

CONSULTATION PAPER

JULY 2015

Consultation Regulatory Impact Statement - Work Health and Safety (Resources) Bill

Consultation Regulation Impact Statement prepared
for the Department of Mines and Petroleum

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Summary

The Western Australian (WA) Government is modernising WA's safety legislation covering mining, petroleum and Major Hazard Facilities (MHFs).

The Hon. Bill Marmion, WA Minister for Mines and Petroleum announced that the new legislation will incorporate the best elements of the National Mine Safety Framework and the nationally developed model Work Health and Safety (WHS) legislation¹.

Following a previous consultation, the Department of Mines and Petroleum (DMP) is consolidating the safety aspects of mining, petroleum and MHF legislation into one Act – the WHS (Resources) Act. DMP is now seeking stakeholder input on the content of the proposed WHS (Resources) Bill that will become the Act when it is passed by parliament and receives assent of the Governor.

This proposed Bill is based on the model WHS Act² that has been introduced across Australia (apart from Victoria).

To assist stakeholders comment on the proposed Bill, DMP has provided:

- a full mock-up of the proposed WHS (Resources) Bill (available [here](#));
- 21 key areas of interest including key changes between the existing Acts and the proposed Bill; and
- the likely structure of the regulations that will support the Bill (outlined in Appendix 2).

IMPORTANT:

This consultation process focuses on the content of the proposed Work Health and Safety (Resources) Bill.

As part of the ongoing Safety Legislation Reform program, DMP will modernise the safety legislation applicable to the resources industry. Modernisation of safety provisions in legislation is included in the changes being considered in this consultation³.

The supporting WHS (Resources) Regulations are being developed separately and will be based on the national model WHS Regulations. DMP has committed to consult with industry, unions, WorkSafe and NOPSEMA during development of the regulations, in addition to undertaking a formal Regulatory Impact Statement public consultation process on the draft regulations in 2016.

For this reason, stakeholders are asked to only consider whether the content of the proposed Bill facilitates the achievement of stated objectives.

NOTE: Throughout this consultation paper, any reference made to the proposed WHS (Resources) Bill should be understood to refer to the mock-up of the WHS (Resources) Bill as the content of the Bill has yet to be drafted.

¹ Marmion, B (Hon.), 2014, *New Resources Safety Bill aims to save WA lives*, media release, 13 August, Ministers Office, Perth. Available at: www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=MinisterialStatementsBarnett&StatId=342

² A copy of the model Work Health and Safety Act is available on Safe Work Australia's website at: <http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/model-whs-act/pages/model-whs-act>

³ More information on the Safety Legislation Reform program is available on the Department of Mines and Petroleum website at: <http://www.dmp.wa.gov.au/19511.aspx>.

DMP considers that the proposed WHS (Resources) Bill will improve or maintain safety levels and will reduce or maintain compliance costs for industry. Consolidating previous legislation into one Act should also result in improved consistency between the various industry sectors and with Commonwealth regulated operations.

While there are a large number of changes to consolidate the resources safety provisions of the current legislation into the proposed WHS (Resources) Bill, only a limited number of the changes will impact on roles, responsibilities, requirements or compliance provisions.

The key substantive changes and areas of interest that require consideration by stakeholders are summarised in section 4.

How to respond to this consultation

You have an opportunity to raise issues and question aspects of the consultation in person; a stakeholder forum will be held on **Thursday, 23 July 2015**. To register your interest, please email whs@marsdenjacob.com.au⁴.

Stakeholders are encouraged to provide a written submission. You may choose to:

- answer “guide questions”, which are outlined throughout this document (and in [Microsoft Word format with the cover sheet here](#)); and/ or
- provide general comments on the regulatory option you prefer.

Your input is needed to ensure the proposed WHS (Resources) Bill is structured in the best possible way and each of the individual changes is fully considered.

You are requested to attach a completed copy of the [cover sheet](#) to your submission. Submissions will be accepted via email or mail. For details, please refer to section 6.

Marsden Jacob will include all responses received from stakeholders in the preparation of a Decision RIS.

Your comments must be received by 5.00pm WST, Friday 14 August 2015, to be considered.

⁴ If the forum is heavily subscribed then a second forum will be held in the week following 23 July.

1. Introduction

The Department of Mines and Petroleum (DMP) is responsible for the regulation and administration of safety provisions pertaining to WA's resources industry, including the mining, petroleum and geothermal energy, and Major Hazard Facility (MHF)⁵ sectors.

Legislated safety obligations for these industries are currently contained within six different Acts and their associated regulations:

- *Mines Safety and Inspection Act 1994;*
- *Petroleum and Geothermal Energy Resources Act 1967;*
- *Petroleum Pipelines Act 1969;*
- *Petroleum (Submerged Lands) Act 1982;*
- *Dangerous Goods Safety Act 2004;* and
- *Occupational Safety and Health Act 1984* (currently regulated by WorkSafe WA / Department of Commerce).

Cost recovery provisions contained within the following Act will also be included in the WHS (Resources) Act.

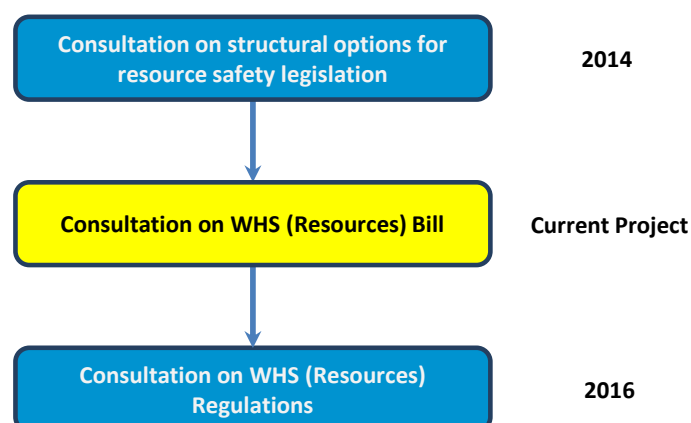
- *Petroleum and Geothermal Energy Safety Levies Act 2011.*

The WA Government has committed to modernising the safety legislation covering mining, petroleum and MHFs in WA. This process will ensure legislation is consistent with the modernised safety legislation used in other jurisdictions.

Following a previous consultation, which considered various legislative options, DMP is consolidating the safety aspects of mining, petroleum and MHF legislation into one Act – the WHS (Resources) Act.

1.1 Reform process

Due to the scale of the reform process, DMP is undertaking the consultation in three separate stages, as described below. This consultation process forms the second stage in the process.



⁵ The exception is Occupational Health and Safety (OHS) for MHFs where WorkSafe is the regulator under the *Occupational Safety and Health Act 1984*.

1.2 Consultation on structural options

In 2014, DMP consulted with the mining, petroleum and MHF industries on possible structures for safety legislation. Five options for reforming the legislation were considered.

Following the public consultation process, Marsden Jacob produced a Decision Regulatory Impact Statement (RIS), which recommended unifying safety legislation covering mining, petroleum and MHFs into a single Act with one regulator, DMP. The key recommendation is summarised below.

“Marsden Jacob recommends that the detailed legislative and regulatory content associated with Option 1 [Unified safety Act covering mining, petroleum and MHF, one regulator for all resource sites] be further developed and be subject to further scrutiny through separate RIS processes (covering the content of the legislation and the regulations respectively). Provided the legislative and regulatory content is found to provide a net benefit compared with the status quo, Option 1 should be implemented as the preferred option.

“If it is not possible to develop legislative and regulatory content that delivers a net benefit, or if other factors cause the development of Option 1 to be delayed and risk delaying the implementation of modernisation for mining and or general industry, then Option 2 should be implemented.”⁶

1.3 Current Consultation

This current consultation focuses on the content of the proposed WHS (Resources) Bill. The Bill is based on the model WHS Act⁷ that has been introduced across Australia (apart from Victoria).

In developing the proposed legislation, DMP has sought to maintain consistency as much as possible for workers and operations in all sectors of the resources industry. The proposed WHS (Resources) Bill should enable the use of common terminology and compliance requirements, remove duplication, simplify approvals, documentation and reporting, as well as reduce legal/consultant and administrative costs. These benefits fall to both industry and government.

