



Government of **Western Australia**

Work Health and Safety

Model Regulations and Codes of Practice

Consultation Regulation Impact Statement

Information and Issues Paper

Copies of the Model Workplace Health and Safety Regulations and first stage model codes of practice can be obtained from www.safeworkaustralia.gov.au

August 2012

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Summary

The Western Australian (WA) Government is undertaking an assessment of the benefits and costs of the model to work health and safety (WHS) regulations and codes. To complete this assessment and provide independent economic analysis the Government is using independent consultants, Marsden Jacob Associates, to obtain information from you about the likely impact on you, your organisation and workers of these proposed changes.

The changes that are planned implement an agreement between all states and the Commonwealth to bring occupational safety and health (OSH) into a uniform framework across Australia. The regulations and codes of practice you are being asked to examine and comment on will come into force when the model WHS Bill and the model WHS Regulations becomes law in WA.

We would like you to pay specific attention to the benefits and cost of the proposed changes to regulations and codes of practice in terms of: potential efficiencies; changes in capital expenditure; changes to employment; and changes to conditions of work, training requirements and skills needs. However, please feel free to include anything of importance that you think will occur as a result of the proposed changes.

While all industry will be covered by the proposed changes, the WA Government will create separate legislation, regulations and codes of conduct that are specific to the mining industry to allow more flexibility in dealing with the future needs of this sector. The timing of the mining version of the WHS laws is unknown and is still dependent on the completion of national development processes.

Introduction

The WA Government is seeking the views of all workplace participants in relation to identifying the benefits and costs of the Model Work Health and Safety Regulations for Western Australia.

Purpose of this paper

The purpose of this Information and Issues Paper is to:

- provide background information on the proposed harmonisation of Western Australia's WHS legislation, regulation and codes of practice with the model used in other Australian jurisdictions;
- explain the need for a Consultation Regulation Impact Statement (Information and Issues Paper) in relation to the impacts, benefits and costs on the WA community;
- outline key changes arising from the proposed changes in the regulations and codes which have already been identified; and
- outline the opportunities for you and other workplace participants to provide comment, feedback and critical information.

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* (IGA). The harmonised legislation, regulations and codes are intended to cover both general industry and the mining industry.

The WA Government has committed to the principle of national harmonisation of WHS subject to:

- a) the exclusion of four areas that it would not be adopting as law in this State;
- b) WorkSafe WA retaining the exclusive responsibility within government in Western Australia to bring prosecutions for offences against WHS legislation and regulation;

- c) the need to ensure that the harmonisation in WA of WHS regulation for mining and general industry is maintained; and
- d) the assessment of its impacts, benefits, and costs to the State – in particular changes from the existing WA framework - all of which will guide the Government on the adoption of particular regulations.

Harmonisation Issues not Applicable for WA

The four areas not included in WA draft legislation because it was considered that they would not deliver direct improvements in safety outcomes in workplaces are:

- **penalty levels** – the proposed penalty levels are significantly higher than the current levels and could be unreasonably punitive, particularly for small business operators;
- **union right of entry** – right of entry for the purposes of occupational health and safety is already provided for under the *Industrial Relations Act 1979*. The proposed change is considered to create duplication risking confusion and inconsistencies;
- **health and safety representatives' capacity to direct the cessation of work** – WA is of the view that this decision should remain with the individual worker and not be placed upon a health and safety representative; and

Reverse onus of proof in discrimination matters – WA considers that its inclusion is contrary to one of the issues that initiated harmonisation (reverse onus of proof associated with prosecutions, which currently exists in Queensland and New South Wales). Consistent with the relevant jurisdictional note, the Western Australian Government has also decided it will not adopt provisions providing for the Director of Public Prosecutions to review decision by WorkSafe WA not to prosecute.

A summary of WA's proposed approach and current interpretation of the legislation, regulations and codes of practice is set out overleaf.

The Model Work Health and Safety Legislation

The final version of the model Work Health and Safety Bill was completed in June 2011 and is the result of a comprehensive, tripartite review into WHS laws across Australia. It is expected that all jurisdictions will adopt the Bill as law. New South Wales, Queensland, the ACT and Northern Territories as well as Commonwealth jurisdictions have already done so.

In Western Australia a mirror version of the Model Work Health and Safety Bill for general industry has been drafted. The Western Australian Government is awaiting the corresponding mining version together with all the supporting regulations and codes of practice.

It is intended that the two versions will be identical in all aspects except those that relate only to the mining industry. This approach reflects the current arrangement in Western Australia whereby there are separate, but similar, legislative frameworks for general industry and for the mining industry.

The Model WHS Regulations

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 general duties under the Model Work Health and Safety Bill. 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 Model Work Health and Safety Bill, the intention is that mirror versions of the Model WHS Regulations will be drafted for implementation in Western Australia. Those new regulations would replace the existing Occupational Safety and Health Regulations 1996 (OSH Regulations) and the mining industry specific regulations in Mines Safety and Inspection Regulations 1995.

The Model Codes of Practice

The model Codes of Practice are intended to provide practical guidance for businesses on how to implement and comply with the provisions contained in the model Work Health and Safety Bill and the accompanying model Work Health and Safety Regulations.

The model Codes of Practice are being developed in stages according to priority. At the current time, a total of nineteen Codes of Practice have been finalised and published by the Commonwealth Government over the period November 2011 to July 2012. They are referred to as first and second stage codes of practice respectively. Subsequent codes of practice are under development and will be published by the Commonwealth Government in due course.

The expectation is that the full suite of model Codes of Practice will be adopted in each State and Territory and the Commonwealth to replace the codes of practice in each of those jurisdictions as part of the implementation of the new model work and health and safety legislation.

Development of an impact assessment for WA

When the Model WHS Regulations and the first stage model Codes of Practice were published in November 2011, they were accompanied by the *Decision Regulation Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice* (the Decision RIS) prepared by the Commonwealth Government.¹

The purpose of the Decision RIS was to provide a detailed analysis of the regulatory changes that will be brought about by the proposed introduction of the model WHS Regulations and the first stage model Codes of Practice in Australia.

¹ A copy of the full text of the Commonwealth's Decision Regulation Impact Statement for the Model WHS Regulations can be downloaded from the Safe Work Australia website at <http://safeworkaustralia.gov.au/Legislation/RIS/Pages/RIS.aspx>

The Commonwealth Government's Decision RIS also assessed the overall costs and impacts on Australian governments, industry and the community in implementing the model WHS regulations and first stage model Codes of Practice.²

The Decision RIS for the model WHS Regulations and first stage Codes of Practice was prepared with a national focus. With little or no Western Australian specific detail, the Decision RIS does not provide enough information for the Western Australian Government to assess fully:

- the impact of the model WHS Regulations and first stage codes of practice for Western Australia; and
- the benefits, improvements and costs to Western Australian businesses and workers arising from the adoption of those regulations and codes of practice, especially for small businesses and those in regional areas.

The Western Australian Government has now commissioned its own assessment of those important issues so it can assess the benefits, costs and other effects that the model WHS Regulations and first stage model Codes of Practice are likely to have on Western Australia.³ Marsden Jacob Associates as the economic consultants have been charged with the responsibility to undertake this task.

