of these proposals may result in a significant increase in the burden of compliance. Where evidence has not been provided that new requirements will improve safety and health outcomes in Western Australia, those provisions have been amended to more closely align with the current requirements of the OSH Act and the OSH Regulations (collectively, the OSH laws).

The model WHS regulations do not include a number of requirements that are currently included in the OSH regulations. Examples include the prohibition on tobacco smoke in the workplace and the commercial vehicle driver regulations. These provisions will be included in Western Australia's version of the model WHS regulations.

Not all of the provisions unique to the OSH regulations have been recommended for inclusion in the Work Health and Safety Regulations for Western Australia (the WHS regulations (WA)). In these circumstances, the general duty and appropriate guidance material are considered sufficient to maintain current safety standards. Examples include the requirements for abrasive blasting and spray painting booths.



Some elements in the model WHS regulations will not be included as they will be in the jurisdiction of other departments. This includes the model WHS regulations for mines, major hazard facilities and dangerous goods which will be administered by the Department of Mines and Petroleum (DMP).

## Version used

The version of the model WHS regulations used to develop the recommendations in this Discussion Paper is the *Model Work Health and Safety Regulations – 4 November 2011*, with revisions as at 9 January 2014 (PCC Draft[359] 9.1.2014). Amendments to this version of the model WHS regulations have been agreed by Ministers but have not yet been incorporated into a new version of the model WHS regulations by Safe Work Australia (SWA).

## Format of Discussion Paper

This Discussion Paper does not provide a detailed examination of the model WHS regulations and the issues identified with their application in Western Australia. Each section provides a summary of the issue and is followed by a recommendation in the following format:

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>1:</b>	Recommendation.	Amended regulations.

The provisions affected by each recommendation are those that require amendments. For example, a recommendation to amend a defined term will list the term to be amended and the clause in which it is specified. There are some exceptions to this approach where it is necessary to highlight other provisions that are impacted by the recommendation.

The recommendations may summarise or paraphrase the provisions that are referenced. This is not intended to provide an exhaustive description of the provision and readers should refer to the model WHS regulations for the full text.

Recommendations have been classified and colour-coded to advise readers of WorkSafe's view on the impact of the proposed changes in Western Australia. For example, recommendations in green are intended to modify the model WHS regulations for greater consistency with Western Australia's current laws.

## Classification

Consistency with current WA laws
Reduction in unnecessary prescription
Consistency with WHS Bill (WA Version)
Other

A table of recommendations is provided in **Appendix A**.

The Discussion Paper is structured to present recommendations that apply to provisions across multiple chapters of the model WHS regulations first, followed by recommendations relevant to individual chapters.

## Regulation impact

Regulatory proposals may require a RIS to be prepared outlining the costs and benefits to the Western Australian community.

The Regulatory Impact Assessment (RIA) requirements apply to all regulatory proposals, including primary and subordinate legislation and quasi-regulation, to determine the impact on business, consumers or the economy. The RIA process is designed to provide an assessment of the costs and benefits in order to justify such action.

Where the model WHS regulations introduce additional requirements to those in the OSH regulations, the Discussion Paper provides recommendations for consistency with the OSH regulations. In broad terms, this approach minimises the changes for workplace participants in Western Australia, and reduces the commensurate transitional costs.

The RIA criteria must be met in relation to a submission that proposes additional requirements to those already in the OSH regulations. For example, if supporting the approach taken in the model WHS regulations, the RIA process requires that your submission, identifies the cost and benefits (identifying sources or substantiating documents), compared to the OSH regulations.

After the model WHS regulations were developed, the *Decision Regulation Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice* (the national RIS) was prepared by SWA to analyse their costs and benefits. The national RIS was approved on 9 September 2011 by the Commonwealth's Office of Best Practice Regulation.

An analysis of the national RIS indicated that it did not contain sufficient Western Australian specific content to meet the requirements for a Western Australian RIS. The national RIS did not demonstrate there were sufficient benefits to be delivered by the model WHS Regulations to offset any costs that would be associated with the adoption of those laws.

Consequently, the MJA RIS was prepared for Western Australia based on public feedback from a range of mechanisms including online surveys, focus group discussions and written submissions.

In its conclusions and recommendations, the MJA RIS indicated that:

*The evidence base indicates that it would be inappropriate to accept the whole package of proposed changes in WHS regulations – not because the costs clearly exceed the potential benefits but because the level of net benefits to the state of Western Australia could clearly be improved by amending and fine-tuning the package of proposed changes and the content of specific proposed changes. Of particular relevance is the ability to reduce costs while still improving safety outcomes in workplaces.*

The Regulatory Gatekeeping Unit (RGU) of the Department of Finance has accepted the MJA RIS for the purpose of Western Australia's RIA requirements.

The approach taken in developing the WHS regulations (WA) is to reduce unnecessary prescription and duplication in the model WHS regulations, align the requirements as closely as possible to the current OSH regulations, and minimise the impact on workplace participants in adopting the model laws. A further RIS may not be required if the work done to achieve these goals has resulted in a satisfactory reduction in transitional and ongoing costs for Western Australian businesses.

If the Government agrees to elements of the model WHS regulations identified as increasing costs as a result of this public consultation process, the RGU may determine that a further RIS will be required.

## Submissions

Submissions are invited from all Western Australians who are interested in work health and safety, with a particular focus on the costs and benefits of the proposed regulations to businesses and workers. Submissions should be accompanied by the cover sheet provided in **Appendix B** and available as part of a template for submissions provided on the Department of Commerce website in Word and PDF formats.

While the focus of the Discussion Paper is on recommendations made to adapt the model WHS regulations for Western Australia, submissions are welcomed on any aspect of the model WHS regulations.

A number of recommendations have been made to refrain from adopting some measures in the model WHS regulations that are not presently a feature of the OSH laws in Western Australia. When making comment supporting the introduction of these features, the RIA process requires information about the costs and benefits of the proposal.

The public comment period commences on 1 June 2016 and ends on 31 August 2016. No further submissions will be accepted after the public comment period closes.

Persons making a submission to WorkSafe in response to the Discussion Paper may request their submissions be held in-confidence. Submissions that are not confidential may be published on WorkSafe's website.

## Questions

Robust evidence of the impact of the proposed changes in the model WHS regulations needs to be assembled with an emphasis on quantitative information on the likely:

- benefits
- impediments and/or
- costs

of the changes the recommendations will bring.

This will enable the Government to make a fully informed assessment of the impact of the model WHS Regulations.

The following questions should be considered when preparing a submission:

1. What is the likely cost to implement a specific proposal?
2. What is the benefit to workplace participants?
3. Is a particular recommendation to align a model WHS regulation with the OSH regulations effective?
4. Are there any unintended consequences?
5. If a new requirement is proposed, what are the costs and benefits?

## Reference to Australian Standards

In response to concerns about compliance costs and a negative impact on competition from the use of Australian Standards in legislation, the former Labour Ministers' Council agreed in November 1998 to a policy of progressive elimination of legislative referencing of Australian Standards, except for definitional purposes or for prescribed methods of measurement.

In 2006, the *Rethinking Regulation, the Report of the Taskforce on Reducing Regulatory Burdens on Business January 2006*, noted:

*...the increasing tendency for standards developed by Standards Australia to be referenced in legislative instruments or used as quasi-regulation. There are some 6,800 Australian standards, about one-third of which are referenced in legislation and regulations by government. Standards Australia is a non-government standards-writing body. While it receives some government funding, business noted that few quality controls are in place to ensure that its standards are developed and drafted in ways that are consistent with their use as quasi-regulation. A particular concern of business is the extent to which the standards have historically been, and largely continue to be, attempts to codify best practice, rather than to set out minimum acceptable standards.*

These views influenced the development of the model WHS Act and the model WHS regulations (collectively, the model WHS laws) and led SWA to agree to minimise references to technical standards with exceptions for definitional purposes (noise) or where it was difficult to provide regulation without referencing a technical standard (high risk diving work).

Western Australia's Joint Standing Committee on Delegated Legislation (JSCDL) has commenced an inquiry into access to Australian Standards adopted in delegated legislation (the Australian Standards inquiry). In its media release of 4 December 2014, the JSCDL noted that:

*The inquiry arose out of the Committee's observation that delegated legislation (including government regulations, rules and local government local laws) frequently adopt Australian Standards but Australian Standards are not accessible at no charge to the public and the Parliament in the same way that primary legislation (Acts) and delegated legislation are publicly available.*

The JSCDL has held three public hearings to solicit information, and their inquiries are ongoing.

In preparing the Western Australian version of the model WHS regulations, a number of current requirements of the OSH regulations are recommended to be included (eg demolition licensing). Consistent with the approach taken by SWA in developing the model laws, references to Australian Standards have been minimised. Detailed requirements will be provided in codes of practice.

## Specific topics

Additional information has been provided to facilitate discussion on the following topics:

- asbestos;
- diving work;
- electrical work; and
- plant item registration.

While public comment is sought on all aspects of the model WHS regulations, the topics identified in this section require detailed consideration of the costs and benefits to determine their regulatory impact, or are subject to separate regulatory review.

## **Asbestos**

The OSH regulations provide a specific regulatory regime for the management and removal of asbestos, including requirements that:

- asbestos at workplaces must be identified and the risks assessed;
- a licence is required for removal of friable asbestos containing material or for removal of more than 10 square metres of non-friable asbestos containing material;
- people must not be exposed to asbestos dust;
- asbestos work areas must be left in a clean state;
- waste asbestos must be correctly disposed of;
- records must be kept, and WorkSafe notified, if a person has been exposed to asbestos at a workplace; and
- where there is a risk to health from asbestos exposure, health surveillance must be provided.

The model WHS regulations include requirements that cover the matters noted above but include substantial additional areas of regulation not presently required in Western Australia. These include requirements for:

- licensing of asbestos assessors to conduct clearance inspections;
- certification of safety management systems;
- specification of the Vocational Education and Training (VET) courses required for asbestos removal workers and supervisors; and
- expansion of the requirement for asbestos registers to buildings constructed from 1 January 1991 to 31 December 2003.

## **Diving work**

Part 4.8 of the model WHS regulations provides the requirements for diving work. High risk diving work is required to comply with Australian New Zealand Standard *AS/NZS 2299.1:2007 Occupational Diving Operations - Standard Operational Practice* (the diving standard). High risk diving work involves construction work and certain types of salvage work.

Other types of diving work in the model WHS regulations is classified as general diving work, and includes limited diving and scientific diving. The model WHS regulations provide minimum requirements for competency, supervision and record keeping.

SWA and the Commission for Occupational Safety and Health (the Commission) are conducting separate reviews of the regulatory environment for occupational diving work. The outcome of these reviews may include recommendations for revision of the model WHS regulations for diving work. After consultation with key industry participants, and regulators, SWA is developing a consultation RIS for approval prior to requesting public comment on the proposals.

In Western Australia, the OSH regulations currently require construction diving to be conducted in accordance with the diving standard. Other forms of diving are covered by the general duty of care of the OSH Act.

Pending the outcome of the reviews by SWA and the Commission, the default recommendation is to align the model WHS regulations for diving work with the current requirements of the OSH regulations.

### **Electrical work**

On 6 August 2015, the Minister for Commerce announced a package of safety reforms that will require:

- work on energised electrical installations to be prohibited with specified exceptions; and
- power to be turned off at the main switch while work is undertaken in a roof space.

The approach taken in the model WHS regulations to prohibit work on energised electrical installations except in certain circumstances (such as testing) is broadly compatible with the safety reforms previously announced by the Minister. The proposed reforms have not yet been finalised and the recommendations provided under the section on electrical work in this Discussion Paper should not be taken to pre-empt the outcome of this process.

### **Plant item registration**

The OSH regulations presently require:

- the design of specified types of plant to be registered (regulation 4.2 and Schedule 4.1); and
- specified items of plant to be registered (regulation 4.14 and Schedule 4.2).

The model WHS regulations include similar requirements in Part 5.3.

The registration of individual items of plant imposes a significant regulatory burden on workplace participants and WorkSafe without necessarily improving safety outcomes - registration of an item of plant does not ensure that it is safe to use in the workplace.

The COAG has identified plant item registration as a potential measure to reduce the burden of compliance and Victoria has already removed the requirement to register individual items of plant from 1 July 2014.

It is proposed to remove the requirement to register individual items of plant from Western Australia's version of the model WHS regulations. The requirement to register the design of plant is to be retained.

## Next steps

After the public comment period has closed, WorkSafe will analyse each submission and provide a report to the Minister for Commerce for further consideration.

## Record keeping

### Retention of records – general

The model WHS regulations require records to be kept for a specific period of time after the completion of the work for which they are created. These regulations relate to risk assessments, evidence of high risk work, and training records, with some retention requirements being triggered by a notifiable incident.

There is little practical safety and health benefit for the retention of records where the hazard no longer exists. In the event of a notifiable incident, the evidentiary value of the record is protected by section 132 of the *Criminal Code* that makes it an offence to destroy evidence.

Duty holders may still wish to retain records, consistent with established best practice, and as evidence of compliance with the model WHS laws.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
1:	Remove the requirement for a record to be retained after the completion of the work or notifiable incident.	77(2); 85(4); 162; 303(2); 304(6)(a).

### Retention of records after cessation of employment

A number of regulations require health records to be kept after employment has ceased. These requirements relate to either records of training related to asbestos or health monitoring/surveillance.

Requiring a person conducting a business or undertaking (PCBU) to retain records of training after the worker has ceased work is unnecessary as the worker is no longer exposed to the hazard to which the training relates. PCBUs may wish to retain records consistent with their established record keeping practices to avoid unnecessary retraining should a worker be reemployed.



<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>2:</b>	Remove the requirement for training records to be retained after employment has ceased.	445(3)(b); 461(1)(b)

## Health monitoring records

Health monitoring in the model WHS regulations requires the retention of records by the PCBU for 30 years (airborne contaminants, hazardous chemicals, carcinogens, lead) and 40 years (asbestos). Illness and diseases that can result from chemical exposure, such as mesothelioma, may not manifest for decades after the exposure and these regulations are intended to ensure that a record of the exposure is available to identify the cause of an illness and assist with diagnosis.

Under the OSH regulations:

- (regulations 5.24 and 5.26, this requirement is imposed on the medical practitioner and the employer respectively; and
- health surveillance reports are to be provided to the WorkSafe Western Australia Commissioner (the Commissioner) should the doctor cease practicing or the business cease operating.

There is evidence this process is not operating effectively under the OSH regulations as no reports have been provided to the Commissioner. This information is also not necessary for worker's compensation claims. The person's health at the time of diagnosis and a connection back to an exposure with an employer is all that is required for a claim to proceed. An employer's only defence to a claim is to provide evidence that an exposure did not occur.

The person with the greatest interest in retaining health surveillance reports in the event of future medical issues is the worker who was the subject of the health surveillance. It is proposed to amend the regulations for health surveillance requiring reports to be provided to the worker on cessation of employment. This does not preclude PCBUs and doctors from retaining copies of the reports according to their current practices.

Regulation 50(2) of the model WHS regulations require records of monitoring for airborne contaminant levels to be kept for 30 years after the date the record is made. These are not the health records of an individual but the duty has been created for a similar purpose. The approach in regulation 5.22(c) of the OSH regulations is to provide the worker with the results of air monitoring as soon as they become available. This approach is to be retained.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>3:</b>	Require that health monitoring records for lead, asbestos and hazardous chemicals are provided to the worker on cessation of employment.	378(1)(b); 388(3); 418(1)(b); 444(1)(b).

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>4:</b>	Require that results of monitoring for airborne contaminants are provided to the worker as soon as they are available.	50.

### Retention of records - plant

Regulation 226 of the model WHS regulations requires that records of plant with presence sensing safeguard systems must be kept for a specified time, with a maximum period set by regulation 226(2)(a) of five years. This is inconsistent with regulation 237 of the model WHS regulations which requires that the record must be kept for the period that the plant is used or until the person relinquishes control of the plant.

Regulation 4.34 of the OSH regulations requires that a record is made and kept of any maintenance, inspection, commissioning, and alteration of the plant or test results. These records must be made accessible at all reasonable times and must be retained while the plant remains under control of the duty holder. There is no requirement for records to be kept for five years.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>5:</b>	Remove the requirement for a record related to plant with presence sensing equipment to be retained for five years.	226(2)(a).

### Making records available for inspection

The model WHS regulations require prescribed documents to be made available for inspection. These provisions are not required as they duplicate powers in the WHS Bill 2014. Similar provisions do not presently exist in the OSH regulations.

Under clause 171 of the WHS Bill 2014, WorkSafe Inspectors already have the power to require a person to produce the documentation while the Inspector is at the workplace or within a specified period.