⁶ Marsden Jacob Associates (2015) *Decision RIS: Safety Law Reform*, report prepared for the Department of Mines and Petroleum, February, p.39. Available at: <http://www.dmp.wa.gov.au/20998.aspx>

⁷ A copy of the model Work Health and Safety Act is available on Safe Work Australia’s website at: <http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/model-whs-act/pages/model-whs-act>

2. Statement of issue and objective

2.1 Statement of issue

Currently, the legislation covering occupational health and safety as well as process safety in mining, petroleum and MHFs is spread across multiple Acts and regulations, and involves multiple regulators for MHFs.

DMP sees the current structure as a hindrance to the consistent and efficient regulation of similar safety issues across different industries. There is potential for duplicated and inconsistent responsibilities and accountabilities where there are two or more Acts dealing with the same safety issues in a single work site⁸.

DMP considers that more modern approaches to regulation of WA industries may be more efficient or economically beneficial. The resources industry increasingly uses a risk-based approach to safety and continues to introduce new technology, so the legislation needs to be less prescriptive and more adaptable to change.

DMP considers that, while many elements of the current legislation are outcomes-based, there are some parts that are outdated, prescriptive, and unnecessarily complex.

The proposed WHS (Resources) Bill should deliver legislation that is outcomes-based and combines the best features of the model WHS Act as well as the National Mine Safety Framework.

Having consulted on the options for structuring the legislative change, DMP is now developing the content for the preferred option of a single consolidated WHS (Resources) Bill. The proposed WHS (Resources) Bill is based on WHS legislation used nationally and should deliver improved consistency between the industry sectors, as well as with the Commonwealth, but still include industry-specific provisions in the regulations.

Changes to legislation for mining, petroleum and MHFs will impact health and safety obligations for employers and employees operating in those sectors. The following sections describe the scope of the potential impact in WA resources sector and its employees.

Overview of WA's resources industry

The number of workers engaged in mining operation activities in WA is an order of magnitude higher than the numbers engaged in petroleum and MHF operation activities. Based on DMP employment numbers, mining and mineral exploration accounts for over 93 per cent of the resources industry workforce, with petroleum (onshore and offshore) accounting for roughly 2.5 per cent and MHF operations accounting for an estimated 4 per cent as shown in Table 1.

The size of the industries (number of companies) and company profiles (number of employees) differ significantly between stakeholder groups impacted by the proposed reforms.

⁸ Particularly where multiple types of operations (e.g. petroleum and MHF) co-exist on one site.

In order to give an indication of the scale of the industries impacted, Marsden Jacob compared data from DMP's contacts database and from the Australian Bureau of Statistics on numbers of companies and employment. Marsden Jacob used DMP's contacts database rather than other figures, such as licences, to overcome differing approaches to licences that companies use. This data is summarised in Table 1.

The discrepancy between the DMP contacts database and the Australian Bureau of Statistics data may be attributed to differing definitions and convoluted company structures. Some industry sectors, such as MHFs, are not identified in Australian Bureau of Statistics business data.

Table 1: Industries and employees potentially impacted

	Company numbers	Employee numbers (average figures for 2013/14)
Large Mining (200+ employees)	50	Mining: 97,795
Small to Medium Mining (1-200 employees)	1,120	Mineral Exploration: 2,375
Petroleum & Gas (Production & Exploration)	205	On-shore petroleum: 2,153
Petroleum & Gas (Pipelines & Networks)	26	Off-shore petroleum: 494
MHF sites	17 [#]	4,280*
MHF and Mining	2 [#]	
Prospective MHFs	4 [#]	
Contractors	18 [#]	
Geothermal operators	3 [#]	
Unions	3 [#]	

Note: Non-employing companies are not included in the ABS figures

** Employment figures at December 2014*

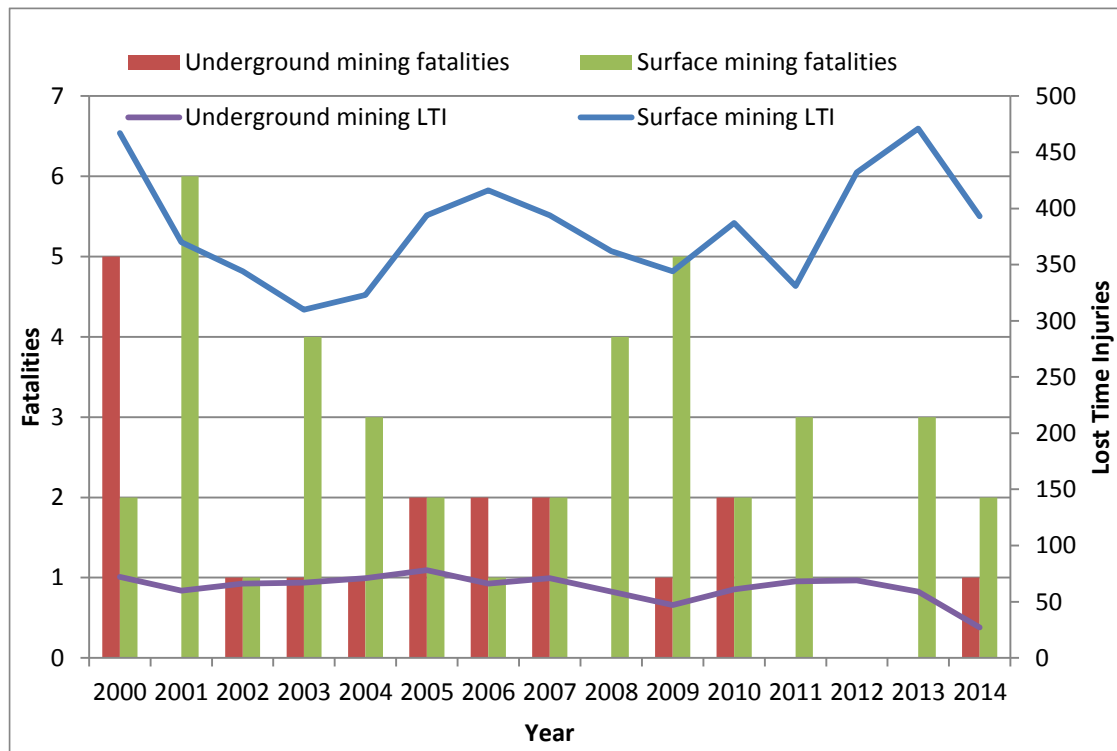
Sourced from DMP contacts database

Source: Marsden Jacob analysis of DMP data and Australian Bureau of Statistics 81650 Counts of Australian Businesses, including Entries and Exits, Jun 2009 to Jun 2013 – Utilising Western Australian businesses operating at end of financial year

Numbers and cost of workplace injuries in the resource sector

DMP collates figures on numbers of Lost Time Injuries and fatalities in WA for both mining and petroleum industries. There were a total of 58 fatalities on mine sites in the period between 2000 and 2014. While no deaths occurred in 2012, as shown in Figure 1, there is no clear trend in deaths or injuries over the period.

Figure 1: Mining fatalities and Lost Time Injuries in WA



Source: Department of Mines and Petroleum, Fatal accidents in the Western Australian mining industry 2000-2014

Due to changes in data collection for petroleum activities, it is not possible to compare fatalities and injuries over the same period. Over the period from 2009 to 2014, no fatalities have occurred in relation to petroleum activities and an average of just less than 7 Lost Time Injuries have occurred each year in WA.

In WA, for the five-year period 2008-09 to 2012-13, there was an average of 998 workers’ compensation claims per year with an average of \$57 million paid in workers compensation for the mining and petroleum industries.⁹ It should be noted that this data and cost estimate excludes fatalities.

Previous research¹⁰ indicates that the total cost of injury and illness on Australia is approximately 10 times the compensation paid. Based on this information, the total cost of workplace incidents for the resources industries in Western Australia is estimated to be around \$570 million per year¹¹.

In addition, the research found that the cost of workplace injuries and illness is spread broadly across the community with 5% of the total cost borne by employers, 74% by workers and 21% by the community.