Taking into account WA difference factors

As part of its assessment of the implications of the new laws for Western Australia, the Western Australian Government wishes to quantify and analyse the impact that those new and different provisions will have on Western Australian businesses and workplace participants.

The need for a fresh analysis of the benefits and costs of proposed changes together with a robust and supporting process for consultation arises from:

² The National RIS is available here:

<http://www.safeworkaustralia.gov.au/sites/SWA/AboutSafeWorkAustralia/WhatWeDo/Publications/Pages/Decision-RIS-Harmonisation-WHS.aspx>

³ It is proposed the WA analysis will augment the information provided in the National Decision RIS by providing detail on the costs and benefits for Western Australia.

- the differing industry composition, operating environment of businesses and workplaces and different work practices across Western Australia compared with other states, territories and the Commonwealth.
- the inadequacy of the national level Regulation Impact Statements in their application to the Western Australian workplaces; and
- the recognition that the choice of implementation and transition options can have material effects on whether the proposed changes deliver net benefits or net costs to the community of Western Australia.

What is not covered

The Consultation Regulation Impact Statement (Information and Issues Paper) is intended to focus on the model WHS Regulations and the first stage model Codes of Practice. It does not:

- focus on legislation (i.e. the model Work Health and Safety Bill),⁴
- cover the application of the new mining-specific laws for the mining industry, which are still under development. The impact of the mining-specific content of the model WHS Regulations and first stage model codes of practice for the mining industry in Western Australia will be addressed as part of a separate exercise conducted by the Resources Safety Division of the Western Australian Department of Mines and Petroleum.

In preparing the Information and Issues Paper, some stakeholders have expressed the desire to comment on elements of the legislation such as the definitions of:

- workers;
- a workplace; and
- a Person Conducting an Undertaking or Business (often shortened to PCBU).

While these definitions are not the subject of this Consultation Regulation Impact statement (Information and Issues Paper), these terms are used

⁴ One area of proposed change in legislation which is not part of existing WA practice is increased requirements for notification of incidents, including near misses.

throughout the regulations and so interact with changes that arise in the model WHS regulations. For this reason, comments received on the benefits and costs arising from these and other changes in legislation will also be compiled.

Key changes proposed in WA WHS regulation and codes

Major changes & differences already identified

While many of the provisions in the Model WHS Regulations and first stage Codes of Practice are very similar to Western Australia's existing Occupational Safety and Health Regulations 1996 (the OSH regulations) and codes of practice, there are some that are different or new.

WorkSafe WA has identified 13 areas where the adoption of the model WHS regulations would result in changes to work practices and so may result in benefits and/or costs. These relate to:

- Asbestos
- Construction projects
- Diving work
- Fall prevention
- Hazardous chemicals
- High Risk Work Licences
- Incident notification
- Lead risk work
- Noise
- Personal Protection Equipment
- Plant
- Spray painting
- Thermal comfort

In addition to these 13 areas, there are two areas where the model WHS regulations differ from the current OSH regulations; they are demolition licensing and smoking (environmental tobacco smoke). The approach that will be taken in WA in relation to these two items is:

- demolition licensing – it is intended that the relevant demolition licensing provisions from the OSH Regulations will be replicated as

closely as possible in the model WHS Regulations thereby retaining the current approach, and

- smoking (environmental tobacco smoke) – it is intended that the existing relevant provisions from the OSH regulations 1996 will be replicated as closely as possible in the model WHS Regulations thereby retaining the current approach.

Your detailed input is requested

This list is not necessarily exhaustive. Thus, we will seek your views and responses on the issues relating to the proposed changes in model WHS regulations and model codes of practice. These may affect your business and workplace or other WA workplaces differently from counterparts in the Eastern States. More importantly, we will also need detailed information from you in order to estimate the benefits and costs to Western Australia resulting from the proposed changes.

WorkSafe WA's comparative analysis of these changes is provided in attachment A.

For some of the changes in regulation identified by WorkSafe WA, there are alternative options for implementation and transition. The choice between options will affect the costs incurred in applying the changes. We also seek your input on such options. Where such options exist they will need to be assessed against relevant criteria including the transitional principles set out in the Intergovernmental Agreement on WHS harmonisation. The transitional principles are summarised below.

Transitional Principles

The following transitional principles have been agreed for implementation of the Model Work Health and Safety (the Model WHS Regulations). These are designed to ensure a smooth transition for their implementation.

These are “high level” principles to ensure they are workable and applicable to the different circumstances of each jurisdiction. Each jurisdiction will implement the model WHS Regulations from a different starting point.

The transitional principles deal with how arrangements under current occupational health and safety (OHS) laws are intended to transition to the harmonised WHS framework, which means, for example, that things done under the old laws will become the basis of compliance for the new laws. They also deal with how existing permits, licences and other authorisations will be saved and recognised under the new system.

The transitional principles also ensure adequate provision is allowed for transitioning to any new requirements.

- For new or significantly modified duties under the model WHS Regulations, an appropriate transitional period is provided to allow duty holders to comply (Principle B). This will generally be 12 months.
- However, where a duty under the model WHS Regulations is the same or very similar and has the same critical elements as a duty under pre-harmonised regulations, the WHS regulation should apply immediately (Principle A). The differences between existing OSH regulations across jurisdictions mean each jurisdiction will need to determine this on a case by case basis.
- Jurisdictions are in the best position to assess the need for transitional arrangements and determine appropriate arrangements. To support the consistent implementation of transitional arrangements, both the jurisdictional representatives responsible for implementing the WHS legislation and employer and employee representatives have considered how the principles should be applied.
- Consistent with the principles underpinning the National Compliance and Enforcement Policy that was endorsed by the Workplace Relations Ministers’ Council, it is also proposed that WHS regulators use information, guidance and education to assist duty holders to achieve compliance in the relevant transitional period.

The purpose of this Information and Issues Paper is to alert you and other workplace participants to the importance of the Consultation Regulation Impact Statement (Information and Issues Paper) for WA and to outline the opportunities for you to contribute through direct submissions, the online survey and the face-to-face consultations. We need to assemble a robust evidence base on the benefits and costs to Western Australia of the proposed changes in WHS regulations. We are especially interested in receiving comment and quantitative information on the likely:

- **benefits**
- **impediments and/or**
- **costs**

of the changes that the new regulations and codes of practice will bring.

This will enable the Government to make a fully informed assessment of the impact of the Model WHS Regulations and first stage model codes of practice for our State.

Methods for making comment

There are three main opportunities for you to make comment and contribute to the understanding of the benefits and costs of the specific changes in regulation and codes. These are:

- **Online Survey.** The survey will be available from the WorkSafe WA website but all submissions will be considered and compiled by Marsden Jacob Associates. Industry associations have been requested to assist in circulating the electronic survey to their members. This step is important to secure adequate sample representation, particularly for smaller groups and smaller businesses. In addition to seeking responses to specific questions on costs and benefits of the proposed changes, the electronic survey will allow contributors to make wider comments.

The online survey can be accessed from the Marsden Jacob webpage at www.marsdenjacob.com.au .

- **Face to Face Consultation.** Consultations will be held in regional centres commencing early September and extending over a 3 week period. In addition, limited consultations will be held in Perth with specific target groups. Verbal comments made during the consultations will be carefully noted. However, it is preferable that any verbal comments are supported by written material which may be provided subsequently (but within the consultation period).