Part 5 Division 1 of the WHS Bill 2014 requires workplace consultation and the sharing of relevant information.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>6:</b>	Delete the requirement for persons to keep specified documentation available for inspection.	94; 124; 226(3); 230; 237(4); 262; 303(4); 304(5); 313(4); 445(4); 465(3)(b); 505.

## Jurisdictional notes

The model WHS regulations include provisions that are required to be amended for consistency with state or territory requirements. These include provisions that reference a specific jurisdiction's laws, definitions within specified laws, or other variations that were identified as necessary during the drafting of the model WHS regulations.

A complete list of jurisdictional notes is provided in the Appendix: Jurisdictional Notes of the model WHS regulations. Only some of the jurisdictional notes are applicable to Western Australia.

The following model WHS regulations are proposed to be amended to implement jurisdictional notes.

## External review body

The model WHS regulations refer to the generic phrase [external review body] as having responsibility for conducting external reviews and a jurisdictional note permits the appropriate external review body to be inserted.

In Western Australia, the Work Health and Safety Tribunal (the Tribunal) is the appropriate external review body. The ***Tribunal*** is defined in clause 4 - Definitions of the WHS Bill 2014.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>7:</b>	Replace the placeholder phrase 'external review body' with the defined term <b><i>the Tribunal</i></b> .	105(5)(b), 519(5)(b) and 683(1) and 683(2)(b).

## Spent Convictions

Some regulations for authorisations require the declaration of a range of relevant information. This includes the declaration of a conviction under the WHS Bill 2014, the model WHS regulations, or a corresponding WHS law.

Safety and health matters are not an exception under the *Spent Convictions Act 1988*. Model WHS regulations that require a conviction to be declared may need to be clarified to exclude spent convictions.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>8:</b>	Clarify that spent convictions are not required to be declared.	87(2)(h) 90(a), 107(2)(a), 116(2)(f), 119(a), 135(2)(a), 492(2)(f)(i) and 492(2)(f)(iii) 500(1)(a) and 500(1)(b), 521(2)(a).

## References to environmental protection law

The model WHS regulations make reference to environmental protection laws as follows:

- regulation 419 permits asbestos work to be done in relation to proper transport and disposal of asbestos or asbestos waste in compliance with jurisdictional legislation;
- regulation 492 requires that an application for an asbestos removal licence requires declaration of a conviction related to unlawful disposal of hazardous waste under jurisdictional legislation; and
- regulation 500 provides the matters to be taken into account when considering an application for an asbestos removal licence.

In Western Australia, the *Environmental Protection Act 1986* and its subordinate regulations creates penalties for improper disposal of waste.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>9:</b>	Refer to the <i>Environmental Protection Act 1986</i> .	419(3)(e); 492(f)(iii), 500(b).

## Definition – accredited assessor

The model WHS regulations provide that assessors for high risk work licences must be accredited. This is consistent with the present requirements of the OSH regulations for assessors to be registered.

In some jurisdictions, the regulator may also be an **accredited assessor**. This is not the case in Western Australia and a jurisdictional note provides that jurisdictions may remove the reference to the regulator as an **accredited assessor**.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>10:</b>	Remove the regulator from the definition of <b>accredited assessor</b> .	Definition of <b>accredited assessor</b> .
<b>11:</b>	Remove the exception permitted if the <b>accredited assessor</b> is the regulator.	114(5).

## Definitions – electrical

### **electricity supply authority**

The definition of **electrical supply authority** is used in Part 4.7 of the model WHS regulations (General Electrical Safety in Workplaces and Energised Electrical Equipment). A jurisdictional note permits the use of a more appropriate definition from State or Territory laws.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>12:</b>	Replace the defined term <b>electricity supply authority</b> with the defined term <b>network operator</b> from regulation 4 of the Electricity (Network Safety) Regulations 2015.	Definition of <b>electricity supply authority</b>

### **electrical equipment, electrical installation, and electrical work**

Division 1 - Preliminary of Part 4.7 of the model WHS regulations (General Electrical Safety in Workplaces and Energised Electrical Equipment) provides definitions of **electrical equipment, electrical work and electrical installation**. Two jurisdictional notes relate to these provisions, permitting jurisdictions to insert or incorporate appropriate local definitions of motor car and motorcycle (in regulation 144(2) and allowing modification of the definition of **electrical work** for consistency with local electrical laws.

In consultation with the Department of Commerce – EnergySafety Division (EnergySafety) it was determined the definition of **electrical work** provided in regulation 4A of the Electrical (Licensing) Regulations 1991 was the appropriate definition to use in Western Australia. It was also determined during these discussions that adoption of the proposed definitions of **electrical equipment** and **electrical installation** from the model WHS regulations would create inconsistencies with the electrical safety regime in Western Australia.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>13:</b>	Replace the definitions of <b>electrical equipment</b> , <b>electrical installation</b> and <b>electrical work</b> in the model WHS to incorporate or reference the definitions provided in the Electricity (Licensing) Regulations 1991.	144; 145; 146.

### Definition – pressure piping

The defined term **pressure piping** is used in the model WHS regulations in the definitions of **pressure equipment**, **pressure vessel** and Schedule 5 Part 1 (Plant requiring design registration). The definition of **pressure piping** provides an exclusion clause for boilers, pressure vessels or any piping that is regulated under a referenced law. A jurisdictional note allows jurisdictions to specify the law for the purpose of this exclusion.

In the OSH regulations, the defined term **pressure piping** is used for the same purposes as the model WHS regulations, but the definition provided in regulation 4.1 does not phrase its exclusion clause in relation to specified legislation. Instead it refers to ‘...a pipeline to which any other written law applies’.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>14:</b>	Alter the exclusion provided in the definition of <b>pressure piping</b> so that it applies to a pipeline to which any other written law applies.	Definition of <b>pressure piping</b> clause (c)(ii).

## Definition – primary emergency service organisation

The defined term **primary emergency service organisation** is used in regulation 359 of the model WHS regulations to ensure fire fighting equipment and protection provided by PCBUs dealing with hazardous chemicals are compatible with those used by emergency respondents. In Western Australia, the Department of Fire and Emergency Services is the **primary emergency service organisation**. The *Fire and Emergency Services Act 1998* refers to ...'the department of the Public Service principally assisting in the administration of this Act' to ensure changes to the name of the department do not require changes to legislation.

Changes will also be required to the definitions of **emergency service organisation** and **emergency service worker** consistent with the proposed definition of **primary emergency service organisation**.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>15:</b>	Insert 'the department of the Public Service principally assisting in the administration of the <i>Fire and Emergency Services Act 1998</i> ' as the definition of <b>primary emergency service organisation</b> .	Definition of <b>primary emergency service organisation</b> .

## Definition – Strata title body corporate

Clause 5(6) of the WHS Bill 2014 permits the WHS regulations to '...specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.'

Regulation 7 of the model WHS regulations provides clarification of the circumstances in which **strata title body corporates** and incorporated associations are not considered to be persons conducting a business or undertaking. A jurisdictional note permits each jurisdiction to include an appropriate definition of **strata title body corporate**.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>16:</b>	Replace the term <b>strata title body corporate</b> with the term <b>strata company</b> , and change the reference to, or replicate the definition of, <b>strata company</b> in section 3(1) of the <i>Strata Titles Act 1985</i> .	7

## Safe distance from power lines

Regulation 166 of the model WHS regulations creates duties in relation to safe distances from overhead or underground electrical lines. In particular, regulation 166(2) of the model WHS regulations permits a PCBU to conduct work at an unsafe distance, if there is no practicable alternative, after a risk assessment is conducted and appropriate control measures are implemented.

The requirements in relation to safe distances from overhead power lines in Western Australia are provided in regulation 3.64 of the OSH regulations and include specification of safe distances and control measures for working within those distances if needed.

A jurisdictional note permits the incorporation of safe distances in local jurisdictions.

Notes: Safe distances from underground power lines are not specified in the OSH regulations. Information on safe distances is available from the network operator (eg Western Power for the south-west grid).

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>17:</b>	Incorporate the approach to working near overhead power lines from the OSH regulations, including specification of safe distances and control measures.	166

## Stay of decision

Clause 228 of the WHS Bill 2014 provides for a stay of decision when an application is made for internal review of that decision. Clause 228(6) provides the conditions when a stay ends which includes the time prescribed to request an external review of the decision (ie apply to the **Tribunal**). Regulation 701 prescribes the timeframe for applying for external reviews and a jurisdictional note permits local timeframes to be applied.

Subsection 51A(2) of the OSH Act provides a 7 day period for requesting an external review of improvement and prohibition notices and this is time period to be used in regulation 701.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>18:</b>	To insert a period of 7 days as the timeframe to make an application for an external review of a decision	701



## Confidentiality of information

The OSH Act does not include a general confidentiality provision. Information collected for the purpose of the OSH Act is treated as confidential unless its release is consistent with the objects of the OSH Act and complies with general privacy principles and the Public Sector *Code of Ethics*, or if its release is required by another law such as the *Freedom of Information Act 1992*.

Unlike the OSH Act, the WHS Bill 2014 specifies the circumstances in which confidential information may be released to other persons. This includes paragraph 271 (3)(c)(ii) where information may be released where it is necessary or convenient for the administration or enforcement of another Act of this state prescribed by the regulations, a Commonwealth law prescribed by the regulations or a law of another state or territory prescribed by the regulations.

Regulation 702 of the model WHS regulations permits a jurisdiction to prescribe laws for the purpose of paragraph 271(3)(c)(ii) of the WHS Bill 2014.

In addition to the general reference to a corresponding WHS law, the following laws are to be referenced in regulation 702:

### **Western Australia:**

- *Building Act 2011*;
- *Criminal Code*;
- *Dangerous Goods Safety Act 2004*;
- *Electricity Act 1945*;
- *Emergency Management Act 2005*;
- *Fire and Emergency Services Act 1998*;
- *Mines Safety and Inspection Act 1994*;
- *Mining Act 1978*;
- *Rail Safety National Law (WA) Act 2015*;
- *Road Traffic (Vehicles) Act 2012*;
- *Vocational Education and Training Act 1996*; and
- *Western Australian Marine Act 1982*.

### **Commonwealth:**

- *Occupational Health and Safety (Maritime Industry) Act 1993*;
- *Australian Border Force Act 2015*; and
- *National Vocational Education and Training Regulator Act 2011*.

**Victoria:**

- *Occupational Health and Safety Act 2004.*

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>19:</b>	Include a list of laws prescribed for the purpose of section 271(3)(c)(ii) of the WHS Bill 2014 for the purpose of providing information that is necessary or convenient for the administration or enforcement of another Act.	702.

## Consequential amendments

Amendments are required to the model WHS regulations as a consequence of changes to the model laws made to the WHS Bill 2014.

## Enforceable undertakings

Part 11 of the model WHS Act permits the regulator to accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the model WHS Act. Part 11 has not been included in the WHS Bill 2014.

The model WHS regulations include requirements that a person provides a declaration and details about any enforceable undertakings.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>20:</b>	Remove references to enforceable undertakings from the model WHS regulations.	87(2)(j), 87(2)(k), 90(c), 107(2)(c), 116(2)(h), 116(2)(i), 119(b), 135(2)(b), 492(2)(f)(v), 492(2)(f)(vi) 500(1)(c), 521(2)(b).

## Workplace entry by work health and safety entry permit holders

Part 7 includes right of entry provisions for WHS entry permit holders. In Western Australia, right of entry is regulated by the *Industrial Relations Act 1979* and Part 7 has not been included in the WHS Bill 2014 to avoid duplication.

The model WHS regulations provide additional requirements in relation to WHS entry permit holders in Part 2.4.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>21:</b>	Remove Part 2.4 (Workplace Entry by WHS Entry Permit Holders).	Part 2.4.

## Training and competency

### Competent person

The model WHS regulations require a competent person for a range of activities, including testing and tagging of electrical equipment, decommissioning of plant, supervision of diving work, and asbestos removal work.

The definition of competent person includes descriptions of the type of experience and nature of training required to be a competent person for specified activities. For example, major inspection of cranes and annual inspection of amusement devices must be carried out by a person registered as a professional engineer.

Non-specific references to **competent person** in the model WHS regulations default to clause (g) which provides the broadly accepted definition of competent person:

*...a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task.*

This definition correlates to the definition in regulation 1.3 of the OSH regulations.

*...a person who has acquired through training, qualification or experience, or a combination of those things, the knowledge and skills required to do that thing competently.*

With the exception of the testing and tagging of electrical equipment, the OSH regulations utilise the default definition of **competent person**.

The model WHS regulations include a definition of **competent person** for conducting energised electrical work and provide a note that permits jurisdictions to use local definitions. In Western Australia this will be a licensed electrician.

Regulation 235 and 241 of the model WHS regulations provide requirements for the major inspection of mobile cranes and tower cranes, and annual inspection of amusement devices. The **competent person** is required to be a professional engineer and also requires the regulator to deem competence. Consistent with the approach in the OSH regulations, these requirements are to be replaced with the general definition of **competent person**.

Regulation 306 of the model WHS regulations specify that a geotechnical engineer is required to ensure the sides of a trench are safe from collapse. This is not included in the definition of **competent person** in the model WHS regulations and is not a feature of the OSH regulations.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>22:</b>	Use the general definition of <b>competent person</b> provided in clause (g) as the default for all competent persons.	Definition of <b>competent person</b> .
<b>23:</b>	Add the requirement that a competent person for work on energised electrical installations must be authorised to carry out electrical work under the Electricity (Licensing) Regulations 1991.	Definition of <b>competent person</b> .
<b>24:</b>	Add the competency requirements for testing and tagging for the purpose of regulation 163.	Definition of <b>competent person</b> .
<b>25:</b>	Replace the requirement for a professional engineer to conduct major inspections of cranes and amusement devices with a <b>competent person</b> .	235(4) and 235(5); 241(5) and 241(6).

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>26:</b>	Require a <b>competent person</b> instead of specifying a geotechnical engineer to ensure the sides of a trench are safe from collapse.	306(4)

Notes:

- Amendments have not been noted for regulations 174 and 177 regarding supervision for general diving work due to the default instruction provided for Part 4.8 Diving Work.
- An amendment has not been noted to regulation 252 as there are no additional requirements specified in that regulation.

## Specified training courses

The model WHS regulations specify training courses for a wide range of activities in the definition of **specified VET course**, including:

- HRWLs;
- construction induction training;
- asbestos removal work; and
- supervision of asbestos removal work;

The model WHS regulations refer to **specified VET courses** by their title and VET courses are updated on a regular basis. Where the title of the course changes, regardless of whether or not the content also changes, an update to the regulations will be required.

With the exception of HRWLs, the OSH regulations specify training by:

- prescribing the required contents of the course (construction induction training, exposure to hazardous chemicals); and
- requiring courses to be approved by the Commissioner (tilt-up training, supervision of demolition work).

In the case of restricted asbestos removal work, the course for asbestos removal work is required as part of the Commissioner's approval of the licence. These approaches are administrative and avoid unnecessary regulatory updates.

The approach in the OSH regulations is to be retained in the WHS regulations (WA). To facilitate drafting, a new definition of **approved training course** will be included in the WHS regulations (WA). The only reference to a **specified VET course** in the definition that will be retained will be clause f) in reference to HRWLs.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>27:</b>	Remove all references to specific courses in the definition of <b>specified VET course</b> with the exception of those for HRWLs.	Definition of <b>specified VET course</b> .
<b>28:</b>	Include a new definition of <b>approved training course</b> as a course approved by the regulator.	Definition of <b>approved training course</b> .
<b>29:</b>	Replace the requirement for a <b>specified VET course</b> for all purposes other than HRWL with a requirement to complete the <b>approved training course</b> .	460; 494; 498(a)(ii)(A); 499(b)i); 518.

Note: Regulations requiring training for tilt-up work and demolition work will be added to the model WHS regulations and will refer to an **approved training course**.

## Generic training requirements

The primary duty of care in clause 19(3)(f) of the WHS Bill 2014 provides a requirement for:

*...the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking.*

The model WHS regulations include requirements for information and training to be provided in relation to specific hazards. In two cases the requirements for information and training are too generic to distinguish them from the requirements of the primary duty of care.

The model WHS regulations requiring training for general workplace management (regulation 39) and entry into a confined space (regulation 76) create duties that are indistinguishable from the primary duty for information and training, other than the nomination of the specified hazard.

The OSH regulations include a duty for the provision of training for confined spaces in regulation 3.87 and it is arguable that this does not add value to the general duty of care for information and training in section 19(1)(b) of the OSH Act. There is no training requirement provided for general workplace management in the OSH regulations.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>30:</b>	Remove generic requirements for information, training and instruction in relation to general workplace management and confined spaces.	39; 76.