⁹ Data was obtained from the Safe Work Australia National Data Set for Compensation-based Statistics using ANZIC industry codes this query prevents identification of incidents on MHFs.

¹⁰ Safe Work Australia, *The cost of work-related injury and illness for Australian employers, workers, and the community: 2008-09*, p. 28. Available at: <http://www.safeworkaustralia.gov.au/sites/swa/statistics/cost-injury-illness/pages/cost-injury-illness>

¹¹ Assuming that the ratio of workers compensation to total economic cost of work related injuries is the same for the resources sector in WA as all industry in Australia.

2.2 Objective of the proposed changes

DMP's objective for change in legislation covering the resources sector is to:

'develop a modern and adaptable regulatory framework that supports the delivery of high standards of safety in an efficient, equitable and consistent manner across mining, petroleum and MHFs. In addition, the regulatory structure seeks to improve:

- *health and safety outcomes while balancing regulatory burden; and*
- *consistency between the industries and with the Commonwealth while recognising sector-specific risks and approaches to risk management.'*

This Consultation RIS invites comment from stakeholders on the content of the proposed WHS (Resources) Bill, which aims to consolidate the health and safety aspects of Western Australia's mining, petroleum and MHF legislation within a single WHS (Resources) Act.

To assist stakeholders to understand and comment on the impacts of legislative consolidation, an indicative version of the proposed Bill has been provided on Marsden Jacob's website:

Indicative version of the WHS (Resources) Bill.

The key changes that are included in the current proposal are presented in the following pages. Stakeholders are requested to make specific comments on the key changes impacting them and their industry more broadly.

After the conclusion of the public comment period, submissions received will be analysed and a Decision RIS will be developed that examines each of the key changes as well as the impact of the proposed WHS (Resources) Bill as a whole. Stakeholders are encouraged to provide comments that address the RIS criteria (both for the whole reform and the key changes), as well as any other changes which may be significant but have not been specifically addressed in this paper.

Consultation questions: Objective of the proposed changes

1. *Is the objective appropriate?*

"to develop a regulatory framework that supports the delivery of high standards of safety in an efficient, equitable and consistent manner across mining, petroleum and MHFs. In addition, the regulatory structure seeks to improve:

- *health and safety outcomes while balancing regulatory burden; and*
- *consistency between the industries and with the Commonwealth while recognising sector-specific risks and approaches to risk management."*

2. *Are there any other objectives that should be considered in assessing the proposed change?*

3. Proposed approach to address the issue

The proposed WHS (Resources) Bill will consolidate the resources safety and cost recovery provisions contained in the following Acts:

- *Mines Safety and Inspection Act 1994;*
- *Petroleum and Geothermal Energy Resources Act 1967;*
- *Petroleum Pipelines Act 1969;*
- *Petroleum (Submerged Lands) Act 1982;*
- *Petroleum and Geothermal Energy Safety Levies Act 2011;*
- *Dangerous Goods Safety Act 2004;* and
- *Occupational Safety and Health Act 1984.*

DMP has developed a diagram that demonstrates the proposed consolidation as shown in Figure 2 (overleaf).

DMP describes the proposed WHS (Resources) Bill as modernised, outcomes-based legislation that is based on the national model WHS Act¹².

The proposed WHS (Resources) Bill only differs substantively from the national model WHS Act by:

- excluding sections that are not relevant to Western Australian resources operations and;
- including sections that are specific to mining, petroleum and MHFs as well as geothermal energy and greenhouse gas storage.

Section 4 highlights these and other minor differences. These differences occur where:

- it is appropriate that the proposed WHS (Resources) Bill is consistent with the current resources safety legislative provisions;
- DMP has chosen to align with
 - aspects of the model WHS Act, where this drafting is considered appropriate for resources industries; or
 - the National Mine Safety Framework, where some of the additional mining sections are drawn from.

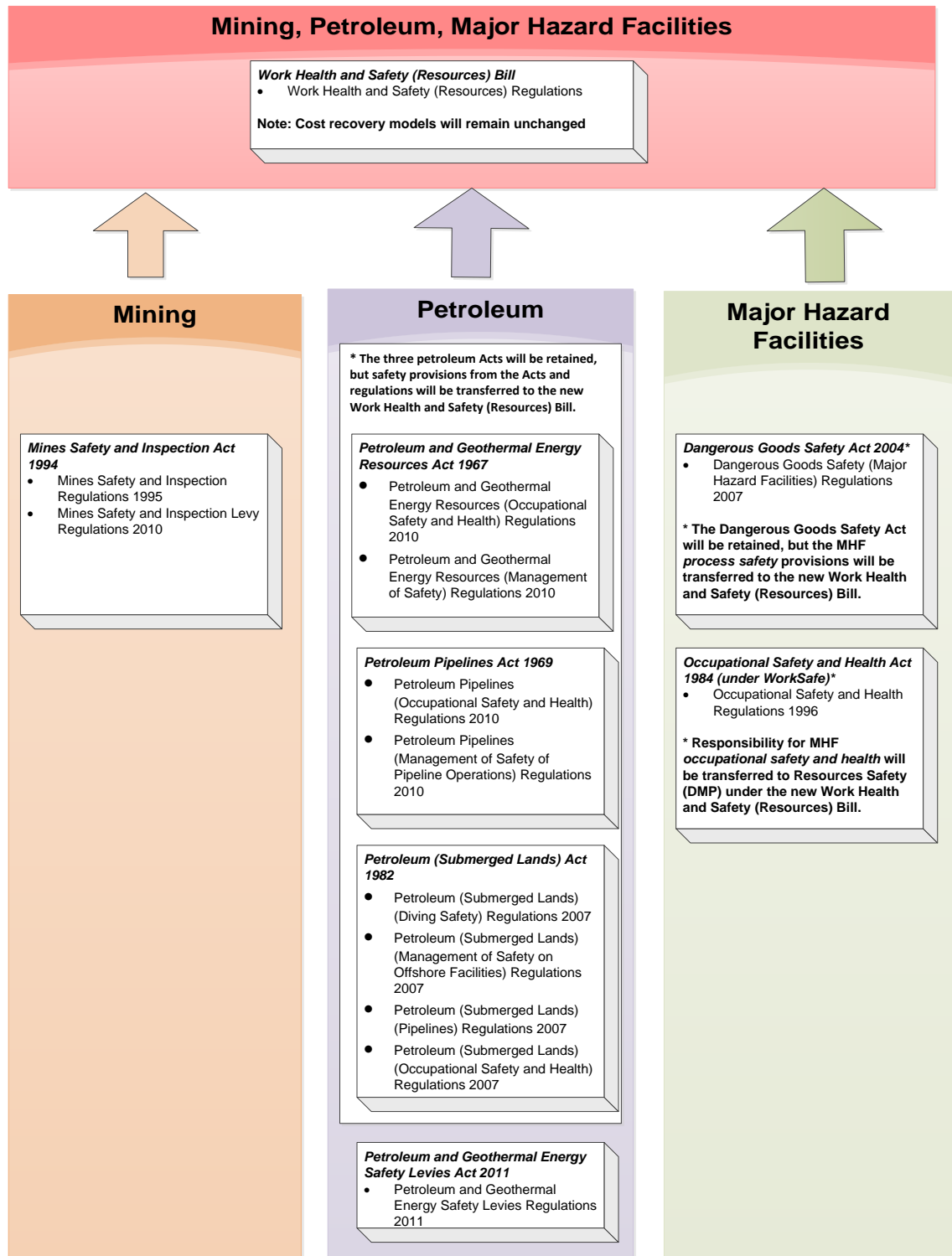
The petroleum provisions will deliver consistent outcomes with the National Offshore Petroleum Safety and Environmental Management Authority's (NOPSEMA's) *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

The proposed structure of the WHS (Resources) Bill and supporting regulations is set out in Appendix 2. A mock-up version of the WHS (Resources) Bill has been provided for consultation purposes and is available on the Marsden Jacob website: Indicative version of the WHS (Resources) Bill.

¹² There are some minor differences beyond the inclusion of the mine, petroleum and MHF specific sections. These differences are summarised in a Frequently Asked Question in Appendix 1.