The timetable for consultations is detailed on the Marsden Jacob webpage at www.marsdenjacob.com.au

- **Written Submission** – particularly if unable to attend the face to face consultations. (See next page for requirements). Marsden Jacob Associates will, where necessary, seek written submissions and supplementary information where critical information to the evidence of benefits and costs is required.

For advice and details on providing written submissions go to page 15.

In making any comments, please make reference to the relevant WHS regulations and, where appropriate for contrast, the current OSH regulations.

Please note the closing date for submissions is

5pm WST on FRIDAY 12 October 2012

Who can submit?

The model WHS Bill is intended to apply to all workplaces and includes specific reference to workplace participants such as persons conducting a business or undertaking (PCBU), public authorities, unions, volunteers, workers, importers, manufacturers, suppliers, employer organisations, health and safety representatives, local authorities and officers.

You can provide your responses and submissions as an individual or you may wish to contribute to a joint submission through your employer or union organisation, industry association, safety group or community forum.

All of the above workplace participants are invited to make submissions. While this discussion paper refers to **business/workplace(s)** in many places, the term is used for ease of reading and all workplace participants are encouraged to make submissions.

What happens after the public comment period closes?

Marsden Jacob Associates will compile and analyse all submissions, survey and forum responses that are received and prepare a comprehensive report for the Minister for Commerce.

The information in the report will be taken into account as part of the Western Australian Government's consideration of the implications of implementing the model WHS Regulations and first stage model codes of practice in Western Australia.

Enquiries

All enquiries about this discussion paper should be addressed to either:

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Director, Policy and Education,

WorkSafe WA

(08) 9327 8693

ian.munns@commerce.wa.gov.au

Requirements for written submissions

In providing a written submission you may:

- answer “guide questions” which are provided towards the end of Part A, Part B, and Part C of this paper;
- provide general comments on how the implementation of the model WHS Regulations and first stage model Codes of Practice will assist or affect you, your fellow workers and/or your business/workplace; or
- provide comment on any wider community benefits or costs that may arise.

Cover sheet

In order to provide a written submission you will need to complete a cover sheet to go with your submission – see Page 13.

This coversheet is also available as a Microsoft Word document from the following webpage: www.marsdenjacob.com.au

Submission Address:

By email to: whs@marsdenjacob.com.au

By post to: Alex Marsden
Marsden Jacob Associates
Level 1, 220 St Georges Terrace
Perth WA 6000

By fax to: (08) 93227936

Confirmation of receipt

When your submission is received by Marsden Jacob Associates, you will be sent a receipt as confirmation. All submissions will be made accessible to the public on the Department of Commerce website. If you do not wish your submission to be made public, please clearly mark it “IN CONFIDENCE”. Your receipt will note your preference.

Thank you for taking the time to provide comment. All comments received by 5.00pm WST, Friday 12 October 2012, will be considered.

COVER SHEET FOR SUBMISSIONS PLEASE COMPLETE AND SUBMIT THIS FORM WITH YOUR SUBMISSION BY 5pm WST on FRIDAY 12 October 2012			
Email submissions to: whs@marsdenjacob.com.au			
Contact name			
Organisation			
Suburb			
Principal contact			
Position			
Email		Phone	
Mobile		Fax	
Postal address			
Suburb/City		State and Postcode	
Length of submission (pages including this cover sheet) Pages:			
Are you making this submission as (please select one of the following categories)			
<input type="checkbox"/> Union <input type="checkbox"/> Community organisation <input type="checkbox"/> Individual	<input type="checkbox"/> Business <input type="checkbox"/> Employer organisation <input type="checkbox"/> Industry representative	<input type="checkbox"/> Academic <input type="checkbox"/> Professional <input type="checkbox"/> Government representative <input type="checkbox"/> Other	
Which industry sector do you operate in?			
<input type="checkbox"/> Agriculture, Forestry and Fishing <input type="checkbox"/> Mining <input type="checkbox"/> Manufacturing <input type="checkbox"/> Electricity, Gas and Water Supply <input type="checkbox"/> Construction <input type="checkbox"/> Wholesale Trade <input type="checkbox"/> Retail Trade <input type="checkbox"/> Accommodation, Cafes and Restaurants <input type="checkbox"/> Transport and Storage		<input type="checkbox"/> Communication Services <input type="checkbox"/> Finance and Insurance <input type="checkbox"/> Property and Business Services <input type="checkbox"/> Government Administration and Defence <input type="checkbox"/> Education <input type="checkbox"/> Health and Community Services <input type="checkbox"/> Cultural and Recreational Services <input type="checkbox"/> Personal and Other Services <input type="checkbox"/> N/A	

What specifically do you or your business do?				
Approximately how many people work for the business or organisation in WA?				
<input type="checkbox"/> Fewer than five employees	<input type="checkbox"/> Five to 20 employees)	<input type="checkbox"/> 21 to 100 employees)	<input type="checkbox"/> 100+ employees)	<input type="checkbox"/> N/A
Do you operate across two or more states and/or territories? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Approximately how many people work for the business or organisation interstate?				
<input type="checkbox"/> Fewer than five employees	<input type="checkbox"/> Five to 20 employees)	<input type="checkbox"/> 21 to 100 employees)	<input type="checkbox"/> 100+ employees)	<input type="checkbox"/> N/A
What is the Postcode of your main workplace?				
Location _____				

Please indicate if you agree to the content of your submission to be made public by placing it on the Department of Commerce website.		<input type="checkbox"/> Yes, I agree	<input type="checkbox"/> No, I do not agree
Confidentiality: Please indicate if your submission contains the following			
<input type="checkbox"/> NO confidential information	<input type="checkbox"/> YES , it contains some confidential information	<input type="checkbox"/> YES , it contains confidential information and the whole submission is provided "IN-CONFIDENCE"	

This coversheet is also available as a Microsoft Word document from the following webpage: www.marsdenjacob.com.au

PLEASE NOTE:

All submissions will be placed on the Department of Commerce website.

Confidential material – Where a submission includes confidential and non-confidential material, the confidential material should be provided under a separate cover sheet and clearly marked "IN CONFIDENCE" and will not be placed on the website.

Submissions made by individuals – All personal details other than your name and the state or territory in which you reside will be removed from your submission before it is published on the Department of Commerce website.

Submissions made by an organisation – The name of the organisation and, where relevant, the state/territory of operation will be included with the submission when it is published on the Department of Commerce website.

Copyright in submissions – Copyright resides with the author(s), not with the Department of Commerce.

Liability – Neither the State of Western Australia nor the Department of Commerce takes responsibility or shall be liable for any breach of the copyright, or libellous or defamatory comments in submissions published by the Department of Commerce.

PART A –Changes in requirements in the Model Work Health and Safety Regulations

Changes in requirements in the Model WHS Regulations

WorkSafe WA has identified 13 areas where the model Work Health and Safety Regulations have differing requirements from the existing OSH regulations.

- Asbestos
- Construction projects
- Diving work
- Fall prevention
- Hazardous chemicals
- High Risk Work Licences
- Incident notification
- Lead risk work
- Noise
- Personal Protection Equipment
- Plant
- Spray painting
- Thermal comfort

The effect of these changes are summarised in the following table.