## Construction induction

Requirements for a worker to complete a pre-employment course of basic safety and health training for work on construction sites was a feature of safety and health regulations in most jurisdictions prior to the development of the model WHS laws. Key features of construction induction training (CIT) are:

- a worker must complete a training course provided by a registered training organisation (RTO) prior to commencing work at construction site;
- the worker is provided with a card (commonly known as a 'white card') which can be shown to an employer as evidence CIT has been completed.

Division 11 of Part 3 of the OSH regulations implements the requirements for CIT in Western Australia.

Part 6.5 of the model WHS regulations provides the requirements for CIT.

There are four key differences between the requirements of the OSH regulations and those in the model WHS regulations:

Model WHS regulations	OSH regulations
The course that must be completed is a <b><i>specified VET course</i></b> .	The minimum content of the course is specified.
Cards are issued by the regulator.	WorkSafe-provided cards are issued to workers by the RTO that conducted the course.
Worker details are provided to the regulator in the application.	The RTO provides worker details direct to WorkSafe.
The regulator may cancel or refuse to replace a card.	WorkSafe has no authority to cancel a CIT card and replacement cards are issued by the RTO.

The approach in the OSH regulations has proven efficient and cost-effective in Western Australia and is to be retained. This will also require amendments to related definitions.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>31:</b>	Implement the approach to construction induction training in Division 11 of Part 3 of the OSH regulations, while retaining mutual recognition of CIT cards.	Part 6.5 and related definitions.

## Health and Safety Representative training

Clause 72 of the WHS Bill 2014 provides an obligation for PCBUs to permit health and safety representatives (HSRs) to attend a course of training. An HSR is not permitted to issue provisional improvement notices unless the appropriate training has been completed.

In the WHS Bill 2014, the PCBU is obliged to:

- allow the HSR to attend the training course as soon as practicable within three months of the request;
- pay course fees and other reasonable costs; and
- pay the HSR for the time taken to attend the course.

In Western Australia, these requirements are provided in regulations 2.2 and 2.3 of the OSH regulations.

Regulation 21(1) of the model WHS regulations prescribes the timeframes for initial (5 days) and refresher (1 day) training courses while regulation 21(2) provides the matters the regulator must take into account when approving an HSR course.

While the model WHS Bill provides that an HSR training course is approved by the regulator, the WHS Bill 2014 requires the training course to be approved by the Commission. This is consistent with the present approach in the OSH Act. The Commission approves HSR courses that are compliant with its guidelines which include the minimum duration of courses and stipulations regarding course content.

The only information in regulation 21 that is not otherwise prescribed by the WHS Bill 2014 or the Commission’s guidelines is the differentiation between initial and refresher courses. The OSH regulations make this differentiation in regulation 2.2 but provide that an introductory course may be taken during the first year of holding office. This provision conflicts with the requirement for a course to be taken within three months of making the request in the WHS Bill 2014.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>32:</b>	Replace the requirements for HSR training with the equivalent of regulation 2.2 of the OSH regulations, but remove the phrase “..during the first year of holding office...”.	21.

## High risk work licences – classes

### Definitions – rigging work

The definition of rigging work provided in the model WHS regulations includes the phrase ‘load using...’ instead of ‘load including...’ which is inconsistent with the definition established in the *National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment [NOHSC: 1006 (2001)] 3rd Edition July 2001*.



<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>33:</b>	Correct the definition of rigging work by replacing the phrase 'load using' with the phrase 'load including'.	Definition of <b><i>rigging work</i></b> .

## Concrete placing booms

The model WHS regulations require an HRWL for all types of concrete placing boom. In the OSH regulations, an HRWL is required only for mobile concrete placing booms. It is not known how many static concrete placing booms are in operation in Western Australia

No evidence has been provided which indicates:

- static concrete placing boom operators are not receiving adequate training under the general duty; and
- the imposition of the new requirements will improve workplace safety.

Note: The requirement for design registration of static concrete placing booms is to be retained.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>34:</b>	Limit the requirement for an HRWL for concrete placing booms to mobile concrete placing booms.	Schedule 3 Item 22; Schedule 4 Items 22.

## Boilers - Definitions

The model WHS regulations provide a definition of boiler for the purpose of high risk work licensing that includes '...boilers with less than 5 square metres heating surface or 150 kilowatt output'.

In the OSH regulations, the requirement for an HRWL for basic boiler operation is not required unless a boiler has an output of more than 500kw.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>35:</b>	Exclude boilers of 500kw output or less from the definition of <b><i>boiler</i></b> .	Definition of <b><i>boiler</i></b> .

## Boilers – high risk work licence classes

The OSH regulations presently require an HRWL to operate certain types of boiler. Presently, there are three classes of HRWL licence required to operate boilers:

- pressure equipment operation, basic;
- pressure equipment operation, intermediate; and
- pressure equipment operation, advanced.

The model WHS regulations include only two classes of HRWL for boilers:

- standard boiler operation; and
- advanced boiler operation.

The advanced classes of HRWL for boiler operation can be considered equivalent as they permit workers to operate all kinds of boilers. However, there is no direct correlation between the classes of basic and intermediate pressure equipment operation in the OSH regulations, and standard boiler operation in the model WHS regulations. The equipment that can be operated and the training required are significantly different.

The HRWL classes in the OSH regulations for basic and intermediate boiler operation will be added to Schedule 3 of the model WHS regulations to ensure current licence holders can continue to renew their licences without requiring to be retrained.

New applicants for HRWLs for boilers will have to be trained and apply for the model WHS regulations classes for boiler operation.

Current holders of the advanced pressure equipment operation class of HRWL in Western Australia will transition to the new advanced boiler operation class.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>36:</b>	Permit the current holders of HRWLs for the basic and intermediate pressure equipment operation to be able to renew their HRWLs under the WHS regulations.	Schedule 3 new items.
<b>37:</b>	Transition existing holders of the HRWL class for advance pressure equipment operation to advanced boiler operation.	Transitional provisions.

## Reach stackers

The model WHS regulations require an HRWL for reach stackers. A worker with any of the HRWL classes for slewing mobile cranes may also operate a reach stacker.

In the OSH regulations, a licence holder with the HRWL class for non-slewing mobile cranes is permitted to operate a reach stacker.

No evidence has been provided which indicates:

- reach stacker operators are not receiving adequate training under the general duty; and
- the imposition of the new requirements will improve workplace safety.

It is understood there are only a small number of reach stackers in operation in Western Australia.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>38:</b>	Remove the separate HRWL class for <b><i>reach stackers</i></b> .	Schedule 3 item 23; Schedule 4 item 23.
<b>39:</b>	Permit the holder of an HRWL to operate a non-slewing mobile crane to operate a reach stacker.	Schedule 3 item 14.

## Authorisations

### Notice of assessment – time to apply

The model WHS regulations require an application for an HRWL to include a copy of a ***certification*** that was issued not more than 60 days before the application is made. This provides no flexibility for the regulator to deal with applications made soon after the deadline when there are mitigating circumstances for the late application (such as the applicant being in a remote or regional area).

Regulation 6.6(3)(a) of the OSH regulations requires a ‘recently issued’ notice of satisfactory assessment.

Note: The limitation on working without an HRWL for no more than 60 days after the completion of training provided in regulation 82(1A)(a) will be retained.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>40:</b>	Require the provision of a ‘recently issued’ <b><i>certification</i></b> for a high risk work licence.	87(2)(f)(ii).

## HRWL – Reassessment of competency

Regulation 95 of the model WHS regulations provides the regulator with the power to direct the holder of an HRWL to obtain a reassessment of competency. The power provided in regulation 6.17(1) of the OSH regulations is more specific as requires provision of the notice of assessment within a specified time. The approach in regulation 6.17(1) of the OSH regulations is to be incorporated into regulation 95.

The model WHS regulations and the OSH regulations for reassessment of competency apply only to a licence holder and there is no power under regulation 89 to reject an application if there is evidence the person has not been appropriately deemed competent. The power for the Commissioner to request a reassessment will be clarified to include an applicant for an HRWL as a person that may be requested to provide a reassessment of competency.

Regulation 90 will be amended to include compliance with amended regulation 95 as a matter to be taken into account when granting an HRWL.

Regulation 106 will be amended to permit an HRWL to be cancelled or suspended if a licence holder does not comply with a request made under regulation 95. This is consistent with regulation 6.17(2) of the OSH regulations.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>41:</b>	Incorporate the power for the regulator provided in regulation 6.17(1) of the OSH regulations in relation to reassessment of competency.	95.
<b>42:</b>	Clarify that an applicant for an HRWL can be asked for a reassessment of competency.	95
<b>43:</b>	Include compliance with amended regulation 95 as a matter to be taken into account when granting an HRWL.	90.
<b>44:</b>	Permit an HRWL to be cancelled or suspended if a licence holder does not comply with a request made under regulation 95.	106.

## High risk work licence – Requirements for **accredited assessors**

The model WHS regulations require that assessors of HRWLs are accredited by the regulator. This is similar to the registration process presently required in Western Australia under the OSH regulations. A number of enhancements have been identified to the requirements for **accredited assessors**, based on the current requirements of the OSH regulations, and recent enforcement activities.

### English language requirements

Regulation 114 of the model WHS regulations requires an accredited assessor to act in accordance with their accreditation.

Regulation 6.20(2)(d) of the OSH regulations includes an English language requirement as part of a notice of satisfactory assessment. This approach is broadly accepted in Western Australia and is to be retained, by adding it to the list of requirements for the conduct of a competency assessment.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>45:</b>	Include an English language requirement as part of the requirements for the conduct of a competency assessment.	114(2).

### Qualifications

Regulation 118 of the model WHS regulations provides the requirements necessary to satisfy the regulator that an applicant for accreditation as an assessor is suitable. This includes at regulation 118(6)(a) a requirement that the an **accredited assessor** is qualified to conduct an assessment if their skills, knowledge and experience are in accordance with the *Standards for NVR Registered Training Organisations 2011* (the NVR Standard). This reference is to a specific document that is revised on a regular basis and will require regulatory amendments to update.

The approach in regulation 6.22(2)(b) of the OSH regulations is a more generic requirement that the person has acquired, through training and work experience, the skills necessary to assess a person's competency to do high risk work of that class.

The approach in regulation 6.22(2)(b) is preferred.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>46:</b>	Replace the requirement that an accredited assessor is qualified to conduct an assessment if their skills, knowledge and experience are in accordance with the <i>Standards for NVR Registered Training Organisations 2011</i> , with a requirement the person has acquired, through training and work experience, the skills necessary to assess a person's competency to do high risk work of that class.	118(6)(a).

### Conditions of accreditation

Regulation 121 of the model WHS regulations includes standard conditions of accreditation. In Western Australia, registered assessors are required to comply with the Public Sector *Code of Ethics*. While this implies cooperation with audits of their activities, there is value in specifying this as a condition of accreditation.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>47:</b>	Include a condition of accreditation for HRWL assessors to cooperate with audits of their activities.	112(2).

The model WHS regulations permit the regulator to take a range of actions in relation to an accreditation to assess competency for an HRWL, including suspension and cancellation of the accreditation. This is limited to circumstances directly related to the accreditation for a particular class of HRWL and does not provide for circumstances where conduct related to one class of HRWL may also apply to other classes of HRWL.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>48:</b>	Permit the regulator to consider all accreditations where an assessor has been convicted of an offence related to authorisations.	134(1); 135(2).

### High risk work licence – Working under supervision

Regulation 82 of the model WHS regulations provides a number of exceptions to the restriction on conducting work that usually requires an HRWL without being in possession of an HRWL. This includes, in regulation 82(1), an exception for a worker who is carrying out the work in the course of training for an HRWL and who is under direct supervision.

The meaning of direct supervision is provided in model WHS regulation 84 which includes an exception to the requirement for direct supervision under specified circumstances.

The OSH regulations (6.2) do not permit exceptions from the requirement for supervision.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>49:</b>	Remove the exception provided for the requirement of direct supervision of a worker carrying out work in the course of HRWL training.	84(2).

### High risk work licence – Grace period for renewal

The model WHS regulations permit HRWLs to be renewed up to 12 months after the expiry date or in exceptional circumstances. Regulation 6.9(1) of the OSH regulations provides a 24-month grace period for renewal of a high risk work licence with no exceptional circumstances.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>50:</b>	Implement the grace period provided in regulation 6.9(1) of the OSH regulations for renewal of an HRWL.	101(4); 102; 103.

## High risk work licence – registered training organisation to retain records

Regulation 6.32 of the OSH regulations requires RTOs to retain records in relation to an assessment for an HRWL which is important to the audit process (WorkSafe does not otherwise regulate RTOs).

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>51:</b>	Include the requirements of regulation 6.32 of the OSH regulations requiring RTOs to retain records.	New provision.

## Residential requirements for authorisations

Applicants for HRWLs, plant design registration, and asbestos removal licences are required to be resident in a jurisdiction, unless circumstances exist for grant of a licence outside the jurisdiction. A jurisdictional note permits the regulator to insert the title of their state or territory in these provisions.

Western Australia does not presently impose a residential requirement on applicants for authorisations.

## Residential requirements for high risk work licences

Note: The term ‘registered assessor’ is used in the OSH regulations and the defined term **accredited assessor** is used in the model WHS regulations. To avoid confusion, the term **accredited assessor** is used throughout this section.

Applicants for HRWLs are required by the model WHS regulations to be resident in a jurisdiction unless circumstances exist for grant of a licence outside the jurisdiction. As a result, WorkSafe would only issue an HRWL to workers who demonstrate they reside in Western Australia.

The OSH regulations do not presently impose a residential requirement for HRWL holders. This approach facilitates the movement of labour across borders by allowing **accredited assessors** to conduct their assessments on candidates (including those with an interstate address) in Western Australia or other jurisdictions.

WorkSafe has concerns about its ability to audit **accredited assessors** who are based interstate and conduct assessments outside Western Australia.



The introduction of the model WHS regulations provides an opportunity for these issues to be resolved. Three options are provided for consideration:

### **Option one (as drafted in the model Work Health and Safety regulations)**

This option reflects provisions in the model WHS regulations where the applicant will have to reside in Western Australia, except where circumstances exist which justify the grant of the HRWL. The reference to 'circumstances exist which justify the grant of the HRWL' is not defined. It has been indicated the circumstances considered in other jurisdictions include:

- fly in fly out workers;
- workers in or near border towns;
- defence personnel stationed in other states who fly in for training and assessing, and
- workers who cannot obtain training and assessing services in certain high risk work classes in their own state or within a reasonable travel distance.

Before conducting the assessment, an **accredited assessor** is required to seek an exemption from their regulator prior to conducting an HRWL assessment for a candidate with an interstate address. A similar process is likely to operate in Western Australia if this option is adopted.

### **Option two (as drafted in the Occupational Safety and Health Regulations 1996)**

The model WHS regulations would be amended to remove the residency requirement for HRWL applicants. This option retains consistency with the OSH regulations and permits workers who have been assessed in Western Australia or interstate by an **accredited assessor** to apply for an HRWL. However, this option does not address concerns about WorkSafe's ability to audit registered HRWL assessors who do not reside in, or are not based in, Western Australia.

### **Option three (Restrict high risk work licence assessments to being conducted Western Australia)**

The model WHS regulations would be amended to restrict assessments so that they can only be performed in Western Australia by **accredited assessors**. This option allows workers with an interstate address to be issued with an HRWL by WorkSafe and increases WorkSafe's ability to audit accredited assessors, but does not restrict the employment or training of workers who reside in other jurisdictions.

Option three is preferred.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>52:</b>	Replace the residential requirement for high risk work licences with the requirement that the applicant was assessed in Western Australia.	89(2)(c)

## Residential requirements for plant design registration and asbestos removal licences

The OSH regulations do not impose a residential requirement for plant design registration or asbestos removal licences. Provisions requiring an applicant to be resident in Western Australian will be removed, consistent with the approach in the OSH regulations.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>53:</b>	Remove the residential requirement for registration of plant design and asbestos removal licences.	256(2)(d); 497(2)(c); 497(2)(d).

## Authorisations – Evidence and declarations

WorkSafe is in the process of developing a system that will permit online lodgement and renewal for HRWLs and other authorisations. Minor amendments may be required to the administrative regulations for authorisations to facilitate online processing. For example, regulation 87(2) requires a copy of evidence/certification to be provided with an application for an HRWL. This regulation may need to be amended to require ‘information about’ rather than a copy.

Additional amendments may be required to ensure appropriate checks and balances are in place.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>54:</b>	Facilitate online lodgement of authorisations.	Various.

## Amendments in multiple chapters

### Review of control measures and asbestos management control plan

The model WHS regulations require control measures to be reviewed when specified conditions are met. One of the conditions specified is that a review must occur at the request of an HSR under the following circumstances:

- wherever a provision requires risk assessment in accordance with Part 3.1; and
- In relation to working with lead.