Figure 2: Proposed consolidation of the resources safety provisions

Consolidation of resources safety legislation under Work Health and Safety (Resources) Bill



3.1 Consideration of options

DMP considers that the proposed WHS (Resources) Bill will meet the reform objectives and aligns with the national model WHS Act. However, the legislation is not finalised and changes based on stakeholder comments in response to the Consultation RIS will help to ensure that the final WHS (Resources) Bill presented to Parliament delivers the best outcomes.

The national model WHS Act has already undergone consultation. Therefore, it was not considered appropriate to identify options. Instead, this RIS sets out the substantive changes from current legislation to the proposed WHS (Resources) Bill, to identify costs or benefits for stakeholders.

3.2 Summary of changes

To assist stakeholders in commenting on the proposed WHS (Resources) Bill, DMP has identified 21 key changes, including:

- changes from the current legislation, such as different terminology, or new requirements that result in benefits and/or costs for industry, workers and other stakeholders;
- other differences or areas of interest.

These changes are summarised in Table 2 and are discussed in detail in section 4, which sets out the current legislation, the proposed legislation under the WHS (Resources) Act and explanatory comments.

Table 2: Summary of key changes

No.	Topic/Key Principle
1. – 3.	Applicable legislation
4. – 6.	Duty of care (primary and other duty holders)
7.	Management of risk
8.	Safety case and Safety management system
9.	Management and supervision / Statutory Positions
10.	Penalties
11. – 12.	Incident notification & investigation
13. – 14.	Administration of the Act and powers of the regulator
15. – 17.	Enforcement, prosecution and liabilities
18.	Advisory Committees
19.	Evidentiary provisions
20.	Sharing and publication of information by regulator
21.	Board of Inquiry

Changes in statutory level of content

The outcomes focus of the proposed WHS (Resources) Bill means that some detailed or prescriptive sections of the current resources safety Acts are not replicated in the proposed WHS (Resources) Bill. These will instead be included in the supporting regulations or guidance material.

Clarifications

DMP is aware that some stakeholders are concerned that the consolidated legislation could result in a “one size fits all” approach to health and safety and that this could result in either an unreasonable increase in compliance costs, or a decrease in levels of safety. DMP believes that the use of outcomes-based legislation, supported by a mix of generic regulations and industry-specific regulations will avoid both an unreasonable increase in compliance costs and a decrease in levels of safety, as well as increasing consistency across industries and between jurisdictions.

To assist stakeholders to understand likely impacts of proposed legislative changes, a number of questions and answers have been included in Appendix 1.

3.3 Arrangements in other jurisdictions

While developing the proposed WHS (Resources) Bill, DMP considered the legislative framework used in other Australian jurisdictions. Across Australia, a range of legislative structures are used for occupational health and safety for mining, petroleum, and MHF industries. As the mining regulations under the model WHS legislation were finalised in 2013, the mine safety legislation has been, and continues to be, the subject of review in a number of states and territories.

The proposal for a single consolidated Act covering health and safety for mining, petroleum and MHFs is not a new concept – it has already been implemented in two States.

The model WHS Act and regulations include both mining and MHFs within the single Act and supporting regulations. This structure was adopted by South Australia and consequently occupational health and safety for mining, petroleum, and MHF industries is regulated under one Act in that state.

While Victoria has not adopted any elements of the model WHS Act, occupational health and safety for mining, onshore petroleum, and MHF industries are regulated under one Act. Offshore petroleum regulation was handed over to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

An alternative structure is used in New South Wales. The *Work Health and Safety (WHS) Act 2011* and the *Work Health and Safety (WHS) Regulation 2011* apply to all workplaces in NSW. This is supported by the *Work Health and Safety (Mines) Act 2013* and *Work Health and Safety (Mines) Regulation 2014*.

The resources safety legislative framework for each jurisdiction is set out below in Table 3.

Table 3: Overview of resources safety regulatory structures in key resources intensive states

Industry	NSW	Queensland	Victoria	South Australia
General Industry	<i>Work Health and Safety Act 2011</i> - Model WHS Act	<i>Work Health and Safety Act 2011</i> - Adapted version of the model WHS Act	<i>Occupational Health and Safety Act 2004</i>	<i>Work Health and Safety Act 2012</i> - Slightly adapted from the model WHS Act
Mines	<i>Work Health and Safety (Mines) Act 2013</i> - Adapted from the model WHS Act	<i>Coal Mining Safety and Health Act 1999</i> and <i>Mining and Quarrying Safety and Health Act 1999</i> – currently subject of a RIS	<i>Occupational Health and Safety Act 2004</i>	Chapter 10 of the WHS Regulations 2012 (SA) – under the <i>Work Health and Safety Act 2012</i>
Petroleum and Gas	Onshore facilities: <i>Petroleum (onshore) Act 1991</i> (WHS and process safety) Onshore pipelines: <i>Pipelines Act 1967</i> (process safety)	Onshore facilities: <i>Petroleum and Gas (Production and Safety) Act 2004</i> (WHS and process safety) Onshore pipelines: <i>Petroleum and Gas (Production and Safety) Act 2004</i> (WHS and process safety)	Offshore: delegated regulation to NOPSEMA Onshore facilities: <i>Petroleum Act 1998</i> (process safety) and the Petroleum Regulations 2011 Onshore pipelines: <i>Pipelines Act 2005</i> (process safety)	<i>Work Health and Safety Act 2012</i> - Slightly adapted the model WHS Act to form the WHS Act (SA) Onshore facilities: <i>Petroleum and Geothermal Energy Act 2000</i> (process safety) Onshore pipelines: <i>Petroleum and Geothermal Energy Act 2000</i> (process safety) <i>Note: the P&GE Act is considered a corresponding WHS law in SA</i>
MHFs	Chapter 9 of the WHS Regulations (unchanged from model) – under the <i>Work Health and Safety Act 2011</i>	Chapter 9 of the Work Health and Safety Regulations 2011 under the <i>Work Health and Safety Act 2011</i>	Occupational Health and Safety Regulations 2007	Chapter 9 of the WHS Regulations 2012 (SA)

4. Detailed table of changes

Note: For the purposes of this document, *petroleum* headings include geothermal energy operations and greenhouse gas storage operations.

References to the PAGERA, PPA and PSLA is reference to the safety provisions only, all other provisions will remain in the existing legislation.

Table 4: Detailed table of changes

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
1.	Applicable legislation	<p>Mining:</p> <ul style="list-style-type: none"> <i>Mines Safety and Inspection Act 1994 (MSIA)</i> <p>Petroleum:</p> <ul style="list-style-type: none"> <i>Petroleum (Submerged Lands) Act 1982 (PSLA)</i> <i>Petroleum and Geothermal Energy Resources Act 1967 (PAGERA)</i> <i>Petroleum Pipelines Act 1969 (PPA)</i> <p>MHF:</p> <ul style="list-style-type: none"> <i>Dangerous Goods Safety Act 2004 (DGSA)</i> <i>Occupational Safety and Health Act 1984 (OSH Act)</i>, regulated by WorkSafe WA 	WHS (Resources) Act	<p>Legislation is based on the national model Work Health and Safety Act.</p> <p>Mining: Incorporates additional provisions from National Mine Safety Framework (NMSF) and corresponding definitions.</p> <p>Petroleum: The three petroleum Acts will be retained, but safety provisions from these Acts are being consolidated under the WHS (Resources) Act.</p> <p>Offshore petroleum facilities in Commonwealth waters will continue to be regulated by NOPSEMA under the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (Commonwealth) (OPGGSA).</p> <p>MHF:</p> <p>MHF process safety and OSH provisions are being consolidated under the WHS (Resources) Act.</p> <p>Regulation of OSH will transfer from WorkSafe to Resources Safety at DMP.</p>