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Asbestos: air monitoring and clearance</p>	<p><i>Class A (unrestricted) asbestos removalist licence holders</i> are required to use a <i>competent person to carry out air monitoring</i> when friable asbestos is being removed.</p> <p>Employers, main contractors, self-employed people and persons in control of a workplace must ensure that any asbestos removal work is done by a licensed asbestos removalist. The latter <i>should obtain a clearance certificate from a competent person</i> as a licence condition, as recommended in a code of practice.</p>	<p><i>A person conducting a business or undertaking</i> who commissions asbestos removal work requiring a Class A asbestos (non-friable or bonded asbestos containing material) removal licence must ensure that an independent <i>licensed asbestos assessor undertakes air monitoring</i>. [Reg. 475]</p> <p>In the case of work involving friable asbestos, a person who commissioned removal work <i>must obtain a clearance certificate from a licensed asbestos assessor, or for other asbestos removal work, a competent person</i>. [Regs. 473, 474 and 477(6)].</p> <p>The licensing of licensed asbestos assessors is prescribed in some detail and involves the applicant completing a VET course or tertiary qualification as a pre-requisite. [Reg. 495]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Asbestos: analysis of samples</p>	<p>A person who is an employer, main contractor, self-employed or person in control of a workplace must ensure that the presence and location of asbestos at the workplace is identified and the process for doing this is in accordance with a national code.</p> <p>The code specifies that laboratory testing must be carried out if it is uncertain whether something is asbestos.</p>	<p>A person with management or control of a workplace may identify asbestos or asbestos containing material by arranging for a sample to be analysed. They must ensure the sample is analysed by:</p> <ul style="list-style-type: none"> (a) a NATA accredited laboratory accredited for the relevant test method; or (b) a laboratory approved by the regulator according to guidelines published by Safe Work Australia; or (c) a laboratory operated by the regulator. [Reg. 423]
<p>Asbestos: certified safety management systems</p>	<p>No requirements.</p>	<p>Applications for a Class A asbestos (non-friable or bonded asbestos containing material) removalist licence must include, amongst other things, evidence that an applicant has a “certified safety management system”. [Reg 493] This is defined as a system complying with Australian Standard AS 4801: 2001 or an equivalent system.</p> <p>The regulator may make a determination for the purposes of the definition of a “certified safety management system”. [Reg. 6]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Asbestos: naturally occurring asbestos</p>	<p>An employer or self-employed person must not use asbestos at the workplace, other than to remove and dispose of it, unless it is used only in analysis or bona fide research and such use has been approved by the WorkSafe Western Australia Commissioner [OSH reg 5.31(1)]. However, a person does not commit an offence under regulation 5.31(1) if the asbestos is in its natural state and has not been moved for its natural location [OSH reg 5.31(2)].</p>	<p>A person with management or control of a workplace must manage the risks to health and safety associated with naturally-occurring asbestos at the workplace. [Reg 431].</p> <p>In addition, if naturally-occurring asbestos is:</p> <ul style="list-style-type: none"> • identified at a workplace; or • likely to be present at a workplace, <p>a person with management or control of the workplace must ensure that a written Asbestos Management Plan is prepared in relation to the naturally-occurring asbestos. [Reg 432]</p> <p>The Asbestos Management Plan must be reviewed and, as necessary, revised. [Reg 433].</p> <p>A person conducting a business or undertaking must ensure that appropriate training is provided to workers who carry out work where naturally-occurring asbestos is likely to be found. [Reg 434].</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Asbestos: register</p>	<p>Although there is no regulation covering age of buildings that require an asbestos register, the WA public sector Asbestos Steering Committee (which included WorkSafe WA) advised government agencies to maintain a register for buildings constructed before 1990. This is based on the history of asbestos building product manufacture and use in WA.</p>	<p>A person with management or control of a workplace must prepare and keep <i>an asbestos register at the workplace for all buildings built before 2003</i>. [Reg. 425]</p> <p>The details to be in the register are specified in the regulations and include the location, type and condition of the asbestos or ACM.</p> <p>If asbestos is not present, the register must state that no asbestos or ACM is identified or likely to be present from time to time.</p>
<p>Asbestos: removal – notifications</p>	<p>Only Class A (unrestricted) asbestos removalists must notify WorkSafe WA in writing before a removal job. There are only seven businesses in this category in WA.</p> <p>Class B licence holders do not have to notify WorkSafe WA, except where demolition regulations apply.</p> <p>[Note: <u>Class B work</u> is restricted to bonded asbestos work e.g. removal of asbestos cement sheets.]</p>	<p>A licensed asbestos removalist must give written notice to the regulator at least five days before the removalist commences ANY licensed asbestos removal work. [Reg. 466]</p> <p>The regulations provide details about the information that must be included in the notification. This includes business details such as ABN, names of competent persons and workplace location, date of work, type and quantity of asbestos and competency details for each worker involved in the work.</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Asbestos: training</p>	<p>There is a WA course to obtain a Class B licence. There is no WA course for Class A licences.</p>	<p>There are increased training requirements. The new regulations establish an extensive training framework for licensed asbestos removalists and assessors. There will be Vocational Education and Training (VET) training courses for individual asbestos removal workers, asbestos removal supervisors (Class A), asbestos removal supervisor (Class B) and asbestos assessor work. [Regs. 460, 493 and 495]</p> <p>Version 7 of the CPC08 Construction, Plumbing and Services Training Package was endorsed by the National Skills Standards Council (NSSC) on October 26th and is now available on training.gov.au</p> <p>This latest version of CPC08 includes four new units of competency related to the removal of asbestos containing materials, which are detailed below.</p> <p>CPC083014A Remove non-friable asbestos CPC083015A Remove friable asbestos CPC084051A Supervise asbestos removal CPC085014A Conduct asbestos assessment associated with removal</p> <p>It is intended that these units will be required before the asbestos licences can be issued by regulators.</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Asbestos: removal licences</p>	<p><i>Restricted (Class B) and Unrestricted (Class A) licences are issued for the removal of asbestos.</i> These licences can be issued to individuals and entities for three years. In order to qualify for the</p> <ul style="list-style-type: none"> • Restricted Asbestos Licence applicants must complete a WorkSafe WA approved Restricted Asbestos Removal Licence training course with a Registered Training Organisation. • Unrestricted Asbestos Licence applicants must submit their relevant manuals and curriculum vitae of each person employed as a manager or supervisor of asbestos removal work for WorkSafe WA to consider. 	<p><i>Class A Asbestos Removal Licence is required for the removal of friable asbestos [Reg 485] and Class B Asbestos Removal Licence is required for the removal of 10 sqm or more of non-friable asbestos or ACM [Reg 487].</i> In order to qualify for the:</p> <ul style="list-style-type: none"> • Class A Asbestos Removal Licence, applicants must have: <ul style="list-style-type: none"> ○ at least one competent person who has completed the prescribed asbestos supervisor training course; ○ evidence the supervisor is over 18 and has at least 3 years relevant experience; and ○ a certified safety management system and each supervisor is over 18 [Reg 493]; and • Class B Asbestos Removal Licence, applicants must have: <ul style="list-style-type: none"> ○ at least one competent person who has completed the prescribed asbestos supervisor training course; and ○ the supervisor is over 18 with at least 1 year of relevant experience [Reg 494]. <p>VET course records for with the asbestos training</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
		<p>details for supervisors will have to be provided to the regulator during the licensing process. [Reg 493]</p> <p>The Licensed asbestos removalist will have to retain the training records of workers for five years. [Reg 461]</p> <p>The Class A and Class B Asbestos Removal Licences require renewal after five years. [Reg 503]</p>
<p>Construction projects: appointment of a principal contractor</p>	<p>A “main contractor” for a “construction site” must ensure that, where <i>five or more persons</i> are, or are likely to be, working at the same time that <i>an occupational safety and health management plan is prepared</i> before work commences and the plan is kept up to date.</p>	<p>Various regulations place <i>prescriptions on a “principal contractor”</i> in relation to ensuring the safety and health <i>at a “construction project”</i>, such as preparation of a “WHS management plan”. [Regs 293, 296 & 301 and Part 6.4]</p> <p>“Construction project” is defined as a project costing <i>\$250,000 or more</i>. However, there is no provision for how the construction work costs are calculated. [Reg. 292].</p> <p>Some guidance is provided in a supporting code of practice.</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Diving work</p>	<p>Only “construction diving work” is regulated under WA's occupational safety and health regulations.</p>	<p>“High risk diving work”(i.e. construction diving) AND “general diving work” and are regulated and a range of duties are imposed on the person conducting the business or undertaking. For general diving work, the duties include minimum training and experience for divers, appointment of a competent person to supervise diving work and keeping of dive safety logs. <u>[Part 4.8]</u></p>
<p>Fall prevention</p>	<p>Employers and main contractors, self-employed people or a person having control of a workplace must ensure that:</p> <ul style="list-style-type: none"> a. edge protection is provided and kept in place where there is a risk of a fall of two or more meters from the edge of a scaffold, fixed stair, landing, suspended slab, formwork or falsework at the workplace; and b. for any other edges where there is a risk of a fall of three or more metres, edge protection or a fall injury prevention system must be provided. 	<p>Where it is not reasonably practicable to eliminate the risk of falls from one level to another, then the person conducting a business or undertaking must provide adequate protection against the risks by:</p> <ul style="list-style-type: none"> a. providing a fall prevention device if it's reasonably practicable to do so; b. if the above is not reasonably practicable, provide a work positioning system; or c. where the above two measures are not reasonably practicable, provide a fall arrest system <p>[Reg 78 & 79]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>The term <i>hazardous chemicals</i> is used in the model WHS Regulations and replaces <i>hazardous substances</i> used in WA’s OSH Regulations. If your workplace activities involve the use of hazardous chemicals, it is suggested you consider the full impacts of the provisions in Part 7 of the model WHS Regulations. There are new and varied provisions. For your convenience, provisions have been divided into two groups as follows:</p> <p>Manufacturing, importing and supplying hazardous chemicals - requirements for Safety Data Sheets [Reg 330], chemical labelling generally, labelling of Agvet chemicals [Regs 335 & 338] and the age of a worker supplying flammable gases/liquids [Reg 334],</p> <p>All users of hazardous chemicals - review of control measures [Reg 352], identify risk of reaction [Reg 354], fire and explosion [Reg 355], keeping hazardous chemicals stable [Reg 356], containing spills [Reg 357], emergency plans [Reg 361], safety equipment [Reg 362], PCBUs providing specified information to medical practitioners [Reg 373], PCBU duty to obtain health monitoring reports [Reg 374], PCBU providing health monitoring reports to workers, WorkSafe WA and other relevant PCBUs [Regs 375, 376 & 377], PCBUs to manage hazardous atmospheres, ignition sources and flammable and combustible materials [Regs 51, 52 & 53]</p>		