HSRs may also request a review of an asbestos management control plan.

The OSH laws in Western Australia do not provide an HSR with the power to trigger a review of control measures.

It is preferred that HSRs use the powers and functions that are specified under clause 68 of the WHS Bill 2014 to monitor measures taken by the PCBU, and require the PCBU to consult and confer under clause 70, in relation to control measures that may not be adequate. This is consistent with the approach in Western Australia's OSH laws.

Where a dispute arises, the HSR may issue a provisional improvement notice. Unlike the power provided in the specified regulations, the regulator may be called on to review a provisional improvement notice providing a process of natural justice.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>55:</b>	Remove the requirement for a control measure to be reviewed at the request of an HSR.	38(2)(e); 38(4); 401(1)(g); 401(3).
<b>56:</b>	Remove the requirement for an asbestos management control plan to be reviewed at the request of an HSR.	430(1)(d); 430(2).

### Power for Inspector to immediately suspend an authorisation

The model WHS regulations provide the regulator with the power to immediately suspend an authorisation if there is an imminent serious risk to health or safety of any person, or when a corresponding WHS regulator has suspended an equivalent authorisation. The regulator is defined in the WHS Bill 2014 as the WorkSafe Western Australia Commissioner.

Immediate suspension provisions are not included in the OSH regulations. Where an Inspector identifies an imminent serious risk to health or safety of any person, the Inspector will issue a prohibition notice to prevent the activity.

Suspending an authorisation is a significant step and it would be inappropriate for WorkSafe to immediately suspend an authorisation without conducting an appropriate investigation. For example, the matters in regulation 106 of the model WHS regulations would not justify cancellation or suspension of an HRWL in all circumstances. Suspension of an authorisation may also have unintended consequences for asbestos removal licences, particularly if the work at other sites is compliant with the model WHS laws.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>57:</b>	Remove the power of inspectors to immediately suspend an authorisation.	110; 138; 524.

### Requirement for regulator to provide a response within 14 days

The model WHS regulations require the regulator to advise an applicant within 14 days in relation to decisions for authorisation, and some review matters. There are no stated consequences for the regulator failing to respond within 14 days and it could be argued the authorisation process is compromised by missing the statutory deadline.

The OSH regulations do not impose a fixed time on the Commissioner for a response but section 63 of the *Interpretation Act 1984* requires a decision to be made 'with all convenient speed and as often as occasion arises'. Public Sector employees are also bound to comply with the Public Sector *Code of Ethics* and the Department of Commerce has published a *Code of Conduct*.

No evidence has been provided that WorkSafe does not appropriately inform applicants about decisions.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>58:</b>	Remove the requirement for the regulator to advise of a decision within 14 days and rely on section 63 of the <i>Interpretation Act 1984</i> .	89(4), 91(2)(c), 98(6), 109(1), 112, 118(4), 120(2)(c), 127(6), 137(1), 140, 256(4), 257(2)(c), 283(3)(c), 284(3)(c), 286, 288(6), 288C(2)(c), 393(3), 407(4), 497(4), 501(2)(c), 508(3)(c), 509(3)(c), 511, 513(6), 523(1), 526; 680(1); 681; 694; 696(1); 698(1).

## Chapter One – Preliminary

### Commencement date

Regulation 2 of the model WHS regulations specifies a commencement date for the regulations. The date specified will be modified appropriately when a commencement date is determined by the Government of Western Australia.

Sub-regulation 2(2) provides a later starting date for regulation 164 (residual current devices in hostile operating environments). This option was provided for jurisdictions that did not have these requirements previously. The OSH regulations already include requirements for residual current devices under regulation 3.60.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>59:</b>	Remove the provision for a different start date for residual current devices in hostile operating environments.	2

### Definitions – combustible dust

The model WHS regulations include a definition of **combustible dust**, which is used in the definition of **hazardous area**. The term ‘flyings’ is no longer in common use and is provided as part of a non-exclusive list, which means the term can be removed without impact on the meaning.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>60:</b>	Remove the term ‘flyings’ from the definition of <b>combustible dust</b> .	Definition of <b>combustible dust</b> .

Note: The term **combustible dust** is also used in the definition of **hazardous atmosphere**, but the provisions that used the definition of **hazardous atmosphere** will be removed.

## Definitions – combustible liquid

The model WHS regulations refer to the defined phrase **combustible liquid** in:

- regulation 53 (flammable and **combustible material** not to be accumulated);
- part 3 of Schedule 12 (Manifest requirements – identification of hazardous chemicals);
- part 4 of Schedule 12 (Manifest – storage area for packaged hazardous chemicals); and
- part 7 of Schedule 13 (Placards for flammable liquids category 4 package or in bulk).

These provisions will be removed so the definition of **combustible liquid** is not required.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>61:</b>	Remove the definition of <b>combustible liquid</b> .	Definition of <b>combustible liquid</b> .

## Definitions – excavation

The model WHS regulations provide a definition of **excavation** that is unsuitable in Western Australia. Clause (a), which excludes a mine, is redundant as mines are excluded by the scope of the WHS bill 2014. Clause (b) includes a jurisdictional note to insert a relevant water law for bores and the relevant law in Western Australia is the *Water Services Act 2012*. Clause (c) excludes excavations for places of interment and this exclusion is non-controversial.

The OSH regulations do not presently define excavation. A suitable replacement for the introductory phrase of the definition of **excavation** in the model WHS regulations has been sourced from the model WHS *Code of Practice: Excavation work*.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>62:</b>	Replace the definition of excavation with the phrase ‘...means an open face, hole, or cavity created as a result of using tools, machinery or explosives...’	Definition of <b>excavation</b> .

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>63:</b>	Remove the reference to 'mines' in the exceptions to the definition of <b>excavation</b> .	Definition of <b>excavation</b> .
<b>64:</b>	Insert the <i>Water Services Act 2012</i> in reference to a bore in the exceptions to the definition of <b>excavation</b> .	Definition of <b>excavation</b> .

### Risk assessment may be done for a class of hazards

Regulation 12 of the model WHS regulations provides clarification that a risk assessment may be applied to a class of hazards under certain circumstances.

Part 3.1 of the model WHS regulations does not specify how a risk assessment should be conducted and does not limit how it may be applied. Consequently, regulation 12 does not create a unique duty.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>65:</b>	Remove the redundant clarification that risk assessments may be applied to a class of hazards, tasks, circumstances or things.	12

## Chapter Two – Representation and Participation

### Negotiations regarding work groups

Clause 52 of the WHS Bill 2014 provides for negotiation and agreement in the creation of work groups and clause 52(6) permits the matters to be taken into account to be prescribed in the regulations.

Clause 56 of the WHS Bill 2014 provides for negotiation and agreement in the creation of work groups for multiple businesses and clause 56(4) permits the regulations to prescribe the matters to be taken into account.

Regulations 16 and 17 of the model WHS regulations provide additional matters for consideration when negotiating to establish work groups. The requirements are self-evident and imprecise. Regulation 17 provides a non-exhaustive checklist of matters to consider that may not be applicable to every PCBU.

The detail provided in regulations 16 and 17 can more effectively be provided in guidance material such as the *SWA Guidance Note: Worker representation and participation guide*.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>66:</b>	Remove the matters prescribed for the determination of work groups.	16; 17.

### Default procedure for election

Clause 61 of the model WHS Bill 2014 provides the procedure for the election of HSRs and clause 61(2) requires the election to comply with procedures provided in the regulations.

Regulation 18 of the model WHS regulations purports to prescribe procedures for the purpose of clause 61(2). However, with the exception of requirements in relation to the provision of information, regulation 18 does not provide a procedure for conducting an election.

The information provided in regulation 18 can more effectively be provided in guidance material, such as the *SWA Guidance Note: Worker representation and participation guide*.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>67:</b>	Remove the minimal procedural requirements for the election of health and safety representatives.	18.



## Chapter Three – General Risk and Workplace Management

### First aid

Regulation 42 of the model WHS regulations prescribes duties in relation to the provision of first aid equipment and the training of an adequate number of workers in relation to first aid. Both requirements are absolute and do not provide sufficient information to ensure compliance, which might cause difficulties for smaller PCBUs. More information on how to comply with the duties imposed by regulation 42 is provided in the model Code of Practice: *First aid in the workplace*.

Regulation 3.12 of the OSH regulations takes a similar approach but requires ‘appropriate’ first aid facilities, and modifies the training requirement with practicability. Details on how to comply with these provisions are provided in details provided in the *Codes of practice: First aid facilities and services; Workplace amenities and facilities; Personal protective clothing and equipment*.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>68:</b>	Require that a PCBU provides facilities and training to ensure effective first aid so far as is reasonably practicable.	42.

### Emergency procedures

Regulation 43 of the model WHS regulations provides prescriptive requirements for emergency plans that are not modified by practicability, with additional details provided in the model *Code of Practice: Managing the work environment and facilities*. Smaller PCBUs may have difficulty complying with the absolute requirements provided in regulation 43.

The OSH regulations (3.10) provide requirements for evacuation procedures that are non-specific (eg the timing required for drills is at ‘reasonable intervals’). Further information is provided in the *Guidance Note: Preparing for emergency evacuations at the workplace*.

Regulation 43 has been modified to require an emergency plan that includes effective procedures to respond to an emergency consistent with regulation 3.10 of the OSH regulations.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>69:</b>	Require PCBUs to prepare procedures to effectively respond to an emergency.	43.

## Personal protective equipment – provided to other persons

Regulation 45 of the model WHS regulations provides a duty on the PCBU to ensure:

- Personal protective equipment (PPE) provided to other persons at the workplace is capable of minimising the risk; and
- the person wears the equipment.

These requirements do not enhance the existing duties of PCBUs to other persons at the workplace provided under clause 19(2) of the WHS Bill 2014. The OSH regulations do not prescribe similar requirements.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>70:</b>	Remove the duplicated duty for the provision of PPE to other persons at the workplace.	45.

## Hazardous atmospheres and ignition sources

Regulations 51 and 52 create duties in relation to hazardous atmospheres and ignition sources. The requirements are general and use undefined terms such as 'safe oxygen level'. Specific control measures are not provided. These requirements can be more effectively enforced under the general duty and the regulations for hazardous chemicals.

It can be noted the OSH regulations provide controls for toxic atmospheres but the definition of toxic atmosphere differs from the definition of hazardous atmosphere. Toxic atmospheres can be more effectively regulated under the model WHS regulations for hazardous workplace chemicals.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>71:</b>	Remove the regulations for hazardous atmospheres and ignition sources.	51; 52.

## Flammable and combustible materials

Regulation 53 requires that flammable and combustible material is not accumulated but does not specify thresholds to determine compliance. The duty is not specific enough to distinguish it from the primary duty of care.

The OSH regulations do not prescribe an approach to dealing with hazardous and combustible materials.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>72:</b>	Remove the regulations in relation to flammable and combustible materials.	53.

## Falling objects

Regulations 54 and 55 of the model WHS regulations provide a requirement to assess and control the risk of falling objects. Other than the specific hazard, these regulations do not articulate duties that enhance the requirements of the general duty.

The model WHS regulations provide some requirements in relation to control measures to reduce the hazards posed by falling objects, including:

- the requirement for gantries when required (regulation 3.76); and
- controlled methods of removing debris for first or subsequent storeys (regulation 3.17(3)).

These provisions have not been replicated in the WHS Regulations (WA) as they are adequately addressed by the model *Code of Practice: Construction work*.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>73:</b>	Remove the regulations providing control measures in relation to falling objects.	54; 55.

## Protection from tobacco smoke

In most jurisdictions, the prohibition on smoking in the workplace is contained in health or environmental regulations. Consequently, the model WHS regulations do not include provisions like those in part 3, division 3, subdivision 2 of the OSH regulations (Protection from tobacco smoke).

A new division will be added to the model WHS regulations to incorporate the requirements of the OSH regulations for protection from tobacco smoke. Changes will be made to make the duty holders and definitions consistent with the model WHS regulations.

Three clauses in the OSH regulations will not be included in the model WHS regulations on the basis that changes in workplace culture mean they have not been used for enforcement activity in recent years. These are:

- the defence for smoking in a private vehicle or residence (regulation 3.44D);
- the requirement for signs (regulation 3.44G); and
- the power of inspectors to require that a tobacco product be extinguished (regulation 3.44I).

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>74:</b>	Include the OSH regulations for protection from tobacco smoke with the exception of the requirement for signs (3.44D), the defence for smoking in a private vehicle or residence (3.44G), and the power for an inspector to require a tobacco product be extinguished (3.44I).	New division.

## Chapter Four – Hazardous Work

### Noise –exposure standard

Part 4.1 of the model WHS regulations provides requirements in relation to the exposure standard for noise.

Regulation 57 requires a PCBU to ensure the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise. This requirement is absolute and difficult to apply in a workplace, particularly where exposure is measured over time. Regulation 3.46 of the OSH regulations provides the same requirement as regulation 57, but modified by practicability. This approach is to be implemented in the WHS regulations (WA).

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>75:</b>	Modify the requirement to ensure the noise exposure standard is not exceeded so far as is reasonably practicable.	57.

### Noise – audiometric testing

Regulation 58 of the model WHS regulations provide requirements for audiometric testing, including timeframes for when testing must commence and how often it should be repeated.

The OSH regulations do not prescribe the requirements for audiometric testing. Detailed requirements are more effectively provided in the model *Code of Practice: Managing noise and preventing hearing loss at work*.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>76:</b>	Remove the requirements for audiometric testing.	58.

## Duties of designers

The model WHS regulations for hazardous work include duties for designers, manufacturers, importers and suppliers of plant in relation to noise, manual tasks and confined spaces.

The WHS Bill 2014 includes clauses that impose obligations on designers, manufacturers, importers and suppliers of plant. Other than citing the specific hazard in relation to plant, the cited regulations do not enhance the duties provided in the WHS Bill 2014.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>77:</b>	Remove the duplicate duties of designers, manufacturers, importers and suppliers of plant in regulations related to noise, manual tasks and confined space.	59; 61; 64.

## Confined spaces – duplicate requirements

The model WHS regulations for confined spaces include a number of regulations that do not create duties substantially different than the primary duty of care.

Regulation 70 provides that connected plant and services connected to a confined space do not introduce hazards when the confined space is occupied (eg by inadvertent engulfment). No control measures are specified. This issue is adequately covered by the general duty and the model *code of practice: Confined space*.

Regulation 74 relates to emergency procedures for confined spaces. Sub-regulation 74(2) does not create a unique duty and sub-regulation 74(3) creates non-specific duties that replicate the requirements of other regulations (notably regulation 40 and 43) and restricts rescue to being initiated from outside of the confined space.

Regulation 75 provides requirements for PPE in relation to confined spaces. The requirements are vague and replicate other duties (eg the general duty and requirements for PPE).

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>78:</b>	Remove the regulations for confined spaces relating to connected plant and services, emergency procedures and PPE.	70, 74, 75.

## Demolition work

Part 4.6 of the model WHS regulations provides the requirements for demolition work. The jurisdictional note for Part 4.6 Division 2 states that:

*A jurisdiction may insert transitional and savings provisions for the licensing of demolishers pending the regulation of demolishers under the Occupational Licensing National Law.*

The Occupational Licensing National Law did not eventuate for demolition licensing. The OSH regulations include provisions for demolition licensing which are to be included in the WHS regulations (WA).

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>79:</b>	Include the demolition licensing requirements of the OSH regulations.	New provision.

A number of changes are required to Western Australia's demolition licensing system to ensure it is compatible with the drafting approach of the model WHS regulations.

## Demolition – definition of class

The model WHS regulations include a definition of **class** to facilitate drafting of regulations related to high risk work licensing and asbestos removal licensing. To assist in the preparation of demolition licensing regulations for Western Australia, demolition licenses will be included in the definition of **class**.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>80:</b>	Add demolition licensing to the definition of <b>class</b> .	Definition of <b>class</b> .

## Demolition – notification

Regulation 142 of the model WHS regulations requires PCBUs to provide notification of proposed demolition work to the regulator at least 5 days before the work commences. Regulation 3.122 of the OSH regulations provides a similar requirement.

These requirements impose a cost on duty holders and provide limited intelligence value to WorkSafe for enforcement. Consequently, it is not proposed to replicate regulation 3.122 of the OSH regulations in the WHS regulations (WA).

Note: the requirement for local government notifications is to be retained and will capture some of these notices.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>81:</b>	Remove the requirement for the regulator to be notified prior to the commencement of demolition work.	142.

## Demolition – clarification of Class 1 licence

Class 1 demolition licences are granted under the OSH regulations for complex demolition work. The types of demolition work that require a Class 1 demolition licence are provided in regulation 3.114 of the OSH regulations.