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
2.	Application of the WHS (Resources) Act	<p>Mining: The Act applies to mining operations as defined in s.4. It generally covers mining, exploration, process facilities, ports support facilities etc.</p> <p>Petroleum:</p> <ul style="list-style-type: none"> PSLA applies to offshore petroleum facilities, pipelines and diving operations, and is closely aligned with the OPGGSA. PAGERA applies to onshore petroleum and geothermal energy operations. PPA applies to onshore licensed pipelines. <p>MHF: A facility is declared by the Chief Officer to be a major hazard facility based on the quantity of prescribed chemicals under Schedule 1 of the DGSA and associated risks, taking into account other written laws that apply relevant to safe storage, handling and transport of dangerous goods.</p>	<p>Mining: The proposed definition of mining operation will be expanded to include:</p> <ul style="list-style-type: none"> Mines operated by local government; and Tourist mines <p>To provide clarity, the following current exclusions will now be explicitly mentioned in the new Act: Railways; public roads; air travel to/from mines; fossicking; and prospecting under Miners Right.</p> <p>Petroleum:</p> <p>Petroleum operations will include onshore and offshore facilities and pipelines and diving.</p> <ul style="list-style-type: none"> Offshore facilities will have a simpler definition, which still aligns with the intent of the OPGGSA. The regulator will have the power to declare, where appropriate, whether a petroleum operation is <i>not</i> captured under the WHS (Resources) Act. Geothermal operations definition will be unchanged, but the regulator has the power to declare whether a geothermal energy operation is <i>not</i> captured under the WHS (Resources) Act, based on the scale and complexity of the operation. Greenhouse gas storage operations will be added, to align with another Bill for the modification of PAGERA and PPA. <p>The scope of operation for petroleum activities will cover the initial survey through to decommissioning and remediation.</p> <p>MHF: A facility will be declared by the regulator to be a major hazard facility based on the quantity of prescribed chemicals and associated risks. Regulator's discretion to declare a MHF is retained.</p>	<p>ALL: Scope aligns with model WHS Act.</p> <p>Mining: The proposed definition of mining operation reflects the NMSF definition, but has been modified slightly to align with the MSIA and the Mining Act.</p> <p>Inclusion of mines operated by local government, etc. and tourist mines reflects a national level decision. The regulation of OSH at these sites will transfer from WorkSafe to Resources Safety.</p> <p>Petroleum: The definition of 'petroleum operation' will be the same for onshore and offshore.</p> <p>Under a separate process, the PAGERA and PPA are being modified to include greenhouse gas storage. This will also be incorporated into the new WHS (Resources) Act.</p> <p>MHF: The declaration of MHFs will be similar to the current process.</p>

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
3.	Decision on application of the WHS (Resources) Act or WHS Act to work sites		Additional powers given to the Minister, where doubt exists, to declare a work site to be (or not to be) a resources operation.	Previously, there had been issues with the determination of jurisdiction under the current MSIA and OSH Act. A new provision, similar to provisions in the new NSW WHS (Mines) Act, has been added.
4.	Primary Duty of Care	<p>Mining: S.9 covers primary duty of care for an employer. The employer has an obligation towards its employees, including contractors and labour hire workers.</p> <p>Petroleum:</p> <ul style="list-style-type: none"> • <i>PSLA:</i> Schedule 5, clause 8 covers the duties of the operator. The operator of a facility has an obligation to any person at or near the facility. • <i>PAGERA:</i> Schedule 1, clause 7 covers the duties of the operator. The operator has an obligation to persons engaged in the petroleum or geothermal energy operation, i.e. employees, including contractors or other protected persons. • <i>PPA:</i> Schedule 1, clause 7 covers the duties of the licensee. The licensee has an obligation to persons engaged in the pipeline operation, i.e. employees, including contractors or other protected persons. <p>MHF: S.19 of the OSH Act covers primary duty of care for an employer. The employer has an obligation towards its employees, including contractors and apprentices. This Act is currently regulated by WorkSafe WA.</p>	All: The primary duty of care is for a Person Conducting a Business or Undertaking (PCBU) towards <u>all</u> workers, including contractors and labour hire workers.	The duty of care concept has been simplified and made broader. It has removed the ambiguity in the relationship between an employer and employee – even where the relationship is through a sub-contract arrangement. Responsibility for worker health and safety at Major Hazard Facilities (MHFs) will be transferred from WorkSafe WA to Resources Safety.

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
5.	<p>Person having primary duty of care</p>	<p>Mining: The Principal Employer, who has the mining right and overall control of the mine, has specified duties, including the duty of care for all employees.</p> <p>Petroleum:</p> <ul style="list-style-type: none"> • <i>PSLA:</i> Operator is registered for facilities or diving operations and has the duty of care to any person at or near the facility. • <i>PAGERA:</i> Operator (who is the title holder) has the duty of care to any persons engaged in the petroleum or geothermal energy operation, i.e. employees, including contractors or other protected persons. • <i>PPA:</i> Licensee has the duty of care to any persons engaged in the pipeline operation, i.e. employees, including contractors or other protected persons. <p>MHF: Under the MHF provisions of the DGSA, the Operator has a general duty to minimise risk to people, property and the environment. Under the OSH Act, the employer has the duty of care towards employees, including contractors and apprentices. This is regulated by WorkSafe WA.</p>	<p>PCBUs will have primary duty of care <i>for the operations under their control</i>. However, the operator/licensee/title holder will have <u>overall</u> primary duty of care <i>for the entire resources site/facility/operation</i>.</p> <p>Mining: Mine Operator is designated as a PCBU and has similar control and duties as the Principal Employer.</p> <p>Petroleum: Operator will be registered, similar to the current PSLA, will be designated as a PCBU and has primary duty of care.</p> <p>MHF: Operator is designated as a PCBU and has primary duty of care.</p>	<p>Mining: The concept of Mine Operator has been recommended by the NMSF and will replace Principal Employer.</p> <p>Petroleum:</p> <p>Operators are defined as being responsible for day-to-day control of the operations. As the Operator is not always the same person as the licensee for the operation, <u>all</u> operators (including onshore operators) will now need to be registered with DMP.</p> <ul style="list-style-type: none"> • <i>Onshore:</i> Registration is a new requirement for operations currently covered under PAGERA and PPA. It aligns with the current requirements for registration of offshore petroleum operators. • <i>Diving:</i> The Diving contractor will be retained, as per current legislation. • <i>Offshore:</i> Registration of offshore operators will be retained, as per current legislation.

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
6.	Other Duty Holders	<p>The current legislation places duties on designers, manufacturers, importers and suppliers of any plant, building or structure and substances.</p> <p>There is no specific provision covering Remote Operations Centres (ROCs).</p>	<p>Similar duties are placed on PCBUs that design, manufacture, import, supply and install plant.</p> <p>A new provision will be added to cover Remote Operations Centres (ROCs):</p> <ul style="list-style-type: none"> • A PCBU that controls autonomous or semi-autonomous operations from a remote site (e.g. an office not located at the resources facility) will have prescribed duties in relation to workers at the resources facility. • Workers located at the ROC office (i.e. not at a resources facility) will have their health and safety covered under the WHS legislation for general industry. 	Control measures for ROCs will now be covered under the new legislation.
7.	Management of risk	<p>Mining: The general risk management is through Duty of Care and the Project Management Plan.</p> <p>Petroleum: Risk management controls measures are in the regulations.</p> <p>MHF: Risk management controls measures are in the regulations.</p>	There will be a general risk management provision in the WHS (Resources) Act.	<p>High-level provisions on general risk management will now be in the Act.</p> <p>Detailed provisions around risk control measures will be in the regulations.</p>