<p>Hazardous chemicals: classification, labels, MSDS and controls</p>	<p>Manufacturers and importers of “hazardous substances” must classify the substances and prepare their labels and safety data sheets <i>according to the “AC Classification System”</i> or, more recently, <i>the GHS Classification System</i>, an international globally harmonised system.</p>	<p>Manufacturers and importers of “hazardous chemicals” must classify the substances and prepare their labels and safety data sheets according to <i>the GHS Classification System</i>. [Reg 335]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Hazardous chemicals: import</p>	<p>A range of duties are placed on importers to ensure the safety of “hazardous substances”.</p> <p>“Import” is defined under the <i>Occupational Safety and Health Act 1984</i> as “means to bring into the State, whether from outside Australia or otherwise”.</p>	<p>A range of duties are placed on importers to ensure the safety of “hazardous chemicals”. However, importer is defined as per the Model WHS Act and, under this, import is defined as “means to bring into the jurisdiction from outside Australia”.</p> <p>An importer of a hazardous chemical may be located in another jurisdiction. This may mean that if an error on a label or SDS is identified, having the improvement implemented would require the cooperation of the WHS regulator in the other jurisdiction, with the potential for delays. Errors on labels or SDS may mean that the proper controls for using the chemical are not known or not used, with increased risk of harm to workers or property [Reg 329]</p>
<p>Hazardous chemicals: “restricted hazardous chemicals” – crystalline silica silicon dioxide</p>	<p>Crystalline silica is prescribed as a “hazardous substance prohibited for specified uses or methods of handling”. In particular, a substance that contains crystalline silicon dioxide is prohibited for use as an abrasive material in abrasive blasting except where less than 2% dry weight of crystalline silicon dioxide is present as a contaminant.</p>	<p>Silica is classified as a “restricted hazardous chemical”. Its use, in relation to abrasive blasting, is restricted to a concentration of less than 0.1%. [Reg 382 and Schedule 10, Table 10.3]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Hazardous chemicals: risk assessment and record keeping</p>	<p>The employer, main contractor and self-employment <i>must conduct a risk assessment</i> and assess the risk of injury or harm to a person as a result of a person being exposed to “hazardous substances”. This must involve identifying each “hazardous substance”, a review of the relevant Material Safety Data Sheets and identification of the likelihood of injury or harm from exposure. If this identifies a significant risk, then <i>a report must be prepared on the assessment</i> and the action to be taken to comply with relevant regulations. This report must be kept in a register at the workplace.</p>	<p>While the general duty of care for safety and health is relevant, there is <i>no specific requirement for a risk assessment for “hazardous chemicals” or preparation of a risk assessment report.</i></p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Hazardous chemicals: therapeutic goods and agricultural veterinary (agvet) chemicals</p>	<p>Through reference to a national code, manufacturers and suppliers of therapeutic goods and agvet chemicals that are packed for end use in a workplace are exempt from the requirements for labels.</p> <p>For agvet chemicals, labels approved by the Australian Pesticides and Veterinary Medicines Authority (APVMA) are considered acceptable.</p>	<p>Manufacturers and importers of “hazardous chemicals” will need to ensure that the selection and use of label elements is in accordance with the above-mentioned international standard/system, the GHS Classification System. The changes means that labels will need to include additional information, such as hazard statements and hazard pictograms.</p> <p>Therapeutic goods will continue to be exempt except where there is a risk to workers e.g. bulk containers of powders to be turned into tablets. In addition, therapeutic goods not intended for human consumption, e.g. disinfectants, will no longer be exempt.</p> <p>For agvet chemicals, including herbicides, fungicides and veterinary chemicals, the labels will need to include the information required by the APVMA plus the relevant hazard and precautionary statements. [Reg 335].</p>
<p>Health monitoring: reports to the regulator</p>	<p>Medical practitioners must give health surveillance reports to the person who was subject to the surveillance and the regulator.</p>	<p>A person in control of a business or undertaking must give copies of health monitoring reports to the regulator where problems are identified. [Reg. 376]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>High risk work licences (HRWL) – Dogging and “slinging techniques”</p>	<p>The definition of “dogging work” includes reference to “applying slinging techniques”. As a result, a HRWL is required in all situations where slinging techniques are applied. A person may apply to the Commissioner for a person or a workplace to <i>be exempted</i> from complying with <i>a requirement of the regulations</i>.</p>	<p>The definition of “dogging work” includes reference to the “application of slinging techniques”.</p> <p>“Slinging techniques” is also defined and includes in its meaning the “exercising of judgement”. As a result, a HRWL for dogging work will be required in the more limited circumstances where judgement is exercised in relation to the suitability and condition of lifting gear</p> <p>[Schedule 3 and Reg 5 – Definitions]</p>
<p>High risk work licences (HRWL) – exemptions</p>	<p>A person may apply to the Commissioner for a person or a workplace to <i>be exempted</i> from complying with <i>a requirement of the regulations</i>.</p>	<p>The regulator <i>may exempt a person or class of persons</i> from compliance with a provision of the regulations requiring <i>the holding of a HRWL</i>. [Reg. 686]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>High risk work licences (HRWL) – boilers (pressure equipment)</p>	<p>There are five pressure equipment operation HRWL licence classes.</p> <p>Operation of boilers with an output of 500 kilowatts or less does not require a HRWL.</p>	<p>There are four HRWL licence classes. As part of this, three current classes, Pressure Equipment (Basic), Intermediate and Advanced, have been converted to two classes, Standard and Advanced Boiler Operation.</p> <p>The change means that operators with a Basic Boiler HRWL will need to obtain at least a Standard boiler HRWL in order to continue to operate.</p> <p>The definition of boiler in the model WHS Regulations excludes boilers with less than 5 square metres heating surface or 150 kilowatt output from requiring an HRWL. Therefore boilers of between 150 and 500 kilowatts will be required to obtain an HRWL [Reg 5 & Schedule 3].</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>High risk work licences (HRWL) – concrete placing boom</p>	<p>An HRWL is required to operate a vehicle mounted concrete placing boom.</p>	<p>The HRWL requirements have been expanded by definition (Schedule 3) to include the use of all Concrete placing booms, not just those that are vehicle mounted.</p> <p>Apart from deleting the reference to vehicle mounted, the definition of concrete placing boom also has other slight differences to the definition in the OSH regulations [Reg 5 & Schedule 3].</p> <p>A process for existing operators of concrete placing booms other than vehicle mounted concrete placing booms to obtain a licence is remains to be determined [Schedule 3]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>High risk work licences (HRWL) – reach stacker</p>	<p>In order to operate a reach stacker, a non slewing mobile crane HRWL is required.</p>	<p>The HRWL requirements have been expanded by definition to include the use a new class for <i>Reach stackers</i> (Schedule 3).</p> <p>This means:</p> <ul style="list-style-type: none"> a. in future under the Model WHS Regulations, existing reach stacker operators holding a CN class HRWL may be required to transition to the HRWL class of reach stacker if they are operating solely a reach stacker; and b. new operators of reach stackers will have to be trained and assessed in a unit of competency specific to the operation of a reach stacker, which will omit many of the general competencies covered under the unit of competency to operate a non slewing mobile crane over three tonnes. <p>The regulator will have to implement a transition period to migrate existing operators across to the class of RS.</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Incident notification: prescribed serious illnesses</p>	<p><i>Certain prescribed diseases</i> contracted in the course of work must be reported to the WorkSafe Western Australia Commissioner. These are tuberculosis, viral hepatitis, Legionnaires’ disease, HIV, Q fever, Anthrax, Leptospirosis and Brucellosis.</p>	<p>Persons in control of a business or undertaking are required to notify any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to:</p> <ul style="list-style-type: none"> • carrying out work with micro-organisms; • providing treatment or care to a person; • contact with human blood/body substances; or • involves handling or contact with animals and certain aspects of animals. <p>[Reg. 699(a)]</p>
<p>Lead risk work</p>		<p>There is a new requirement for a person in control of a business or undertaking to notify the regulator within seven days, where they have determined that work is “lead risk work”. [Reg. 403]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Noise: audiometric testing</p>	<p>Audiometric testing is recommended in a code of practice.</p>	<p>Audiometric testing applies in relation to a worker who is frequently required by the person conducting the business or undertaking to use personal protective equipment to protect from the risk of hearing loss associated with noise that exceeds the exposure standard for noise. Testing required at commencement of employment and two yearly thereafter. [Reg. 58]</p>
<p>Noise: managing risks</p>	<p>Employers must, as far as practicable, ensure that persons at workplaces are not exposed to noise above the exposure standard.</p>	<p>A person conducting a business or undertaking at a workplace must ensure that the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise. [Reg. 57(b)]</p> <p>The practicability element is not included as in the current WA regulation.</p>
<p>Personal protective clothing and equipment (PPE)</p>	<p>Where, after a risk assessment, it is concluded that a risk may be reduced by PPE, then employers and main contractors must ensure that the PPE is in compliance with certain prescribed Australian or Australian New Zealand standards.</p>	<p>The provision of PPE is prescribed where a risk cannot be eliminated or minimised by other means. [Reg. 36] There are various prescriptions for the selection of PPE to minimise risk but no reference to ensuring it is in compliance with Australian or Australian New Zealand standards. [Reg. 44]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Plant: amusement devices</p>	<p>Employers, self-employed people, persons having control of the workplace or its access must ensure that amusement structures are:</p> <ul style="list-style-type: none"> a. operated, maintained and inspected and maintained: <ul style="list-style-type: none"> i) in accordance with Australian Standard AS 3533 or a steamers code of practice; or ii) in accordance with the instructions of the person who manufactured the structure or any competent person who develops instructions for the operation. <p>A competent person is defined as “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”.</p>	<p>The person with management or control of an amusement device at a workplace must ensure that a detailed inspection of it is carried out at least once every 12 months by a competent person.</p> <p>The definition of a competent person is prescribed as somebody who has:</p> <ul style="list-style-type: none"> a) either the skills, qualifications, competence and experience to inspect the plant and is registered under a law that provides for the registration of professional engineers; or b) is determined by the regulator to be a competent person. <p>The requirements for the annual inspection are detailed in the regulation. [Reg. 241].</p>
<p>Plant: design registration – Concrete placement units with delivery booms</p>	<p>Concrete placement units with delivery booms do not require design registration.</p>	<p>Concrete placement units with delivery booms are required to obtain design registration. [Reg 243 & Schedule 5, Part 1]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Plant: design verification – pressure vessels	To obtain design registration of a pressure vessel, the design needs to be verified against an Australian standard. <i>Design verifier must be accredited to Australian Standard AS 3920.1</i>	A person is eligible to be a design verifier for the design of an item of plant if the person is <i>a competent person</i> . [Reg. 252]
Plant: design verification – cranes	To obtain design registration of a crane, the design needs to be verified by <i>a competent person</i> as part of the requirements. A competent person is defined as “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”.	A person is eligible to be a design verifier for the design of an item of plant if the person is <i>a competent person</i> . However, for cranes, a competent person is defined as “a person who has the skills, <i>qualifications</i> , competence and experience to design the plant or verify the design. [Regs 5 and 252].