Class 1 demolition licences have been granted to applicants who only have the expertise to conduct a subset of class 1 demolition work (for example, a PCBU that specialises in demolition work using explosives may be granted a class 1 licence with a condition that no other kind of class 1 work is to be conducted).

An alternative view is that a class 1 applicant must have the skills and expertise to conduct all types of class 1 demolition work to be granted a class 1 demolition licence. It is WorkSafe's view this is not the intent of these provisions.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>82:</b>	Clarify that a Class 1 demolition licence may be issued for one or more of the types of work to be conducted.	New provision.



## Demolition – remove references to Australian Standards

The model WHS regulations minimise references to technical standards and rely on these references being made in codes of practice.

The OSH regulations for demolition work make a number of references to Australian Standard *AS 2601 – Demolition of Structures*. Consistent with the approach taken in drafting the model WHS regulations, and the previous instruction regarding notification, these regulations will not be implemented in the WHS regulations (WA).

The WHS regulations (WA) will rely on the requirements of the primary duty of care, the construction work regulations, and the *model Code of practice: Demolition work*.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>83:</b>	Not include OSH regulations that refer to <i>Australian Standard AS 2601 – Demolition of Structures</i> for licensed demolition work.	New provision.

## Demolition – supervision

Sub-regulation 3.116(2) of the OSH regulations permits the Commissioner to issue a licence ‘...if satisfied that the applicant is able to do that class of demolition work in a safe and proper manner’. In order to be satisfied, the Commissioner imposes a range of requirements for the information to be provided in the application, including relevant training and experience. This includes the minimum experience and training for supervisors.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>84:</b>	Include a new provision setting out the minimum experience and training requirements for supervisors of demolition work.	New provision.

## Electrical work

Note: The OSH regulations for electrical work are being redrafted in a separate process to implement the decision of the Minister for Commerce to prohibit work on energised **electrical installations** except in specified circumstances (eg testing). The recommendations provided in this section may be modified based on the outcome of this process.

### Disconnection/isolation of unsafe electrical equipment

Regulation 149 requires unsafe **electrical equipment** to be disconnected or isolated. The primary duty of care in the WHS Bill 2014 requires the PCBU to ensure the safety and health of workers. Unsafe **electrical equipment** should not be used under the primary duty of care.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>85:</b>	Remove the redundant requirement for unsafe electrical equipment to be disconnected or isolated.	149.

### Record keeping

Regulations 161 and 162 of the model WHS regulations provide specific controls and record keeping measures for working with energised **electrical equipment**. Work carried out on or near energised **electrical installations** or services is high risk construction work that requires a safe work method statement in both the model WHS regulations and the OSH regulations.

The record keeping requirements in regulations 161 and 162 duplicate the requirement for a safe work method statement and some of the control measures re-state the general duty or duplicate the requirements of other model WHS regulations.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>86:</b>	Remove the requirements of regulations 161 and 162 in relation to control measures and record keeping for work on energised electrical equipment.	161; 162.

## Testing of electrical equipment and portable appliances

Regulation 150 of model WHS regulations provides the requirements for testing of **electrical equipment**. Sub-regulations 150(3) and 150(4) provide requirements for record keeping for the specified activities. These records are not required by the OSH regulations and there are no identified enforcement or safety and health benefits for their retention.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>87:</b>	Remove the requirement for records to be kept in relation to the testing of electrical equipment.	150(3); 150(4).

Note: This regulation applies only to equipment permanently attached to an **electrical installation**, rather than portable appliances.

## Implementation of OSH regulations – testing and tagging

Regulation 163 of the model WHS regulations provides the requirements for testing and tagging electrical equipment on construction sites in accordance with Australian/New Zealand Standard *AS/NZS 3012:2010 Electrical installations—Construction and demolition sites* (AS/NZS 3012). The requirement for a tag is prescribed by clause 3.8.3 of AS/NZS 3012 which requires the tester’s name to be provided on the tag.

The OSH regulations also include a requirement for testing and tagging on construction sites, and specify the tag must include the name of tester and, if applicable, the electrical worker’s licence or permit number.

The requirement for the electrical worker’s licence or permit number is to be added to the model WHS regulations to retain the approach to testing and tagging in the OSH regulations.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>88:</b>	Ensure the tag attached when testing and tagging electrical equipment includes the electrical worker’s licence or permit number.	163.

### Implementation of OSH regulations – connection to construction site

Regulation 3.62 of the OSH regulations specifies when electricity is to be connected to a construction site. There is no similar requirement in the model WHS regulations.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>89:</b>	Include a requirement similar to regulation 3.62 of the OSH regulations specifying when electricity is to be connected to a construction site.	New provision.

### Implementation of OSH regulations – evidence portable electrical equipment has been tested

The model WHS regulations provide duties for testing and tagging of electrical equipment but do not include a provision equivalent to regulation 3.63 of the OSH regulations which require a person bringing equipment to a construction site to provide evidence it has been tested.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>90:</b>	Include a requirement similar to regulation 3.63 of the OSH regulations requiring a person bringing equipment onto a construction site to provide evidence it has been tested.	New provision.

### Requirement to de-energise *electrical installation* in roof space

In response to electrocution deaths in Western Australia, drafting instructions are presently being prepared to prohibit live **electrical work**. This includes a requirement that the main switch is de-energised before a worker enters a roof space. This requirement applies to all workers, rather than just electrical workers, so it must be provided in the WHS regulations (WA).

Initial public consultation on the proposal to prohibit live **electrical work** was conducted by EnergySafety in February 2015. The WHS regulations (WA) will incorporate the provisions related to the prohibition of live **electrical work** when they are drafted.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>91:</b>	Include a provision requiring the main switch is de-energised before a worker enters a roof space.	New provision.

## Diving Work

As noted in the introduction, the model WHS regulations for diving work are presently under review. The default recommendation provided below is to retain the current approach in the OSH regulations that require compliance with the diving standard for construction diving work. This recommendation may change based on the outcome of the review.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>92:</b>	Require compliance with the <i>Australian New Zealand Standard AS/NZS 2299.1:2007 Occupational Diving Operations - Standard Operational Practice</i> for construction diving work, consistent with the approach in the OSH regulations.	Part 4.8.

## Driving commercial vehicles

During the development of the model WHS laws, heavy vehicle national laws (HVNL) were also being developed. As a result of this parallel process, the model WHS regulations were not drafted to include regulations for commercial vehicle drivers.

Western Australia has decided not to participate in the HVNL at this time and the regulations for commercial vehicle drivers will be retained in the WHS regulations (WA).

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>93:</b>	Include a new part that replicates the requirements of Division 10 of Part 3 of the OSH Regulations – Driving commercial vehicles.	New provisions.

## Chapter Five – Plant and Structures

### Plant item registration

The OSH regulations presently require that specified items of plant must be registered with WorkSafe. The model WHS regulations include similar requirements in Part 5.3.

The requirement to register individual items of plant is to be removed. Registration of plant design will be retained.

Note: Regulation 237 of the model WHS regulations requires specified records to be created and maintained for registered plant and this requirement will be retained for items of plant that formerly required registration.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>94:</b>	Remove the requirement for individual items of plant to be registered with the regulator.	227; 246, 247, 264 to 280, 281(b), 282(3), 288A(b).

### Tree lopping

Regulation 221 provides an exception for tree loppers from the requirement to work from a work box under certain conditions. Tree loppers are not presently exempt from these requirements in the OSH regulations.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>95:</b>	Remove the exception permitting tree loppers to be suspended from a crane (not in a workbox).	221.

## Storage of amusement devices

Regulation 239 provides requirements for the storage of amusement devices and passenger ropeways. Requirement for storage of plant more generally are provided in regulation 207. There is no need for duplicate requirements.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>96:</b>	Remove the duplicate requirement for storage of amusement devices in regulation 239.	239.

## Chapter Six – Construction Work

### Threshold for construction project

Regulation 292 of the model WHS regulations provides the definition of a **construction project**. Construction work that meets the definition of a **construction project** requires the appointment of a principal contractor who has additional duties. The threshold specified in the model WHS regulations is \$250,000.

The threshold in regulation 3.142 of the OSH regulations for a main contractor in relation to an occupational health and safety management plan is where 5 or more persons are likely to be working at the same time. This replicates the threshold established in clause 7.30 of the *National standard for construction work [NOHSC:1016(2005)]* (the construction standard).

A monetary threshold is not a reliable measure for determining risk and complexity in construction work as costs vary considerably based on factors such as quality, location and materials.

The monetary threshold poses significant challenges for regulators and PCBUs as it must be regularly updated and requires the declaration of sensitive financial information. The 5 person threshold provided in the construction standard and the OSH regulations is more readily enforceable.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>97:</b>	Replace the monetary threshold for a construction project with the 5 person threshold provided in regulation 3.142 of the OSH regulations.	292.

### Prevention of unauthorised access to area of a trench

Regulations 306(1) and (2) of the model WHS regulations require a PCBU to prevent unauthorised access to an area where a trench is to be dug. This replicates the general requirement to secure a construction site provided in regulation 298 and is not required.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>98:</b>	Remove the duplicate requirement to prevent unauthorised access to an area where a trench is to be dug.	306(1) and 306(2).



## Tilt-up construction work

The model WHS regulations include tilt-up construction work as high risk construction work which requires the use of a safe work method statement.

The OSH regulations presently include requirements in relation to tilt-up construction work, including:

- notification to the Commissioner;
- compliance with specified elements of the Australian Standard *AS3850 – Tilt-up concrete construction* (the tilt-up standard); and
- competency requirements.

The requirement for notification to the Commissioner will not be included in the model WHS regulations. Notifications for this purpose impose significant costs on the PCBU and the regulator and have not proven effective in providing enforcement intelligence to WorkSafe.

Note: the requirement for local government notifications is to be retained and will capture some of this information.

The OSH regulations in relation to tilt-up work incorporate specific requirements of the tilt-up standard.

The model WHS regulations rely on the requirements of the primary duty of care, construction work regulations, and the *National code of practice for precast, tilt-up and concrete elements in building construction* published by Safe Work Australia.

Consistent with the approach in the model WHS regulations the regulations referencing the tilt-up standard will not be implemented in the WHS regulations (WA).

The requirements for training and supervision in the OSH regulations for tilt-up work will be retained. It has been identified there are issues with the training requirement for supervisors where tilt-up manufacture is conducted at a workplace that is not a construction site. The present course for the supervision of the manufacture of tilt-up panels includes assessment components that can only be done on a construction site. The training requirements for supervisors of concrete panel manufacture off-site will be modified to mitigate this issue.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>99:</b>	Incorporate the competency requirements for tilt-up construction work from the OSH regulations.	New provision.
<b>100:</b>	Modify the incorporated requirements in relation to training for supervisors for panels manufactured at workplaces other than a construction site.	New provision.

## Local government notifications

The model WHS regulations include a number of requirements for different types of construction work to be notified to the Commissioner (demolition work, tilt-up work). Similar provisions in the OSH regulations have not proven effective for enforcement purposes and are to be removed from the model WHS regulations.

Regulation 2.10 of the OSH regulations presently requires local governments to notify the Commissioner of all permits issued on a monthly basis in relation to construction work. This works effectively with minimal cost and is to be retained.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>101:</b>	Include the equivalent of regulation 2.10 of the OSH regulations requiring local government to notify the Commissioner of permits for construction work.	New provision.

## Consequential amendments

Regulation 314 of the model WHS regulations includes a list of divisions elsewhere in the model WHS regulations for which a principal contractor must ensure arrangements are in place to ensure compliance. Some of these divisions have been removed by other recommendations in this Discussion Paper, and the correlating references in this regulation have been removed.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>102:</b>	Remove references to divisions that have been removed by other amendments.	314.

## Chapter Seven – Hazardous Chemicals

### Specified control measures

The model WHS regulations in relation to hazardous chemicals mandate a number of control measures that duplicate the requirements of other regulations or may otherwise be required by a risk assessment conducted under regulation 351 (management of risks to health and safety).

Regulation 353 requires the provision of safety signs in relation to hazardous chemicals. Safety signs are an administrative control and should only be considered in conjunction with other controls. With the exception of asbestos removal work, no other regulation requires safety signs.

Regulation 360 requires emergency equipment to be available at the workplace for use in an emergency. This duplicates the general requirement for emergency procedures in regulation 43.

The primary duty of care requires the safe use, handling and storing of substances and the provision and maintenance of safe plant. Regulation 362 requires the provision of safety equipment.

Details on these control measures are provided in the model *Code of Practice: Managing risks of hazardous chemicals in the workplace*.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>103:</b>	Remove the requirement for the provision of safety signs in relation to hazardous chemicals.	353.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>104:</b>	Remove the redundant provisions for hazardous chemicals in relation to the requirements for emergency and safety equipment.	360; 362.

## Supervision

Regulation 379 of the model WHS regulations creates a duty to provide supervision. This replicates the primary duty under section 19(3)(f). More information is provided in the model *Code of Practice: Managing risks of hazardous chemicals in the workplace*.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>105:</b>	Remove the duplicated requirement for supervision in relation to hazardous chemicals.	379.

## Working with lead – changing and washing facilities

Regulation 399 of the model WHS regulations requires a PCBU to provide changing and washing facilities to minimise lead contamination by ingestion, secondary exposure, or spreading. The duty in regulation 399(1) is absolute and inconsistent with the duties to control the risk of lead risk work contained in division 2 of Part 7.2 which are all modified by practicability. For consistency, regulation 399(1) is to be amended so it is modified by practicability.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>106:</b>	Modify the requirement to provide changing and washing facilities to minimise lead contamination by practicability.	399(1).

## Health monitoring

Note: Amendments to the record keeping requirement for health monitoring have been addressed earlier in this Discussion Paper.

Regulation 368 provides the triggers for health monitoring for hazardous chemicals. Sub-regulations 368(a) requires health monitoring due to a significant risk to the worker's health because of exposure to a hazardous chemical. This requirement is consistent with the approach in regulation 5.23 of the OSH regulations.

Sub-regulation 368(b) triggers health monitoring if there is a significant risk the worker will be exposed to a hazardous chemical, but only if there is valid method of measuring the exposure standard has been exceeded and there is a technique available to detect the effect on the worker's health.

Sub-regulation 368(b) is not consistent with the approach in the OSH regulations and relies on the biological exposure standard which has not yet been published by SWA. The preferred approach is to consistently focus on the risk to the worker's health and permit a broader means of assessing biological exposure.

The requirement for a 'significant risk to health' from a risk of exposure is also to be added to regulation 435(1)(b) in relation to health monitoring for asbestos work.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>107:</b>	Change the trigger for health monitoring where there is risk of exposure to a hazardous chemical/asbestos to also require a significant risk to health.	368(b); 435(1)(b).
<b>108:</b>	Provide duty holders with an alternative approach to assess the biological exposure standard for hazardous chemicals.	368(b)(ii).

Note: The model WHS regulations for health monitoring in lead risk work are not required to be amended as the work itself is the trigger for health monitoring.

The model WHS regulations for health monitoring place a duty on the PCBU to provide a copy of the health monitoring report to the regulator.

Regulation 5.24 of the OSH regulations places the duty to provide the health monitoring report to the regulator on the medical practitioner who prepared it if the results indicate exposure.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>109:</b>	Change the duty holder for provision of the health monitoring report to the regulator from the PCBU to the medical practitioner.	376; 413; 442.

The model WHS regulations for health monitoring permit the PCBU to provide the report to others at a workplace that may have a corresponding duty. The intent is to prevent unnecessary testing where duties overlap. However, this does not take into account potential privacy concerns for workers. Regulations 378(2), 418(2) and 444(2) permit a health monitoring report to be released with the worker's consent and this is the preferred mechanism where there are shared responsibilities.

Regulation 5.23(4) of the OSH regulations requires information from health monitoring to be kept confidential.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>110:</b>	Remove the ability of PCBUs to provide a health monitoring report to PCBUs with a corresponding duty.	377; 414; 443.

Regulation 435 of the model WHS regulations creates the health monitoring duty in relation to working with asbestos. Regulation 435 also differentiates between licensed asbestos work and other work, primarily to create a duty to commence health monitoring before work commences for licenced asbestos work (regulation 435(2)). A baseline is necessary for all health monitoring to be effective so this duty provides unnecessary prescription and is to be removed.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>111:</b>	Remove the specified requirement to commence health monitoring prior to a worker commencing asbestos removal work.	435(2).

## Dangerous goods

The regulation of dangerous goods in Western Australia will be retained by the DMP under the *Dangerous Goods Safety Act 2004* (or its successor). The complexity of defining jurisdiction in relation to chemical substances means it is not possible to make a broad declaration to exclude dangerous goods from the scope of the WHS Bill 2014.