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
8.	<p>Safety case and Safety management system (SMS)</p>	<p>Mining: The Project Management Plan (PMP) requires management of identified risks at the time of commencement of mining operations. There is no requirement to update this document as the mining operations expand or change. The PMP is not an enforceable document.</p> <p>Petroleum:</p> <p><i>PSLA:</i></p> <ul style="list-style-type: none"> • Petroleum facility requires a safety case. • Offshore pipeline requires a pipeline management plan. • Diving operations require a diving SMS. <p><i>PAGERA:</i> Petroleum and geothermal energy operations require an SMS.</p> <p><i>PPA:</i> Pipeline operations require a safety case.</p> <p>MHF: Requires safety report covering process safety. This excludes worker OSH, which is currently covered by WorkSafe WA.</p>	<p>Mining: Mining operations will be required to prepare a Safety Management System (SMS). This is an enforceable and living document.</p> <p>The SMS must be prepared and reviewed in consultation with workers relevant to the mining stage being undertaken, e.g. construction (i.e. workers covered by the WHS (Resources) Act).</p> <p>Petroleum & MHF:</p> <ul style="list-style-type: none"> • All MHFs and petroleum operations (including pipelines, geothermal energy and greenhouse gas storage operations) will require a safety case. • Diving operations will require a diving SMS. 	<p>Details of safety case and SMS will be in the regulations.</p> <p><i>Note: Mining will use Safety Management Systems – not a safety case.</i></p> <p>Mining:</p> <p><i>For proposed new mining operations;</i> Initially, an outline of the SMS will be required, instead of a PMP. The full SMS will be required by the time mining operations commence</p> <p><i>For existing mining operations:</i> A full SMS will be required.</p> <p>Petroleum:</p> <ul style="list-style-type: none"> • The Pipeline Management Plan under PSLA and the SMS under PAGERA will be replaced by a safety case in the WHS (Resources) Act. • <i>Diving:</i> Registration of the Diving SMS will be retained, as per current legislation. <p>MHF: Safety report will be renamed as a safety case and this will now include coverage of both process safety and worker OSH.</p>

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
9.	Management and supervision / Statutory Positions	<p>Mining: The Act prescribes statutory positions and advises on other management appointments. These include Registered Manager, Quarry Manager, Underground Manager, etc.</p> <p>Petroleum: The operator's representative must be present at the facility.</p> <p>MHF: There are no statutory positions. The operator is the person who has the control or management of the MHF.</p>	<p>The Act makes provision for a Site Senior Executive (SSE).</p> <p>Mining: The SSE replaces the Registered Manager. Exploration Manager will be required, similar to current requirements. Other statutory positions will be listed in the regulations, and will be similar to those in the MSIA.</p> <p>Petroleum: The SSE replaces the operator's representative at the facility.</p> <p>MHF: The SSE is the operator's representative at the facility.</p>	This is not a new requirement; it is a change in terminology.
10.	Penalties	<p>Penalties are covered under the following parts of the legislation:</p> <p>Mining: MSIA: Section 4A.</p> <p>Petroleum:</p> <ul style="list-style-type: none"> • <i>PSLA</i>: Schedule 5. • <i>PAGERA</i>: Schedule 1. • <i>PPA</i>: Schedule 1. <p>MHF: Part 2 general duties.</p>	<p>Penalties will be aligned with national model WHS Act for general industry.</p> <p>Petroleum: Reckless conduct – Category 1 new provision for petroleum operations.</p> <p>MHF: Reckless conduct – Category 1 new provision for MHF operations.</p>	These penalties are consistent with the model WHS Act for general industry.

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
11.	Incident notification	<p>Mining: Serious accidents, specified occurrences and potentially serious occurrences are to be reported immediately. Lost Time Injuries (LTI) must be reported at the end of the month, with employment statistics and lost shift data.</p> <p>Petroleum: Accidents and dangerous occurrences require immediate notification and a report within 3 days. The operator must provide a monthly report on the number and types of injuries, hours worked and the number of days lost due to injuries.</p> <p>MHF: Section 9 of the DGSA requires certain dangerous goods incidents (reportable situations) to be notified as soon as practicable by phone and an incident report form within 21 days. LTIs are reported to WorkSafe as worker health and safety at MHFs is regulated under the OSH Act.</p>	<p>Notifiable incidents must be reported immediately via the regulators reporting system. Death and serious illnesses and injuries also need to be reported by telephone. The list of dangerous incidents and serious injuries will align with the model WHS Act.</p>	<p>Mining: The reporting process will not change. Mining companies already phone immediately, followed by an online report using the Safety Regulation System (SRS).</p> <p>Petroleum: The reporting system will change. The new WHS (Resources) Act will require <u>immediate</u> reporting of incidents, after the initial phone call. A uniform online reporting system will be implemented for all resources industries, with the Safety Regulation System (SRS) replacing the current paper reporting form.</p> <p>MHF: The reporting system will change. The new WHS (Resources) Act will require <u>immediate</u> reporting of incidents, after the initial phone call. A uniform online reporting system will be implemented for all resources industries, with the Safety Regulation System (SRS) replacing the current paper reporting form. Notifiable instances and LTIs will be reported to Resources Safety, rather than WorkSafe.</p> <p>ALL: Some minor changes in terminology to facilitate shared definitions.</p>

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
12.	Incident investigation	<p>Mining: No specific requirements for Principal Employer, employer or Registered Manager to investigate reportable incidents and accidents.</p> <p>Petroleum: No specific requirements for the petroleum operator or licensee to investigate reportable incidents and accidents. However, the petroleum operator/licensee must prepare a report covering all material details concerning the accident or dangerous situation and this requires a root cause analysis.</p> <p>MHF: No specific requirements for the MHF operator or licensee to investigate dangerous goods incidents or dangerous situations. However, under Section 46(2), the Chief Officer may direct a person with control management of a site to conduct an approved audit and report to the Chief Officer about dangerous goods incidents or a dangerous situation on the site.</p>	<p>There is an obligation on the Resources Facility Operator to report and investigate all notifiable incidents. DMP may also request a copy of the investigation report. The safety case or the SMS must be reviewed and updated to prevent recurrence.</p>	<p>The resources industry already investigates incidents on sites/facilities as part of current processes. The new legislative provision formalises this as a requirement.</p> <p>Mining: New provision aligns with NMSF and formalises current processes.</p> <p>Petroleum and MHF: Formalises current processes.</p>
13.	Administration of the Act by the regulator	<p>Mining: State Mining Engineer is the chief administrator of the MSIA.</p> <p>The Act prescribes three types of inspectors – District, Special, Employees.</p> <p>Petroleum: The Minister is the chief administrator and the Minister has delegated his power to the Director.</p> <p>MHF: Chief Officer is the chief administrator of the DGSA.</p>	<p>The regulator (Commissioner Resources Safety) will be the chief administrator of the WHS (Resources) Act.</p> <p>There will only be one type of inspector, called an Inspector.</p> <p>The concept of corresponding regulator and corresponding legislation has been introduced for sharing of information and recognition of certain approvals.</p>	<p>Change in terminology to facilitate shared definitions only.</p> <p>These changes were made to align with the national model WHS Act for general industry.</p>

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
14.	Powers of regulator and inspectors	<p>Mining: Inspector powers are outlined in s.21 of the Act.</p> <p>The State Mining Engineer has all of the powers of inspectors and the ability to request an independent study report under s.45 of the Act at the Principal Employer's expense.</p> <p>Petroleum: Inspectors powers are outlined in PPA & PAGERA Schedules 1 or and PSLA Schedule 5 and the Minister may request a validation at the operator's expense.</p> <p>MHF: Powers of Chief Officer and DGOs are outlined in Parts 5 and 6 of DGSA.</p> <p>The Chief Officer has all of the powers of DGOs and under s.46(2) may direct an MHF operator to pay for an approved auditor to conduct an audit and report to the Chief Officer.</p>	<p>The new WHS (Resources) Act is similar to the present provisions.</p> <p>Similar powers exist under current legislation, but these have been made consistent across all industry sectors.</p>	<p>No change to powers, apart from the additional power noted on the left.</p>

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
15.	Enforcement measures	<p>Mining: Inspectors have powers to issue improvement and prohibition notices, as well as powers to require that the mine, or any part of it, be left undisturbed for as long as is specified in the requirement.</p> <p>Petroleum: Inspectors have powers to issue improvement and prohibition notices, and direct by written notice that the site is not to be disturbed.</p> <p>MHF: WorkSafe inspectors have powers under the OSH Act to issue improvement and prohibition notices and can require that the workplace, or any part of it, be left undisturbed.</p> <p>Resources Safety's DGOs also have powers under the DGSA to restrict access to sites of dangerous goods incidents and dangerous situations.</p>	The inspectors have powers to issue improvement, prohibition and non-disturbance notices.	<p>Mining and MHF: The new non-disturbance notice formalises the current inspectors' powers to ensure that a site is not disturbed for a specified period and aligns with the current petroleum safety legislation.</p> <p>Petroleum: No change.</p>
16.	Limitation period for prosecutions	<p>Mining: Proceedings for an offence against the Act must be commenced within three years after the offence was committed.</p> <p>Petroleum: Proceedings for an offence may be brought at any time.</p> <p>MHF: Relies on <i>Criminal Procedure Act 2004</i> and proceedings can be brought within one year.</p>	The new legislation requires proceedings to begin within two years after the offence first comes to the notice of the Regulator.	Aligned with the model WHS Act.