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Plant: import</p>	<p>If the designer and manufacturer are outside of WA, the importer of plant must, as far as practicable, identify any hazards in the design, assess the risks and consider controls. They must also identify any hazards from the manufacture of the plant and assess these (with testing amongst other things) and consider controls or arrange with the designer for alterations to be made.</p> <p>“Import” is defined under the <i>Occupational Safety and Health Act 1984</i> as “means to bring into the State, whether from outside Australia or otherwise”.</p>	<p>Importers of plant have a duty to take all reasonable steps to obtain information on the purpose for which they were designed and conditions necessary to ensure they are without risks when used.</p> <p>Importers must also ensure that the plant is inspected, tested (where required) and, if hazards are identified, the plant is not supplied until the risks have been eliminated as far as reasonably practicable or where this is not possible, advise people who are supplied with the plant of the risks. They must also consult the designer and manufacture in relation to any alterations made to control risks. [Regs 196 & 197]</p> <p>However, importer is defined as per the Model WHS Act and, under this, import is defined (s4) as “means to bring into the jurisdiction from outside Australia”.</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Plant: item of plant registration</p>	<p>As part of the requirements to obtain individual item of plant registration for prescribed items of plant, an applicant must provide a signed statement by a competent person that the item of plant has been inspected by that competent person is safe to operate.</p> <p>A competent person is defined as “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”.</p>	<p>As part of the requirements to obtain registration of prescribed items of plant, the applicant must obtain a statement that the plant has been inspected by a competent person and assessed as being operable. A person is competent to carry out the inspection if they have:</p> <ul style="list-style-type: none"> (a) educational or vocational qualifications in an engineering discipline relevant to the plant to be inspected; or (b) knowledge of the technical standards relevant to the plant to be inspected. <p>[Regs. 266 and 267]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Plant: item of plant registration – renewals</p>	<p>“Individual item of plant” registration for certain prescribed plant is required to be <i>renewed when there is a change of ownership, it is relocated or altered.</i></p> <p>The fee for the above is currently \$79.00.</p>	<p>Persons conducting a business or undertaking will need to <i>renew</i> “individual item of plant” registrations <i>every five years</i> for certain prescribed plant. WorkSafe WA understands it is intended that the five yearly renewal will apply to plant that is currently registered and operational at workplaces. Therefore, plant that falls within this category will need to be identified and a renewal date established. A means of identifying the location of the plant and determining a means of classifying the plant in order to fairly and evenly spread the transition to the five yearly renewal system will need to be determined. [Reg. 272 and 273]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Plant: mobile and tower cranes</p>	<p>It must be ensured that registered mobile and tower cranes are maintained according to the manufacturer’s instructions or, where these are not available, maintenance is carried out by a competent person.</p> <p>A competent person is defined as “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”.</p>	<p>The person with management or control of a registered mobile and tower cranes at a workplace must ensure that maintenance, inspection and testing is carried out by a competent person. It must be ensured that the cranes are inspected at:</p> <ul style="list-style-type: none"> (a) at the end of the design life recommended by the manufacturer; or (b) if there are no manufacturer’s instructions, in accordance with the recommendations of a competent person; or (c) if it is not reasonably practicable to comply with the above, every ten years. <p>The definition of a competent person for this regulation is prescribed as somebody who has either:</p> <ul style="list-style-type: none"> (a) the skills, qualifications, competence and experience to inspect the plant <i>and is registered under a law that provides for the registration of professional engineers</i>; or (b) is determined by the regulator to be a competent person. <p>[Reg. 235]</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
<p>Plant: registration – prefabricated formwork and boom type concrete placement units</p>	<p>Boom type concrete placement units that are truck mounted require design registration.</p>	<p>Persons in control of businesses or undertakings will be required to obtain or ensure design registration for prefabricated formwork and boom type concrete placement units that are stationary, as well as truck mounted (mobile).</p> <p>Persons in control of businesses or undertakings will be required to also obtain “individual item of plant” registration for all boom type concrete placement units (i.e. it is not limited to Truck-Mounted (mobile) concrete placing units with booms). [Schedule 5, Part 2.3]</p>
<p>Tilt-up construction, spray painting, welding, abrasive blasting, isocyanates and styrene</p>	<p>There are <i>prescriptions</i> in relation to safe work practices for tilt-up construction, spray painting, abrasive blasting, isocyanates and styrene. For example, there is a requirement for spray painting to be carried out in a booth that is in accordance with an Australian New Zealand standard.</p>	<p>No prescriptions in these areas.</p>