Under present regulations, an amount of overlap exists and is dealt with cooperatively between the two agencies. The WHS regulations (WA) will retain some overlapping requirements, but remove specific regulations that deal with circumstances more effectively regulated under the *Dangerous Goods Safety Act 1984*.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>112:</b>	Remove provisions that are more appropriately regulated under the <i>Dangerous Goods Safety Act 2004</i> .	334, 336, 347, 348, 349, 350, 354, 356, 358, 361, 363 to 367 and 389 to 391 and related definitions and schedules.

## Chapter Eight – Asbestos

### Retention of Western Australian licence classes for asbestos removal

The model WHS regulations provides for a system to licence asbestos removalists. Regulation 493 establishes the requirements to apply for a Class A licence for friable asbestos removal work and regulation 494 establishes the requirements to apply for a Class B licence for non-friable asbestos removal work. Each licence requires a **specified VET course** for nominated asbestos removal supervisors (regulations 498 and 499) and for workers (regulation 460) and relevant industry experience.

The asbestos removal licensing requirements in the model WHS regulations are more extensive than in the OSH regulations which prescribe Unrestricted (regulation 5.45A) and Restricted (regulation 5.45B) asbestos removal licences. The OSH regulations broadly require the Commissioner to be satisfied about the capabilities of the licence holder to ensure the work is done in a safe and proper manner. This includes a requirement for appropriate training and experience.

Training courses that satisfy the requirements for supervisors and workers are approved by the Commissioner and required as part of the application process. The courses presently approved are not necessarily the same as the **specified VET courses** in the model WHS regulations.

The approach in the OSH regulations to asbestos licensing will be retained. Class A and Class B licences will be renamed Unrestricted and Restricted licences respectively.

Training courses will be the same as those presently required by the Commissioner and the model WHS regulations will be amended to require an **approved training course**.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>113:</b>	Replace the term Class A in relation to asbestos removal licences with the term unrestricted.	459, 473 Part 8.8 Part 8.10 Related definitions.
<b>114:</b>	Replace the term Class B in relation to asbestos removal licences with the term restricted.	459, 473 Part 8.8 Part 8.10 Related definitions.



## Certified safety management systems

The model WHS regulations require that Class A asbestos removalists have a **certified safety management system** in place and regulation 6 permits a regulator to make a determination regarding a **certified safety management system**. The equivalent to a Class A licence in Western Australia is an Unrestricted licence.

A **certified safety management system** is not required by the OSH regulations. Instead, applicants for an Unrestricted licence are required to provide an asbestos removal work procedures manual.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>115:</b>	Remove the definition of <b>certified safety management system</b> .	Definition of <b>certified safety management system</b> ; 6.
<b>116:</b>	Replace references to a <b>certified safety management system</b> with reference to an asbestos removal work procedures manual.	493(1)(e), 498(b), 520(1)(e).

## Licensed asbestos assessors

Part 8.10 of the model WHS regulations includes a system of assessors licenced by the regulator to conduct clearance inspections for licensed asbestos removal work. A licenced asbestos assessor is required to have completed the **specified VET course** *Conduct asbestos assessment associated with removal* and make declarations similar to those required for an asbestos removal licence. A fee is required to accompany the application for an asbestos assessor licence.

Part 11 of the *Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)]* (the asbestos removal code) requires a clearance inspection to be conducted by a **competent person**. In the OSH regulations (5.45) work done in relation to removing friable asbestos is required to be done in accordance with the asbestos removal code.

The approach in the OSH regulations, which is consistent with the approach in the asbestos removal code, is to be retained.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>117:</b>	To replace the requirement for a licenced asbestos assessor to conduct clearances with a <b>competent person</b> .	<p>For removal: 489, 490, 491(2), 492(2)(i), 495, 528</p> <p>For amendment: 492(1), 497(1), 502(1), 503, 504(1), 506(1), 508(1), 509(1), 511, 512, 513, 515, 516(1), 517(3), 517(4), 520(1), 522, 523(1).</p> <p>For amendment require a competent person or an independent competent person 466(4)(c), 473(2)(a), 474(2), 474(3), 474(4), 475(1), 475(2), 475(6), 477(1)(d), 477(1)(e), 477(4)(a), 477(6), and the note to 473.</p> <p>The table in Part 11.1 (Reviewable decisions)</p> <p>Related definitions</p>

### Mutual recognition of licences

Regulation 488 of the model WHS regulations ensures that equivalent licences issued under a corresponding WHS law can be used in Western Australia. The use of the word “equivalent” in regulation 488 may cause scope for confusion due to the retention of the titles of each licence in Western Australia.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>118:</b>	Remove the reference to ‘equivalent’ licence.	488.

## Asbestos registers - threshold date

Buildings constructed before a specified date are required to maintain an asbestos register.

In the model WHS regulations, the threshold date for creating an asbestos register is 31 December 2003 which is the date a comprehensive Australia-wide ban on the import, manufacture and use of all types of asbestos and asbestos containing material (ACM) took effect. With some specified exceptions, the model WHS regulations require persons with management or control of buildings constructed prior to 31 December 2003 will be required to prepare an asbestos register.

In Western Australia, construction material using asbestos was banned in the mid-eighties and it has been presumed that no buildings constructed after 31 December 1990 include ACM. While not specified in the OSH regulations, the 31 December 1990 date has been used widely for the presumption that asbestos is not contained in a structure. Consequently, asbestos registers have not been required for buildings constructed after 31 December 1990.

Retaining the threshold date provided in the model WHS would require buildings constructed in the 13 years between 31 December 1990 and 31 December 2003 to create and maintain asbestos registers

Note: The 31 December 2003 date is also used as a threshold to permit maintenance or service work on non-friable asbestos in regulation 419(3)(c) and management of in situ asbestos in regulation 419(3)(h). These dates will be retained.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>119:</b>	Replace the specified date of 31 December 2003 with 31 December 1990.	425(6)(a); 447.

## Asbestos registers – copy required

Part 8.6 of the model WHS regulations provide duties in relation to demolition and refurbishment of buildings built before 31 December 1990. Regulation 449 requires the person with management or control of the workplace to provide a copy of the asbestos register to the PCBU carrying out the work. Regulation 450 provides a mirror obligation for the PCBU to acquire a copy of the register.

For older and larger buildings, the asbestos register may be substantial and require significant copying on behalf of the person with management or control of the workplace. To facilitate easier access to the information, the model WHS regulations will be amended to require that access to the asbestos register is provided (this does not preclude provision of a copy).

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>120:</b>	Require that access to the asbestos register is provided to the PCBU carrying out demolition or refurbishment work.	449; 450.

## Decontamination facilities

The model WHS regulations provide requirements for decontamination facilities to be provided in regulation 471 (asbestos removal) and 483 (asbestos work). The requirements of these regulations are absolute and may be impracticable to implement for small asbestos removal jobs.

The requirements for decontamination facilities for asbestos removal are provided in the asbestos removal code and compliance with the asbestos removal code is required by the OSH regulations. Decontamination facilities are not specified for asbestos work other than removal work (eg maintenance).

The requirements for decontamination facilities referenced by the model WHS regulations are to be retained but modified for practicability.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>121:</b>	Modify the requirement for decontamination facilities by practicability.	471; 483.

## Exception for trace amounts of asbestos

Regulation 419 of the model WHS regulations provides the general prohibition on working with asbestos, but also includes a number of exceptions. The exception provided in regulation 419(5)(a)(ii) relates to soil with visible friable asbestos that a competent person has determined does not contain more than trace levels of asbestos.

Advice provided to WorkSafe is that it is not possible be certain that visible asbestos contains only trace amounts -- if you can visually identify a material as being asbestos it should be presumed to contain more than trace amounts.

This exception is not currently provided in the OSH regulations.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>122:</b>	Remove the exception for the prohibition on asbestos work for soil containing trace amounts of visible friable asbestos.	419(5)(a)(ii).

## Laboratories that can be used to test asbestos

The model WHS regulations specify the laboratories that can be used to test asbestos. These are:

- a) a National Association of Testing Authorities (NATA) accredited laboratory accredited for the relevant test method; or
- b) a laboratory approved by the regulator in accordance with guidelines published by SWA; or
- c) a laboratory operated by the regulator.

The OSH regulations do not provide WorkSafe with the authority to approve laboratories to conduct tests for asbestos or to offer its laboratory for this purpose.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>123:</b>	Require a National Association of Testing Authorities accredited laboratory to test samples for asbestos.	423; 479(2)(b); 479(2)(c).

## Generic training requirement for naturally occurring asbestos

Part 8.4 of the model WHS regulations provides duties in relation to naturally occurring asbestos, including requirements for preparation and review of an asbestos management plan.

Regulation 434 of the model WHS regulations creates a duty to provide information and training in relation to naturally occurring asbestos. Other than the reference to naturally occurring asbestos, there is nothing novel about this requirement - the duty created by this regulation is adequately covered by the general duty.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>124:</b>	Remove the generic training duties in relation to naturally occurring asbestos.	434.

## Record keeping

Regulation 464 of the model WHS regulations requires a licensed asbestos removalist to prepare an asbestos removal control plan. Asbestos work is also high risk construction work that requires a safe work method statement.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>125:</b>	Include clarification that a separate asbestos removal control plan is not required if there is a compliant safe work method statement.	464.

## Notifications – Unrestricted asbestos removal work

Regulation 466 of the model WHS regulations requires the licensed asbestos removalist to inform the regulator in writing prior to the commencement of asbestos removal work.

The OSH regulations do not include a requirement for notification. However, regulation 5.45E permits the Commissioner to include conditions on the licence. Notification of Unrestricted asbestos removal work 7 days prior to the work commencing is required as a condition of the licence.

The form of notification is not provided in the OSH regulations and the licence holder is required to notify in the manner and form approved by the Commissioner.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>126:</b>	Require notification to the regulator 7 days prior to the commencement of Unrestricted asbestos removal work.	466(1).
<b>127:</b>	Require the notice is provided in the manner and form approved by the regulator	466(1).

## Notifications – Threshold to advise regulator of respirable asbestos fibres

Regulation 476 of the model WHS regulations creates duties for an Unrestricted asbestos removalist to take action if respirable asbestos fibres exceed a specified threshold.

Threshold	Action
More than 0.01 fibres/ml but less than 0.02 fibres /mL	<ul style="list-style-type: none"> <li>• Investigate the cause of the respirable asbestos fibre level.</li> <li>• Implement controls to prevent exposure of anyone to asbestos.</li> <li>• Prevent the further release of respirable asbestos fibres.</li> </ul>
More than 0.02 fibres/mL	<ul style="list-style-type: none"> <li>• Order the asbestos removal work to stop.</li> <li>• Notify the regulator.</li> <li>• Investigate the cause of the respirable asbestos fibre level.</li> <li>• Implement control measures to prevent exposure of anyone to asbestos</li> <li>• Prevent further release of respirable asbestos fibres.</li> <li>• Do not resume work until the recorded respirable asbestos fibre level is below 0.01 fibres/mL.</li> </ul>

The requirement for action to be taken at 0.02fibres/mL is a feature of the asbestos removal code referenced in the OSH regulations and is therefore consistent with current requirements.

The requirement to notify the regulator in these circumstances is new for Western Australia. The threshold to notify the regulator of 0.02fibres/mL is 1/5th of the exposure standard while the general approach in occupational safety and health is to treat exposure as significant at half the exposure standard or 0.05fibres/mL. The requirement for notification to the regulator has been amended to 0.05fibres/mL consistent with the general approach for other hazardous chemicals.

Under the recommended amendment, the action required will be:

Threshold	Action
More than 0.01 fibres/ml but less than 0.02 fibres /mL	<ul style="list-style-type: none"> <li>Investigate the cause of the respirable asbestos fibre level.</li> <li>Implement controls to prevent exposure of anyone to asbestos.</li> <li>Prevent the further release of respirable asbestos fibres.</li> </ul>
More than 0.02 fibres/mL	<ul style="list-style-type: none"> <li>Order the asbestos removal work to stop.</li> <li>Investigate the cause of the respirable asbestos fibre level.</li> <li>Implement control measures to prevent exposure of anyone to asbestos</li> <li>Prevent further release of respirable asbestos fibres.</li> </ul>
More than 0.05 fibres/mL	<ul style="list-style-type: none"> <li>Notify the regulator.</li> </ul>

Regulation 476(2) requires that work is not resumed until the level of asbestos fibres drops below 0.01fibre/mL. While a reasonable benchmark, there is no need to specify this. If the source of respirable fibres is not appropriately controlled regulation 1(a) and 1(b) will continue to be evoked.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>128:</b>	Change the threshold to notify the regulator if specified respirable asbestos fibre levels exceed 0.05fibre/mL.	476(b)(ii).
<b>129:</b>	Remove the requirement that work is not resumed until the recorded respirable fibre level drops below 0.01fibre/mL as it is made redundant by regulation 476(1).	476(2).



## Control measures

The model WHS regulations require a range of control measures for asbestos removal work. Most of the control measures required for asbestos removal work in Australia originated in the asbestos removal code. For the management of in-situ asbestos, *Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]* (the asbestos management code). Both codes are referenced in the OSH regulations.

In developing the model WHS regulations, some requirements of the asbestos removal code and the asbestos management code were included in the regulations while other information was provided in model codes of practice.

Some control measures provided in the model WHS regulations are redundant or inadvertently exceed the requirements of the asbestos removal code.

## Informing persons in the immediate vicinity

Regulation 468 of the model WHS regulations requires the person with management or control of a workplace to inform persons about asbestos control work. Regulation 468(3)(b) requires that anyone occupying premises in the immediate vicinity are informed.

The requirement to notify persons in the immediate vicinity is not provided in the asbestos removal code or the OSH regulations and the regulation is imprecise (eg 'immediate vicinity' is not defined).

Regulation 469 requires signs and barricades and this is adequate to ensure those not directly affected by the asbestos removal work are aware of the control measures in place.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>130:</b>	Remove the requirement to notify persons occupying premises in the immediate vicinity (that are not PCBUs).	468(3)(b).

## Prevention of access to a workplace

Regulation 470 of the model WHS regulations limits access to a workplace where licensed asbestos work is being conducted to those directly involved in the work. While a regulation cannot override a provision of the authorising Act, it is possible to interpret this regulation in such a way that an Inspector may be prevented from lawful entry to the removal site.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>131:</b>	Clarify that an Inspector cannot be prevented from entering a workplace where licensed asbestos removal work is being conducted.	470(3).

Regulations 472 and 484 of the model WHS regulations provides the requirements for appropriate disposal of asbestos waste and contaminated personal protective equipment (for asbestos removal work and asbestos-related work respectively). Regulation 472(1)(a) requires the container to be labelled in accordance with the Globally Harmonised System of chemical labelling.

The imposition of GHS labelling in the cited regulations is a significant increase in regulation and requires specialist skills and knowledge.

Regulation 5.52 of the OSH regulations requires disposal to be compliant with the asbestos removal code which requires a generic label for asbestos waste.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>132:</b>	Require that containers with asbestos waste are labelled in accordance with schedule 9 (hazardous chemicals).	472; 484.

## Chapter Nine – Major Hazard Facilities

The model WHS regulations provide for the regulation and licensing of major hazard facilities.

In Western Australia, the *Dangerous Goods Safety Act 2004* regulates dangerous goods sites to the extent of any inconsistency with other laws. This means that, presently, the OSH Act has some application at dangerous goods sites.

As part of proposed reforms to legislation administered by the DMP, all safety and health and licensing matters for major hazard facilities will be administered by the DMP. Consequently, there is no requirement for major hazard facilities to be included in the WHS regulations (WA).

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>133:</b>	Remove Chapter 9, Major Hazard Facilities, and all associated definitions and schedules.	<p>Major hazard facilities to be regulated by the DMP. Regulations 530 to 608 inclusive. Regulations 688 and 698 (in relation to exemptions). <b>Schedule 15 to 18</b> Related definitions:</p> <ul style="list-style-type: none"> <li>• <b><i>determined major hazard facility</i></b></li> <li>• <b><i>facility</i></b></li> <li>• <b><i>licensed major hazard facility</i></b></li> <li>• <b><i>local community</i></b></li> <li>• <b><i>local authority</i></b></li> <li>• <b><i>local community</i></b></li> <li>• <b><i>major hazard facility</i></b></li> <li>• <b><i>major hazard facility licence</i></b></li> <li>• <b><i>major incident</i></b></li> <li>• <b><i>major incident hazard modification</i></b></li> <li>• <b><i>proposed facility</i></b></li> <li>• <b><i>proposed major hazard facility</i></b></li> <li>• <b><i>schedule 15 chemical</i></b></li> <li>• <b><i>surrounding area</i></b></li> <li>• <b><i>threshold quantity</i></b></li> </ul> <p>Related notes and items from the table in regulation 676.</p>

## Chapter Ten – Mines

Section 12 provides the scope of the model WHS Bill 2014 which excludes operations involving mining, petroleum or geothermal activities, pipelines, and offshore petroleum. These exclusions are similar to those provided in section 4 of the OSH Act.