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
17.	Officer's liability	<p>Mining: Under s.100A of MSIA, officers of corporations are liable in cases of gross negligence.</p> <p>Petroleum: Directors, employees or agents of the body corporate are liable under the following provisions:</p> <ul style="list-style-type: none"> • PAGERA & PPA: Schedule 1, Clause 78. • PSLA: Schedule 5, clause 79. <p>MHF: Under s.6 of DGSA, officers of corporations are liable.</p>	The new WHS (Resources) Act places duty on officers of a corporation to exercise due diligence to ensure that the PCBU complies with any duty or obligation under the WHS (Resources) Act.	Aligned with the model WHS Act and the definition of an officer under the Corporations Law.
18.	Advisory Committees	<p>Mining: MIAC is a statutory committee currently under s.14A of the <i>Occupational Safety and Health Act 1984</i>.</p> <p>Petroleum and MHFs: No statutory committees.</p>	<p>Proposed advisory committees are as follows:</p> <p>Mining: MIAC will be retained, however provision to establish this committee will be moved to the WHS (Resources) Act.</p> <p>Petroleum & MHFs: A new committee to be formed to represent petroleum and MHFs.</p>	<p>These committees will consist of industry, union and government representatives and provide advice to the Minister.</p> <p>The introduction of a committee for petroleum and MHFs will facilitate discussions on safety issues, reforms or changes going forward and provide a line of advice for these industries to the Minister (akin to the existing situation for mining).</p>
19.	Evidentiary provisions	<p>Covered under current legislation as follows:</p> <p>Mining: MSIA s.98</p> <p>Petroleum:</p> <ul style="list-style-type: none"> • PAGERA: s126A • PPA: s.66BB • PSLA: s.137A <p>MHF: DGSA: s.58.</p>	Evidentiary provisions are included to save time in Court, consistent with current legislation.	<p>No change in requirement, as provisions in the proposed WHS (Resources) Bill reflect current legislation and provisions which already exist.</p> <p>It is noted that retaining this provision differs from the model WHS Act, which does not include this provision.</p>

No.	Topic/Key Principle	Current Legislation	Proposed Legislation - WHS (Resources) Act	Comments/Explanation
20.	Sharing and publication of information by regulator	No provision for this in current legislation.	<p>Added to enable the regulator to publish information for shared learnings and education purposes.</p> <p>This will include publication of:</p> <ul style="list-style-type: none"> • approved Radiation Management Plans; • learnings from significant incidents and accidents. 	<p>This aligns with the model WHS Act.</p> <p>It is proposed that Radiation Management Plans approved for planned uranium mining operations will be published prior to construction of these mines. The full plan will be published for those plans approved after the new WHS (Resources) Act is implemented.</p> <p>The publication of learnings from significant incidents and accidents is merely formalising a current process. These publications are de-identified to remove personal or company details.</p>
21.	Board of Inquiry	No provision for this in current legislation. However, the Minister already has the power to institute inquiries and has done so in the past.	Enables the Minister to establish a Board of Inquiry to inquire into serious incidents and dangerous occurrences; any practice or safety matter which may adversely affect the health and safety of persons; or any emerging or systemic issues affecting health and safety of persons.	<p>This provision aligns with the NMSF and the model WHS Act.</p> <p>It formalises current Ministerial powers to establish an inquiry, such as inquiries into major incidents.</p>

5. Impact analysis

This section aims to assist stakeholders responding to the consultation, by ensuring that their responses address the RIS assessment criteria.

Following comments on the proposed WHS (Resources) Bill from stakeholders, Marsden Jacob will review the changes in terms of their advantages and disadvantages to Western Australia. The cost benefit analysis is a key step in evaluating the potential impacts on business, consumers and the economy. A broader impact assessment will examine effects on individuals, the community as a whole and the environment where these are relevant.

As outlined in section 3.2 (above), key areas have been identified to assist stakeholders understand the changes and assess likely impacts. The analysis will consider each of the key changes in detail and the proposed WHS (Resources) Bill as a whole. Stakeholders may wish to provide feedback on individual changes as well as the entire proposed WHS (Resources) Bill.

Benefits to WA industry may arise from consolidating and modernising the legislation. Making the legislation less prescriptive will enable industry and the regulator to more flexibly manage aspects of health and safety.

Additional minor changes may be evident to stakeholders when reviewing the proposed structure of the proposed WHS (Resources) Bill and regulations provided in Appendix 2 and the indicative version of the WHS (Resources) Bill (available on Marsden Jacob's website [here](#)). In analysing stakeholders' submissions, the net benefit to WA will be an important consideration.

5.1 Previous national RIS on the model WHS legislation

The proposed WHS (Resources) Bill is based on the model WHS Act, which was the subject of a Regulatory Impact Statement in 2009¹³. Analysis of the national RIS provides some insights into how costs and benefits are considered.

The RIS consultation process was undertaken at a national level and considered all industries, but did not deal with the Western Australian resources industry in detail. However, the conclusions drawn by the National RIS are likely to be indicative of the costs and benefits that would arise from implementation of the proposed WHS (Resources) Bill in WA.

Types of costs and benefits identified

The National RIS identified costs and benefits relevant to each key stakeholder group as set out in Table 5. For each group the summary finding of the scale of each cost and benefit is given in bold at the top of the cell and the types of costs and benefits are given below.

¹³ Access Economics Pty Limited (2009), *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, report prepared for Safe Work Australia, 9 December. Available at: www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/pc200912decisionregulationimpactstatementf ormohsact

Table 5: Summary of findings from National RIS on model WHS Act

Stakeholder	Benefits identified	Costs identified
Industry	<p>Medium benefit</p> <p>The model Act will reduce differences across jurisdictions at the legislative level</p> <p>For multi-jurisdictional employers, there may even be a reduction in adjustment costs (estimated \$179 million)</p>	<p>Small cost</p> <p>Main costs to business will be establishment costs – These are unknown but unlikely to be significant</p> <p>Single jurisdictional employers, will not benefit from the Act’s reductions in cross-border red-tape restrictions but the outcome is probably neutral</p>
Workers	<p>Small benefit</p> <p>Improved protection for workers who are not employees</p> <p>Potential for improved safety – but this is dependent on the regulations</p> <p>Reduced barriers to workers moving jurisdictions</p>	<p>Nil-Marginal cost</p> <p>It is unlikely that there will be any significant costs to workers</p>
Government	<p>Marginal benefit</p> <p>Long term reduction of duplication, as future legislative reviews and development of legislation and codes will be undertaken nationally</p>	<p>Small cost</p> <p>Costs to government are also not likely to be substantial</p>
Society	<p>Small benefit</p> <p>Safety benefit</p>	<p>Marginal cost</p> <p>It is unlikely that there will be any significant costs to society</p>

Source: Access Economics Pty Limited (2009) Decision Regulation Impact Statement for a model Occupational Health and Safety Act, report prepared for Safe Work Australia, 9 December – Refer to Table 8.1 and Section 8.

Total net benefit identified

The RIS did not quantify the net benefits of the model WHS Act and instead concluded:¹⁴

“Costs and the benefits of the model Act are small and not readily quantifiable. The qualitative and quantitative evidence available suggests that the model Act is expected to bring medium sized benefits for multi-state business, principally in reduced red tape for multi-jurisdiction operations.”

Through a survey, Access Economics estimated the impact on businesses and other stakeholder groups, but due to a limited sample size of 26 usable responses, they concluded that the results are not robust.

Despite the small sample size, the survey provides a useful discussion point for the current RIS.

The Access Economics survey concluded that there would be a set-up cost for retraining workers – estimated at \$25 per private sector employee and totalling \$192 million for private industry across Australia.