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Thermal comfort	An employer <i>must ensure</i> that, in a workplace in a building or structure, <i>heating and cooling is provided</i> to enable employees to work in a comfortable environment, as far as practicable.	<i>No prescription</i> for this.

Guide questions – regulation changes

As mentioned above, if you wish, your submission can answer the following questions in Part A of this discussion paper. These relate to the differences between the current OSH Regulations in Western Australia and the Model WHS Regulations. The listing is not exhaustive. If you identify other issues you believe should be brought to the attention of the Government, please provide the details. We would specifically like to seek information from you on:

Overall benefits and costs

Do you believe that (as a whole) the package of changes will deliver:

- any improvements to health and safety at your workplace;
- any detriments to health and safety at your workplace;
- any additional compliance or other costs you believe will arise as a consequence of the additional or new requirements in the model WHS Regulations;

- any financial or other benefits that you believe will accrue to you or your business as a result of the adoption of the model WHS Regulations in Western Australia; and
- any market and competition impacts that you believe may arise as a consequence of the additional or new requirements in the model WHS Regulations.

Specific changes in regulation

- Which of the changes in regulation will impact on your business?

For each change - do you believe this change will result in:

- increased safety benefits?
- other benefits (eg. efficiency, administrative, training, capital)?
- increased costs (eg. consultants, administrative, training, capital)

Changes in Legislation

Some stakeholders have expressed the desire to comment on elements of the legislation such as the definitions of:

- workers;
 - a workplace and
 - a Person Conducting an Undertaking or Business (often shortened to PCBU).
-
- Comments on the impacts of these definitions and other changes in legislation are welcome.

What are your views on the additional or new requirements in the Model WHS Regulations? Please consider providing comments in response to the questions in the table below. Where possible, please include details which help quantify the impacts whether they be improvements or detriments in workplace health and safety, or costs.

It is not necessary to limit your comments directly to these questions. It is appreciated that you may have information which you believe will help the Government identify the risks, benefits and costs of the proposed model WHS Regulations and first stage model codes of practice but is not addressed by these questions. Please do not hesitate to provide any other information you believe to be relevant.

References to relevant regulations in the Model WHS Regulations are included. To read the actual regulations, go to <http://safeworkaustralia.gov.au/Legislation/AdministrativeRegulations/Pages/Model%20work%20health%20and%20safety%20Regulations.aspx>

PART B: Model WHS Regulations – transitional principles

Safe Work Australia has agreed to transitional principles for the Model Work Health and Safety (the Model WHS Regulations). These are designed to ensure a smooth transition for their implementation.