Chapter 10 of the model WHS regulations was intended to include regulations developed under the national mine safety framework. Since mining is not in the scope of the WHS Bill 2014, Chapter 10 is not required.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>134:</b>	Insert a note that mine safety is regulated under the <i>Mines Safety and Inspection Act 1994</i> and that regulations 609 to 705 are not required.	Chapter 10.

## Chapter 11 – General

### Review of decisions

Regulation 676 of the model WHS regulations provides a table of reviewable decisions and a description of the person eligible to make an application for a review.

Some of the items in regulation 676 relate to regulations that have been removed by preceding amendments which means the associated items in the table are no longer required.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>135:</b>	Remove items in the table at regulation 676 that refer to regulations that have been deleted.	676.

The model WHS regulations permit eligible parties to apply for a review of a decision. Items 8 to 16 in the table refer to **accredited assessors**, and list both the assessor and the RTO as valid applicants.

While the RTO is an interested party, the accreditation is solely the responsibility of the assessor. Providing an RTO with the opportunity to request a review may permit duplicate reviews of the same issue and WorkSafe may be limited in relation to the information the RTO may be provided about the assessor's accreditation.

If the RTO wishes to assist its employee it may do so without having the independent right to request a review.

Items 25 to 27A allow both the applicant and the person with management or control of the item of plant to apply for a review.

Plant item registration will no longer be required in Western Australia. As a result, the person with management or control of the item of plant need not be specified as a valid applicant for review.

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>136:</b>	Remove the RTO as a valid applicant for review of a decision related to an accredited assessor.	676 - Items 8 to 16.
<b>137:</b>	Remove the person with management or control of an item of plant as a valid applicant for review of a decision related to design registration of plant.	676 - Items 25 to 27A.

## Publication of notices for class exemptions

Regulation 695 of the model WHS regulations requires the regulator to publish a notice in the Government Gazette (the gazette) when an exemption is granted to a class of person.

Western Australia does not presently publish exemptions or provide class exemptions. Where actions by WorkSafe affect workplace participants, WorkSafe targets the promotional activities appropriately. The gazette has limited distribution, can incur significant costs and is not as timely as existing advisory methods utilised by WorkSafe. These methods include publication on the WorkSafe website, media statements, distribution via the subscriber, lists and direct contact with workplace participants. WorkSafe has the discretion to publish information in the gazette.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>138:</b>	Remove the requirement for class exemptions to be published in the Government Gazette.	695(2).

## Appendices

### Appendix A – Table of recommendations

#### Classification

Consistency with current WA laws
Reduction in unnecessary prescription
Consistency with WHS Bill (WA Version)
Other

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>1:</b>	Remove the requirement for a record to be retained after the completion of the work or notifiable incident.	77(2); 85(4); 162; 303(2); 304(6)(a).
<b>2:</b>	Remove the requirement for training records to be retained after employment has ceased.	445(3)(b); 461(1)(b)
<b>3:</b>	Require that health monitoring records for lead, asbestos and hazardous chemicals are provided to the worker on cessation of employment.	378(1)(b); 388(3); 418(1)(b); 444(1)(b).
<b>4:</b>	Require that results of monitoring for airborne contaminants are provided to the worker as soon as they are available.	50.
<b>5:</b>	Remove the requirement for a record related to plant with presence sensing equipment to be retained for five years.	226(2)(a).
<b>6:</b>	Delete the requirement for persons to keep specified documentation available for inspection.	94; 124; 226(3); 230; 237(4); 262; 303(4); 304(5); 313(4); 445(4); 465(3)(b); 505.
<b>7:</b>	Replace the placeholder phrase 'external review body' with the defined term <b><i>the Tribunal</i></b> .	105(5)(b), 519(5)(b) and 683(1) and 683(2)(b).

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
8:	Clarify that spent convictions are not required to be declared.	87(2)(h) 90(a), 107(2)(a), 116(2)(f), 119(a), 135(2)(a), 492(2)(f)(i) and 492(2)(f)(iii) 500(1)(a) and 500(1)(b), 521(2)(a).
9:	Refer to the <i>Environmental Protection Act 1986</i> .	419(3)(e); 492(f)(iii), 500(b).
10:	Remove the regulator from the definition of <b>accredited assessor</b> .	Definition of <b>accredited assessor</b> .
11:	Remove the exception permitted if the <b>accredited assessor</b> is the regulator.	114(5).
12:	Replace the defined term <b>electricity supply authority</b> with the defined term <b>network operator</b> from regulation 4 of the Electricity (Network Safety) Regulations 2015.	Definition of <b>electricity supply authority</b>
13:	Replace the definitions of <b>electrical equipment</b> , <b>electrical installation</b> and <b>electrical work</b> in the model WHS to incorporate or reference the definitions provided in the Electricity (Licensing) Regulations 1991.	144; 145; 146.
14:	Alter the exclusion provided in the definition of pressure piping so that it applies to a pipeline to which any other written law applies.	Definition of pressure piping clause (c)(ii).
15:	Insert 'the department of the Public Service principally assisting in the administration of the <i>Fire and Emergency Services Act 1998</i> ' as the definition of <b>primary emergency service organisation</b> .	Definition of <b>primary emergency service organisation</b> .
16:	Replace the term <b>strata title body corporate</b> with the term <b>strata company</b> , and change the reference to, or replicate the definition of, <b>strata company</b> in section 3(1) of the <i>Strata Titles Act 1985</i> .	7
17:	Incorporate the approach to working near overhead power lines from the OSH regulations, including specification of safe distances and control measures.	166



<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>18:</b>	To insert a period of 7 days as the timeframe to make an application for an external review of a decision	701
<b>19:</b>	Include a list of laws prescribed for the purpose of section 271(3)(c)(ii) of the WHS Bill 2014 for the purpose of providing information that is necessary or convenient for the administration or enforcement of another Act.	702.
<b>20:</b>	Remove references to enforceable undertakings from the model WHS regulations.	87(2)(j), 87(2)(k), 90(c), 107(2)(c), 116(2)(h), 116(2)(i), 119(b), 135(2)(b), 492(2)(f)(v), 492(2)(f)(vi) 500(1)(c), 521(2)(b).
<b>21:</b>	Remove Part 2.4 (Workplace Entry by WHS Entry Permit Holders).	Part 2.4.
<b>22:</b>	Use the general definition of <b>competent person</b> provided in clause (g) as the default for all competent persons.	Definition of <b>competent person</b> .
<b>23:</b>	Add the requirement that a competent person for work on energised electrical installations must be authorised to carry out electrical work under the Electricity (Licensing) Regulations 1991.	Definition of <b>competent person</b> .
<b>24:</b>	Add the competency requirements for testing and tagging for the purpose of regulation 163.	Definition of <b>competent person</b> .
<b>25:</b>	Replace the requirement for a professional engineer to conduct major inspections of cranes and amusement devices with a <b>competent person</b> .	235(4) and 235(5); 241(5) and 241(6).
<b>26:</b>	Require a <b>competent person</b> instead of specifying a geotechnical engineer to ensure the sides of a trench are safe from collapse.	306(4)
<b>27:</b>	Remove all references to specific courses in the definition of <b>specified VET course</b> with the exception of those for HRWLs.	Definition of <b>specified VET course</b> .
<b>28:</b>	Include a new definition of <b>approved training course</b> as a course approved by the regulator.	Definition of <b>approved training course</b> .

Recommendations		Provisions affected
<i>Amend the WHS regulations to:</i>		
<b>29:</b>	Replace the requirement for a <b>specified VET course</b> for all purposes other than HRWL with a requirement to complete the <b>approved training course</b> .	460; 494; 498(a)(ii)(A); 499(b)i); 518.
<b>30:</b>	Remove generic requirements for information, training and instruction in relation to general workplace management and confined spaces.	39; 76.
<b>31:</b>	Implement the approach to construction induction training in Division 11 of Part 3 of the OSH regulations, while retaining mutual recognition of CIT cards.	Part 6.5 and related definitions.
<b>32:</b>	Replace the requirements for HSR training with the equivalent of regulation 2.2 of the OSH regulations, but remove the phrase “..during the first year of holding office...”.	21.
<b>33:</b>	Correct the definition of rigging work by replacing the phrase ‘load using’ with the phrase ‘load including’.	Definition of <b>rigging work</b> .
<b>34:</b>	Limit the requirement for an HRWL for concrete placing booms to mobile concrete placing booms.	Schedule 3 Item 22; Schedule 4 Items 22.
<b>35:</b>	Exclude boilers of 500kw output or less from the definition of <b>boiler</b> .	Definition of <b>boiler</b> .
<b>36:</b>	Permit the current holders of HRWLs for the basic and intermediate pressure equipment operation to be able to renew their HRWLs under the WHS regulations.	Schedule 3 new items.
<b>37:</b>	Transition existing holders of the HRWL class for advance pressure equipment operation to advanced boiler operation.	Transitional provisions.
<b>38:</b>	Remove the separate HRWL class for <b>reach stackers</b> .	Schedule 3 item 23; Schedule 4 item 23.
<b>39:</b>	Permit the holder of an HRWL to operate a non-slewing mobile crane to operate a reach stacker.	Schedule 3 item 14.
<b>40:</b>	Require the provision of a ‘recently issued’ <b>certification</b> for a high risk work licence.	87(2)(f)(ii).

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>41:</b>	Incorporate the power for the regulator provided in regulation 6.17(1) of the OSH regulations in relation to reassessment of competency.	95.
<b>42:</b>	Clarify that an applicant for an HRWL can be asked for a reassessment of competency.	95
<b>43:</b>	Include compliance with amended regulation 95 as a matter to be taken into account when granting an HRWL.	90.
<b>44:</b>	Permit an HRWL to be cancelled or suspended if a licence holder does not comply with a request made under regulation 95.	106.
<b>45:</b>	Include an English language requirement as part of the requirements for the conduct of a competency assessment.	114(2).
<b>46:</b>	Replace the requirement that an accredited assessor is qualified to conduct an assessment if their skills, knowledge and experience are in accordance with the <i>Standards for NVR Registered Training Organisations 2011</i> , with a requirement the person has acquired, through training and work experience, the skills necessary to assess a person's competency to do high risk work of that class.	118(6)(a).
<b>47:</b>	Include a condition of accreditation for HRWL assessors to cooperate with audits of their activities.	112(2).
<b>48:</b>	Permit the regulator to consider all accreditations where an assessor has been convicted of an offence related to authorisations.	134(1); 135(2).
<b>49:</b>	Remove the exception provided for the requirement of direct supervision of a worker carrying out work in the course of HRWL training.	84(2).

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>50:</b>	Implement the grace period provided in regulation 6.9(1) of the OSH regulations for renewal of an HRWL.	101(4); 102; 103.
<b>51:</b>	Include the requirements of regulation 6.32 of the OSH regulations requiring RTOs to retain records.	New provision.
<b>52:</b>	Replace the residential requirement for high risk work licences with the requirement that the applicant was assessed in Western Australia.	89(2)(c)
<b>53:</b>	Remove the residential requirement for registration of plant design and asbestos removal licences.	256(2)(d); 497(2)(c); 497(2)(d).
<b>54:</b>	Facilitate online lodgement of authorisations.	Various.
<b>55:</b>	Remove the requirement for a control measure to be reviewed at the request of an HSR.	38(2)(e); 38(4); 401(1)(g); 401(3).
<b>56:</b>	Remove the requirement for an asbestos management control plan to be reviewed at the request of an HSR.	430(1)(d); 430(2).
<b>57:</b>	Remove the power of inspectors to immediately suspend an authorisation.	110; 138; 524.
<b>58:</b>	Remove the requirement for the regulator to advise of a decision within 14 days and rely on section 63 of the <i>Interpretation Act 1984</i> .	89(4), 91(2)(c), 98(6), 109(1), 112, 118(4), 120(2)(c), 127(6), 137(1), 140, 256(4), 257(2)(c), 283(3)(c), 284(3)(c), 286, 288(6), 288C(2)(c), 393(3), 407(4), 497(4), 501(2)(c), 508(3)(c), 509(3)(c), 511, 513(6), 523(1), 526; 680(1); 681; 694; 696(1); 698(1).
<b>59:</b>	Remove the provision for a different start date for residual current devices in hostile operating environments.	2
<b>60:</b>	Remove the term 'flyings' from the definition of <b>combustible dust</b> .	Definition of <b>combustible dust</b> .
<b>61:</b>	Remove the definition of <b>combustible liquid</b> .	Definition of <b>combustible liquid</b> .

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>62:</b>	Replace the definition of <b>excavation</b> with the phrase ‘...means an open face, hole, or cavity created as a result of using tools, machinery or explosives...’	Definition of <b>excavation</b> .
<b>63:</b>	Remove the reference to ‘mines’ in the exceptions to the definition of <b>excavation</b> .	Definition of <b>excavation</b> .
<b>64:</b>	Insert the <i>Water Services Act 2012</i> in reference to a bore in the exceptions to the definition of <b>excavation</b> .	Definition of <b>excavation</b> .
<b>65:</b>	Remove the redundant clarification that risk assessments may be applied to a class of hazards, tasks, circumstances or things.	12
<b>66:</b>	Remove the matters prescribed for the determination of work groups.	16; 17.
<b>67:</b>	Remove the minimal procedural requirements for the election of health and safety representatives.	18.
<b>68:</b>	Require that a PCBU provides facilities and training to ensure effective first aid so far as is reasonably practicable.	42.
<b>69:</b>	Require PCBUs to prepare procedures to effectively respond to an emergency.	43.
<b>70:</b>	Remove the duplicated duty for the provision of PPE to other persons at the workplace.	45.
<b>71:</b>	Remove the regulations for hazardous atmospheres and ignition sources.	51; 52.
<b>72:</b>	Remove the regulations in relation to flammable and combustible materials.	53.
<b>73:</b>	Remove the regulations providing control measures in relation to falling objects.	54; 55.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>74:</b>	Include the OSH regulations for protection from tobacco smoke with the exception of the power for an inspector to require a tobacco product be extinguished (3.44I), the requirement for signs (3.44D) and the defence for smoking in a private vehicle or residence (3.44G).	New division.
<b>75:</b>	Modify the requirement to ensure the noise exposure standard is not exceeded so far as is reasonably practicable.	57.
<b>76:</b>	Remove the requirements for audiometric testing.	58.
<b>77:</b>	Remove the duplicate duties of designers, manufacturers, importers and suppliers of plant in regulations related to noise, manual tasks and confined space.	59; 61; 64.
<b>78:</b>	Remove the regulations for confined spaces relating to connected plant and services, emergency procedures and PPE.	70.
<b>79:</b>	Include the demolition licensing requirements of the OSH regulations.	New provision.
<b>80:</b>	Add demolition licensing to the definition of <b>class</b> .	Definition of <b>class</b> .
<b>81:</b>	Remove the requirement for the regulator to be notified prior to the commencement of demolition work.	142.
<b>82:</b>	Clarify that a Class 1 demolition licence may be issued for one or more of the types of work to be conducted.	New provision.
<b>83:</b>	Not include OSH regulations that refer to <i>Australian Standard AS 2601 – Demolition of Structures</i> for licensed demolition work.	New provision.
<b>84:</b>	Include a new provision setting out the minimum experience and training requirements for supervisors of demolition work.	New provision.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>85:</b>	Remove the redundant requirement for unsafe electrical equipment to be disconnected or isolated.	149.
<b>86:</b>	Remove the requirements of regulations 161 and 162 in relation to control measures and record keeping for work on energised electrical equipment.	161; 162.
<b>87:</b>	Remove the requirement for records to be kept in relation to the testing of electrical equipment.	150(3); 150(4).
<b>88:</b>	Ensure the tag attached when testing and tagging electrical equipment includes the electrical worker's licence or permit number.	163.
<b>89:</b>	Include a requirement similar to regulation 3.62 of the OSH regulations specifying when electricity is to be connected to a construction site.	New provision.
<b>90:</b>	Include a requirement similar to regulation 3.63 of the OSH regulations requiring a person bringing equipment onto a construction site to provide evidence it has been tested.	New provision.
<b>91:</b>	Include a provision requiring the main switch is de-energised before a worker enters a roof space.	New provision.
<b>92:</b>	Require compliance with the <i>Australian New Zealand Standard AS/NZS 2299.1:2007 Occupational Diving Operations - Standard Operational Practice</i> for construction diving work, consistent with the approach in the OSH regulations.	Part 4.8.
<b>93:</b>	Include a new part that replicates the requirements of Division 10 of Part 3 of the OSH Regulations – Driving commercial vehicles.	New provisions.
<b>94:</b>	Remove the requirement for individual items of plant to be registered with the regulator.	227; 246, 247, 264 to 281, 282(3), 288A(b); 288B.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>95:</b>	Remove the exception permitting tree loppers to be suspended from a crane (not in a workbox).	221.
<b>96:</b>	Remove the duplicate requirement for storage of amusement devices in regulation 239.	239.
<b>97:</b>	Replace the monetary threshold for a construction project with the 5 person threshold provided in regulation 3.142 of the OSH regulations.	292.
<b>98:</b>	Remove the duplicate requirement to prevent unauthorised access to an area where a trench is to be dug.	306(1) and 306(2).
<b>99:</b>	Incorporate the competency requirements for tilt-up construction work from the OSH regulations.	New provision.
<b>100:</b>	Modify the incorporated requirements in relation to training for supervisors for panels manufactured at workplaces other than a construction site.	New provision.
<b>101:</b>	Include the equivalent of regulation 2.10 of the OSH regulations requiring local government to notify the Commissioner of permits for construction work.	New provision.
<b>102:</b>	Remove references to divisions that have been removed by other amendments.	314.
<b>103:</b>	Remove the requirement for the provision of safety signs in relation to hazardous chemicals.	353.
<b>104:</b>	Remove the redundant provisions for hazardous chemicals in relation to the requirements for emergency and safety equipment.	360; 362.
<b>105:</b>	Remove the duplicated requirement for supervision in relation to hazardous chemicals.	379.
<b>106:</b>	Modify the requirement to provide changing and washing facilities to minimise lead contamination by practicability.	399(1).



<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>107:</b>	Change the trigger for health monitoring where there is risk of exposure to a hazardous chemical/asbestos to also require a significant risk to health.	368(b); 435(1)(b).
<b>108:</b>	Provide duty holders with an alternative approach to assess the biological exposure standard for hazardous chemicals.	368(b)(ii).
<b>109:</b>	Change the duty holder for provision of the health monitoring report to the regulator from the PCBU to the medical practitioner.	376; 413; 442.
<b>110:</b>	Remove the ability of PCBUs to provide a health monitoring report to PCBUs with a corresponding duty.	377; 414; 443.
<b>111:</b>	Remove the specified requirement to commence health monitoring prior to a worker commencing asbestos removal work.	435(2).
<b>112:</b>	Remove provisions that are more appropriately regulated under the <i>Dangerous Goods Safety Act 2004</i> .	334, 336, 347, 348, 349, 350, 354, 356, 358, 361, 363 to 367 and 389 to 391 and related definitions and schedules.
<b>113:</b>	Replace the term Class A in relation to asbestos removal licences with the term unrestricted.	459, 473 Part 8.8 Part 8.10 Related definitions.
<b>114:</b>	Replace the term Class B in relation to asbestos removal licences with the term restricted.	459, 473 Part 8.8 Part 8.10 Related definitions.
<b>115:</b>	Remove the definition of <b><i>certified safety management system</i></b> .	Definition of <b><i>certified safety management system</i></b> ; 6.
<b>116:</b>	Replace references to a <b><i>certified safety management system</i></b> with reference to an asbestos removal work procedures manual.	493(1)(e), 498(b), 520(1)(e).

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>117:</b>	To replace the requirement for a licenced asbestos assessor to conduct clearances with a <b>competent person</b> .	<p>For removal: 489, 490, 491(2), 492(2)(i), 495, 528</p> <p>For amendment: 492(1), 497(1), 502(1), 503, 504(1), 506(1), 508(1), 509(1), 511, 512, 513, 515, 516(1), 517(3), 517(4), 520(1), 522, 523(1).</p> <p>For amendment require a competent person or an independent competent person 466(4)(c), 473(2)(a), 474(2), 474(3), 474(4), 475(1), 475(2), 475(6), 477(1)(d), 477(1)(e), 477(4)(a), 477(6), and the note to 473.</p> <p>The table in Part 11.1 (Reviewable decisions)</p> <p>Related definitions</p>
<b>118:</b>	Remove the reference to 'equivalent' licence.	488.
<b>119:</b>	Replace the specified date of 31 December 2003 with 31 December 1990.	425(6)(a); 447.
<b>120:</b>	Require that access to the asbestos register is provided to the PCBU carrying out demolition or refurbishment work.	449; 450.
<b>121:</b>	Modify the requirement for decontamination facilities by practicability.	471; 483.
<b>122:</b>	Remove the exception for the prohibition on asbestos work for soil containing trace amounts of visible friable asbestos.	419(5)(a)(ii).
<b>123:</b>	Require a National Association of Testing Authorities accredited laboratory to test samples for asbestos.	423; 479(2)(b); 479(2)(c).
<b>124:</b>	Remove the generic training duties in relation to naturally occurring asbestos.	434.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>125:</b>	Include clarification that a separate asbestos removal control plan is not required if there is a compliant safe work method statement.	464.
<b>126:</b>	Require notification to the regulator 7 days prior to the commencement of Unrestricted asbestos removal work.	466(1).
<b>127:</b>	Require the notice is provided in the manner and form approved by the regulator	466(1).
<b>128:</b>	Change the threshold to notify the regulator if specified respirable asbestos fibre levels exceed 0.05fibres/mL.	476(b)(ii).
<b>129:</b>	Remove the requirement that work is not resumed until the recorded respirable fibre level drops below 0.01fibres/mL as it is made redundant by regulation 476(1).	476(2).
<b>130:</b>	Remove the requirement to notify persons occupying premises in the immediate vicinity (that are not PCBUs).	468(3)(b).
<b>131:</b>	Clarify that an Inspector cannot be prevented from entering a workplace where licensed asbestos removal work is being conducted.	470(3).
<b>132:</b>	Require that containers with asbestos waste are labelled in accordance with schedule 9 (hazardous chemicals).	472; 484.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>133:</b>	Remove Chapter 9, Major Hazard Facilities, and all associated definitions and schedules.	<p>Major hazard facilities to be regulated by the DMP. Regulations 530 to 608 inclusive. Regulations 688 and 698 (in relation to exemptions). <b>Schedule 15</b> <b>Schedule 16</b> <b>Schedule 17</b> <b>Schedule 18</b> Related definitions:</p> <ul style="list-style-type: none"> <li>• <b><i>determined major hazard facility</i></b></li> <li>• <b><i>facility</i></b></li> <li>• <b><i>licensed major hazard facility</i></b></li> <li>• <b><i>local community</i></b></li> <li>• <b><i>local authority</i></b></li> <li>• <b><i>local community</i></b></li> <li>• <b><i>major hazard facility</i></b></li> <li>• <b><i>major hazard facility licence</i></b></li> <li>• <b><i>major incident</i></b></li> <li>• <b><i>major incident hazard modification</i></b></li> <li>• <b><i>proposed facility</i></b></li> <li>• <b><i>proposed major hazard facility</i></b></li> <li>• <b><i>schedule 15 chemical</i></b></li> <li>• <b><i>surrounding area</i></b></li> <li>• <b><i>threshold quantity</i></b></li> </ul> <p>Items 46 to 62 inclusive in the table under regulation 676 (reviewable decisions). Related notes.</p>
<b>134:</b>	Insert a note that mine safety is regulated under the <i>Mines Safety and Inspection Act 1994</i> and that regulations 609 to 705 are not required.	Chapter 10.
<b>135:</b>	Remove items in the table at regulation 676 that refer to regulations that have been deleted.	676.

<b>Recommendations</b>		<b>Provisions affected</b>
<i>Amend the WHS regulations to:</i>		
<b>136:</b>	Remove the RTO as a valid applicant for review of a decision related to an accredited assessor.	676 - Items 8 to 16.
<b>137:</b>	Remove the person with management or control of an item of plant as a valid applicant for review of a decision related to design registration of plant.	676 - Items 25 to 27A.
<b>138:</b>	Remove the requirement for class exemptions to be published in the Government Gazette.	695(2).

## Appendix B – Submission template and coversheet

### **Making a submission**

The Department of Commerce – WorkSafe Division has released a Discussion Paper on recommendations to amend the model Work Health and Safety Regulations (the WHS regulations) for the Western Australian working environment.

All submissions must be accompanied by a cover sheet and you are encouraged to use one of the templates provided to assist you in organising your submission.

The simple template provides a blank table to enter your comments. The comprehensive template includes the complete list of recommendations from the Discussion Paper and permits you to address any that interest you.

Your completed coversheet and submissions may be provided by mail or email as outlined below:

**Mail:** WorkSafe, Department of Commerce, Locked Bag 14, CLOISTERS SQUARE WA 6850

PLEASE MARK YOUR ENVELOPE “TO THE ATTENTION OF THE EXECUTIVE DIRECTOR, WORKSAFE – SUBMISSION ON WHS REGULATIONS”

**Email:** [WHSregulations@commerce.wa.gov.au](mailto:WHSregulations@commerce.wa.gov.au)

Note: All commonly accessible electronic formats will be accepted for submissions but Word documents are preferred.

The closing date for submissions is **31 August 2016**.

### Coversheet

<b>Contact name</b>			
<b>Organisation</b>			
<b>Contact telephone number (optional)</b>			
<b>Employment status (if applicable)</b>	<input type="checkbox"/> Worker	<input type="checkbox"/> Principal contractor	
	<input type="checkbox"/> Employer	<input type="checkbox"/> Contractor	
	<input type="checkbox"/> Self-employed	<input type="checkbox"/> OSH professional	
	<input type="checkbox"/> Other (enter details)		
<b>Size of workplace</b>	<input type="checkbox"/> Small (0-9)	<input type="checkbox"/> Medium (20-199)	<input type="checkbox"/> Large (200+)
<b>Please indicate how you are making this submission (select one of the following categories)</b>	<input type="checkbox"/> Individual	<input type="checkbox"/> Academic	
	<input type="checkbox"/> Business	<input type="checkbox"/> Government representative	
	<input type="checkbox"/> Community organisation	<input type="checkbox"/> Professional	
	<input type="checkbox"/> Employer organisation		
	<input type="checkbox"/> Industry representative		
	<input type="checkbox"/> Other (enter details)		
<b>Which industry sector do you operate in?</b>			
<b>Your type of job or business (if applicable)</b>			
<b>Is your submission confidential?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Your submission will be presumed to be confidential if you do not indicate a preference.			
<b>Number of pages in your submission</b>			

**Simple template**

**Questions for you to consider:**

1. What is the likely cost to implement a specific proposal?
2. What is the benefit to workplace participants?
3. Is a particular recommendation to align a WHS regulation with the OSH regulations effective?
4. Are there any unintended consequences?
5. If a new requirement is proposed, what are the costs and benefits?

<b>Recommendation number in the Discussion Paper and/or regulation number in the model WHS regulations.</b>	<b>Comment (including costs and benefits)</b>



## Appendix C: Table of abbreviations

Abbreviation	Phrase
ACM	Asbestos containing material
AS/NZS 3012	Australian/New Zealand Standard <i>AS/NZS 3012:2010 Electrical installations—Construction and demolition sites</i>
Asbestos management code	<i>Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]</i>
Asbestos removal code	<i>Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)]</i>
Australian Standards Inquiry	Inquiry into Access to Australian Standards Adopted in Delegated Legislation
CIT	Construction induction training
COAG	Council of Australian Governments
Commission	The Commission for Occupational Safety and Health
Commissioner	WorkSafe Western Australia Commissioner
Construction standard	<i>National standard for construction work [NOHSC:1016(2005)]</i>
Diving Standard	Australian New Zealand Standard <i>AS/NZS 2299.1:2007 Occupational Diving Operations - Standard Operational Practice</i>
DMP	The Department of Mines and Petroleum
EnergySafety	Department of Commerce – EnergySafety Division
Gazette	Government Gazette
GHS	Globally Harmonised System
HRWL	High risk work licences
HSR	Health and safety representative
HVNL	Heavy vehicle national laws
JSCDL	Joint Standing Committee on Delegated Legislation
MJA RIS	<i>Regulation Impact Statement: Model Work Health and Safety Regulations and Codes of Practice in Western</i>

Abbreviation	Phrase
	<i>Australia</i>
Model WHS laws	The model WHS Act and the model WHS regulations
Model WHS regulations	Model Work Health and Safety Regulations
NATA	National Association of Testing Authorities
National RIS	<i>Decision Regulation Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice</i>
NVR Standard	<i>Standards for NVR registered training organisations 2011</i>
OSH Act	<i>The Occupational Safety and Health Act 1984</i>
OSH laws	The OSH Act and the OSH regulations
OSH Regulations	The Occupational Safety and Health Regulations 1996
PCBU	Person conducting a business or undertaking
PPE	Personal protective equipment
RGU	Regulatory Gatekeeping Unit
RIA	Regulatory Impact Assessment
RIS	Regulation Impact Statement
RTO	Registered Training Organisation
SWA	Safe Work Australia
Tilt-up standard	<i>Australian Standard AS3850 – Tilt-up concrete construction</i>
<b><i>Tribunal</i></b>	The Work Health and Safety Tribunal
VET	Vocational Education and Training
WHS	Work Health and Safety
WHS Bill 2014	Work Health and Safety Bill 2014
WHS regulations (WA)	Work Health and Safety Regulations for Western Australia
WorkSafe	The Department of Commerce – WorkSafe Division

## Appendix D: Referenced publications

Selected publications
Australian Standard AS 2601 – <i>Demolition of Structures</i>
Australian Standard AS3850 – <i>Tilt-up concrete construction</i>
Australian/New Zealand Standard AS/NZS 2299.1:2007 <i>Occupational Diving Operations - Standard Operational Practice</i>
Australian/New Zealand Standard AS/NZS 3012:2010 <i>Electrical installations—Construction and demolition sites</i>
<i>Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]</i>
<i>Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)]</i>
<i>Code of Practice: Managing noise and preventing hearing loss at work</i>
<i>Code of Practice: Managing the work environment and facilities</i>
<i>Codes of practice: First aid facilities and services; Workplace amenities and facilities; Personal protective clothing and equipment</i>
<i>Decision Regulation Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice</i>
Department of Commerce <i>Code of Conduct</i>
<i>Guidance Note: Preparing for emergency evacuations at the workplace</i>
<i>Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety</i>
<i>Model Code of Practice: Construction work</i>
<i>Model Code of Practice: First aid in the workplace</i>
<i>Model Code of Practice: Managing risks of hazardous chemicals in the workplace</i>
<i>Model WHS Code of Practice: Excavation work</i>
<i>Model Work Health and Safety Regulations – 4 November 2011, with revisions as at 9 January 2014 (PCC Draft[359] 9.1.2014)</i>
<i>National code of practice for precast, tilt-up and concrete elements in building construction</i>

<b>Selected publications</b>
<i>National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment [NOHSC: 1006 (2001)] 3rd Edition July 2001</i>
<i>National standard for construction work [NOHSC:1016(2005)]</i>
<i>Public Sector Code of Ethics</i>
<i>Regulation Impact Statement: Model Work Health and Safety Regulations and Codes of Practice in Western Australia</i>
<i>Rethinking Regulation, the Report of the Taskforce on Reducing Regulatory Burdens on Business January 2006</i>
<i>Standards for NVR Registered Training Organisations 2011</i>
<i>Safe Work Australia Guidance Note: Worker representation and participation guide</i>

## Appendix E: Referenced legislation

Legislation cited
<i>Australian Border Force Act 2015 (Cth)</i>
<i>Building Act 2011</i>
<i>Criminal Code</i>
<i>Dangerous Goods Safety Act 2004</i>
Electricity (Licensing) Regulations 1991
Electricity (Network Safety) Regulations 2015
<i>Electricity Act 1945</i>
<i>Emergency Management Act 2005</i>
<i>Environmental Protection Act 1986</i>
<i>Fire and Emergency Services Act 1998</i>
<i>Freedom of Information Act 1992</i>
<i>Industrial Relations Act 1979</i>
<i>Mines Safety and Inspection Act 1994</i>
<i>Mining Act 1978</i>
<i>National Vocational Education and Training Regulator Act 2011 (Cth)</i>
<i>Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)</i>
<i>Occupational Health and Safety Act 2004 (Vic)</i>
<i>Occupational Safety and Health Act 1984</i>
Occupational Safety and Health Regulations 1996
<i>Rail Safety National Law (WA) Act 2015</i>
<i>Road Traffic (Vehicles) Act 2012</i>
<i>Spent Convictions Act 1988</i>
<i>Strata Titles Act 1985</i>
<i>Vocational Education and Training Act 1996</i>
<i>Water Services Act 2012</i>
<i>Western Australian Marine Act 1982</i>