The transitional principles are “high level” principles to ensure they are workable and applicable to the different circumstances of each jurisdiction. This recognises that each jurisdiction will implement the model WHS Regulations from a different starting point.

These relate to how business/workplace(s), workers and the regulator will transition from requirements under the existing OSH regulations to those under the new Model WHS Regulations.

A copy of the transitional principles can be downloaded from the Safe Work Australia website at:

www.safeworkaustralia.gov.au/aboutsafeworkaustralia/whatwedo/publications/documents/577/transitional_principles_for_implementing_the_model_whs_act.pdf

To assist in providing your comments on the transitional principles, the table below sets out the Transitional Principles for the Model WHS Regulations. Guide questions are provided following the table.

Are workers likely to know what a “transition for legislation means?”

Transitional principles

- A** All duties under the WHS Regulations that are the same or very similar to previous duties under pre-harmonisation regulations should commence on and from the date of commencement of the WHS Regulations.
- B** Specific duties under the WHS Regulations that are new or significantly modified compared with a particular jurisdiction's pre-harmonisation regulations are subject to a transitional provision with a transitional period of 12 months unless otherwise specified.
- Where an entire Part or Chapter is new for a jurisdiction, the jurisdiction may consider implementing a 12 month transitional period for the entire Part or Chapter for simplicity. Conversely, a transitional period can be applied to a particular aspect of a regulation.
- C** The WHS Regulations adopt transitional principle C of the model WHS Act in relation to upstream duty holders (designers, manufacturers, importers, suppliers, and those that install, construct or commission, or decommission plant, structures or substances).
- D.1** Authorisations such as licences, registrations, etc, issued under pre-harmonisation laws will be recognised by the new WHS regime until the term of the authorisation expires. Any relevant mutual recognition principles will also be recognised on the same basis.
- Pre-existing exceptions to licensing requirements should be saved for a transitional period to allow affected persons reasonable time to obtain the relevant authorisation (e.g. 12 months).
- D.2** If changes to authorisation requirements in a jurisdiction are likely to significantly affect either duty holders, authorisation holders, or the viability of the jurisdiction's ability to issue and administer an authorisation, transitional arrangements should be included on a regulation by regulation basis to minimise adverse impact in that jurisdiction.
- D.3** Where long lead times to prepare for authorisations are required, for instance preparations and applications for an MHF licence, jurisdictions should put in place transitional provisions that minimise disruption to affected duty holders.
- E** Where documentation, information and records provided under pre-harmonised laws complies with the WHS Regulations, savings provisions should be used to avoid unnecessary resubmission of documents or information. [N.B. Acts interpretation laws may already provide for this]
- Where requirements for work plans, risk assessments and similar documents are the same or substantially similar, provision should be made to deem documents that comply with pre-existing requirements

immediately before “day one” as compliant under the new laws.

Jurisdictions should consider saving record keeping requirements under the pre-harmonised laws, particularly in relation to duration requirements (e.g. work plans and health surveillance records). Consideration should also be given to inspection entitlements in relation to these documents.

- F** Savings provisions be provided to preserve applications submitted to the regulator prior to the implementation of the harmonised WHS Regulations and that a transitional period of 12 months be provided.
- G** A five year transitional period should apply in relation to classification of hazardous chemicals under the GHS.

Guide questions -transitional principles

What are your views on the transitional principles?

Specifically we seek information from you on:

- any additional compliance or other costs you believe will occur as a result of the transition from the current OSH Regulations to the Model WHS Regulations; and
- any market and competition impacts that you believe may arise as a consequence of the transition from the current OSH Regulations to the Model WHS Regulations.
- What impacts (if any) will the principles have on your business/workplace(s)?
- Do you have any views about how costs can be minimised during the transition to the new WHS regulations and first stage model codes of practice? Please provide information about how you have calculated your estimated costs.
- What costs do you anticipate incurring during the transition to the new WHS regulations and first stage model codes of practice? Please provide information about how you have calculated your estimated costs.

- Do you have any other general comments you wish to make about the transition from the current OHS regulations to the Model WHS Regulations in Western Australia? If so, please enter them here.

PART C: First stage model codes of practice

First stage model codes of practice

As mentioned above, if you wish, your submission can address the first stage model codes of practice. A complete list of the codes is provided in the table below. The table shows whether or not there is currently a code of practice on the same topic in Western Australia.

We would appreciate any comments you have about the likely benefits/problems and costs that may arise as a consequence of the adoption of the first stage model codes of practice in Western Australia. (Note: it is intended that the model codes of practice will replace Western Australia's existing codes of practice.)

Copies of each code can be downloaded from the Safe Work Australia website at:

<http://safeworkaustralia.gov.au/Legislation/model-COP/Pages/Model-COP.aspx>

Comparison of first stage model codes of practice and the existing code of practice

The table below lists the 11 first stage model codes of practice and the equivalent existing code of practice approved under Western Australia's *Occupational Safety and Health Act 1984* or Western Australian guidance note.

Model first stage code of practice	Existing code of practice/guidance note (Western Australia)
<i>How to Manage Work Health and Safety Risks</i>	<i>General Duty of Care</i> (Note: this is a guidance note, not a code of practice)
<i>Hazardous Manual Tasks</i>	<i>Manual Tasks</i>
<i>Managing the Risk of Falls at Workplaces</i>	<i>Prevention of Falls at Workplaces</i>
<i>Labelling of Workplace Hazardous Chemicals</i>	<i>Labelling of Workplace Substances</i> (Note: this is a national code of practice)
<i>Preparation of Safety Data Sheets for Hazardous Chemicals</i>	<i>Preparation of Material Safety Data Sheets</i> (Note: this is a national code of practice)
<i>Confined Spaces</i>	<i>No WA equivalent</i>
<i>Managing Noise and Preventing Hearing Loss at Work</i>	<i>Managing Noise at Workplaces</i>
<i>Managing the Work Environment and Facilities</i>	<i>First Aid – Workplace Amenities – Personal Protective Clothing</i>

Model first stage code of practice	Existing code of practice/guidance note (Western Australia)
<i>Work Health and Safety Consultation Cooperation and Coordination</i>	<i>Formal Consultative Processes</i> (Note: this is a guidance note, not a code of practice)
<i>How to Safely Remove Asbestos</i>	<i>Safe Removal of Asbestos</i> (Note: this is a national code of practice)
<i>How to Manage and Control Asbestos in the Workplace</i>	<i>Management and Control of Asbestos in Workplaces</i> (Note: this is a national code of practice)

Guide questions -first stage model codes of practice

We are interested in hearing your views about the implementation of the first stage model codes of practice in Western Australia.

Specifically:

- Which (if any) of these model codes of practice are relevant to your business/workplace(s)?
- What are the likely impacts of these model codes of practice on your business/workplace(s)?
- Do you have any other general comments you wish to make about the first stage Codes of Practice?

While this public comment process is not intended to cover the implications of the second and later stage Codes of Practice, you may use the those Codes of Practice as a tool to understand the meaning of the regulations and the potential benefits and costs for your workplace.