¹⁴ Access Economics Pty Ltd (2009), Decision Regulation Impact Statement for a Model Occupational Health and Safety Act, report prepared for Safe Work Australia, 9 December, p. 70

In addition, based on the survey, the RIS suggested that the improvement in health outcomes from harmonisation for multi-state firms would be around 1.41%, but no benefit was assumed for workers at firms that only operate in one jurisdiction.

The total distribution of costs and benefits is summarised in Table 6.

Table 6: Estimated national benefits of OHS harmonisation (per year)

Class	Net benefit (\$m)
<i>single state firms</i>	-223.5
<i>multi-state firms</i>	179.3
Total firms	-44.3
Workers	114.8
Rest of Society	110.2
Total	180.7

Source: Access Economics Pty Limited (2009) *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, report prepared for Safe Work Australia, 9 December – Refer to Table 7.3 and Appendix C.

Importantly, Table 6 suggests that multi-state firms would benefit, but that single state firms would be disadvantaged. This is based on the assumption that safety benefits would only accrue to workers at companies that operate in multiple jurisdictions. However, Marsden Jacob notes that single state firms were not asked in the survey whether the reforms would have a likely impact on numbers of incidents¹⁵. Given that the same legislation and requirements would apply to both single state and multi-state firms, it could be argued that any safety benefit would accrue to all workers.

5.2 Western Australian RIS assessment criteria

The RIS guidance produced by the Regulatory Gatekeeping Unit¹⁶ specifies that proposals should be assessed against the following criteria:

- whether the legislative change will meet its objective;
- whether there will be a net benefit to the economy;
- whether the regulatory change will have an impact on:
 - the environment;
 - social justice;
 - health;
 - equity; and
 - any other relevant areas; and
- whether the legislative change will result in costs or benefits being distributed unfairly.

Consideration of whether the proposed WHS (Resources) Bill will have a net benefit to the economy will be determined through a cost benefit assessment.

¹⁵ Access Economics Pty Limited (2009) *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, report prepared for Safe Work Australia, 9 December, p. 64.

¹⁶ Western Australian Government (2010) *Regulatory Impact Assessment Guidelines for Western Australia*, updated July 2010. Available at: https://www.finance.wa.gov.au/cms/Economic_Reform/RIA_support.aspx

5.3 Costs benefit framework

To assess whether the proposed WHS (Resources) Bill will provide a net benefit to the economy, an analysis of the costs and benefits over an extended period (e.g. ten years) is required.

The cost benefit analysis will compare:

- the “base case” – consolidation of all resources safety legislation into one Act, *but with no changes to existing definitions, roles and responsibilities*; and
- the proposed reform – consolidation of all resources safety legislation into one Act, *as per the proposed WHS (Resources) Bill*.

As the resources safety provisions could include none, some or all of the key changes identified in section 4, the cost benefit analysis will consider the base case and the proposed WHS (Resources) Bill as a whole, as well as each of the key changes.

The key impacts of the proposed WHS (Resources) Bill are on compliance costs and safety levels, so these two factors will form the framework from which the cost benefit analysis is conducted. Changes in compliance costs and safety can be benefits (decreased compliance costs and increased safety), or can be costs (increased costs and decreased safety).

Marsden Jacob will use a method consistent with Australian Government guidance¹⁷ to identify the costs and benefits of legislative change. The analysis will capture:

- the initial setup and transition costs;
- changes in the level of ongoing costs and benefits;
- the distribution of costs and benefits to different stakeholder groups – industry, government, workers and the broader community; and
- any differences in the costs and benefits to industries working across multiple jurisdictions versus those working in a single jurisdiction (this approach was used in the National RIS).

The proposed definitions of industries that work across multiple and single jurisdictions is included in Table 7.

¹⁷ Australian Government *Handbook for Cost-Benefit Analysis* (2006) and *The Australian Government Guide to Regulation* (2014).

Table 7: Description and examples of industry groups

Industry Group	Description and example
Industries that work across multiple jurisdictions	Mining, petroleum, pipeline and MHF operations with operations in WA and in other jurisdictions, such as: <ul style="list-style-type: none"> • Off shore oil and gas – where one operation may span Commonwealth and WA land • Mining companies with operations in multiple states • Contractors operating in multiple states/jurisdictions (e.g. mobile drill rig) • Contractors working for companies with operations in multiple states • Pipelines that span state boundaries
Industries that work in only one jurisdiction	Mining, petroleum, pipeline and MHF operations with operations only in WA, such as: <ul style="list-style-type: none"> • smaller operations • location specific operations

Note: WA does not currently have any pipelines that cross state boundaries. However, this could change in the future if onshore gas projects were to commence (e.g. tight gas)

As discussed in detail in section 5.6, it appears that slightly different compliance costs may be relevant for each of these industry groups. The costs of operating under the proposed WHS (Resources) Bill may be marginally lower for industries that work across multiple jurisdictions and the proposed WHS (Resources) Bill may deliver slightly higher benefits (through cost savings) to this industry group.

Where possible, Marsden Jacob will consider costs and benefits quantitatively. However, we note that it may not be possible to quantify costs and benefits in the advance of the detailed provisions that are included in the regulations.

5.4 Preliminary assessment of costs and benefits

To assist stakeholders to respond to the consultation, Marsden Jacob has developed a preliminary assessment of the costs and benefits to industries operating under the proposed WHS (Resources) legislation. While the final part of the consultation process, the Decision RIS, will consider each of the key changes, the preliminary assessment undertaken in this Consultation RIS only considers the likely types of costs and benefits that may arise from the proposed WHS (Resources) Bill as a whole.

This section collates data from previous studies and publications to propose a possible outcome for the proposed WHS (Resources) Bill as a whole. As the previous studies and publications are not specific to Western Australia or resource industries, the analysis and costs included should be seen as indicative and are included to prompt discussion.

When commenting on the proposed reform, stakeholders are encouraged, at this time, to provide comments that address the RIS criteria (both for the whole reform and the key changes), such as whether the proposed costs and benefits are likely to arise.

The following sections provide more information on possible areas where costs may change under the proposed legislation. Please consider how they may impact on your business, your systems or any aspects associated with your employment and safety.

5.4.1 Changed compliance costs

When legislation or regulations are changed, compliance costs may increase or may decrease. These changes may occur in "set-up" costs or in "ongoing" costs associated with the changes.

The nature and timing of these two cost categories differ, with set-up costs generally being incurred during the implementation and transition to the new legislation, while ongoing costs relate to day-to-day or annual activities undertaken in the usual course of business.

Set-up costs

For the proposed WHS (Resources) Bill, establishment costs will relate to implementation of the legislation, such as new processes and updating systems that will be required when the legislation is implemented. These costs traditionally fall to both government and industry in the transition and implementation of the legislation.

Establishment costs could include updating training modules, amending work processes and providing updated training to senior management and staff in key safety roles.

As noted under section 5.3, the 'base case' for the cost benefit analysis is the consolidation of the various resources safety Acts into one piece of legislation, without modernising the Act to align with the model WHS Act. It is clear that the 'base case' would involve set-up costs, as industries and government would need to adapt their processes and procedures to align to the consolidated legislation.

The move to the proposed modernised WHS (Resources) Bill will increase set-up costs, but not substantially. The National RIS on the model WHS Act estimated that it would cost around \$25 per person (median estimate) to train workers for the new regime.

Your comments are fundamental to understanding the actual costs of these changes for West Australian mining, petroleum and MHF businesses.

Marsden Jacob also considers that the cost of making the key changes may be smaller for companies that operate across multiple jurisdictions. It appears likely that for some companies operating across multiple jurisdictions, the costs of changing to the proposed WHS (Resources) Bill may be lower, as it is likely to align with processes and systems used in other states.¹⁸

Ongoing costs

Ongoing costs will appear as the annual cost of compliance after the first year and are expected to continue at a similar rate into the future.

DMP has proposed that the WHS (Resources) Bill and the supporting regulations will closely reflect the levels of safety achieved by the current legislation¹⁹. DMP has confirmed that in parts of the proposed WHS (Resources) Bill, they are simply consolidating current legislation to achieve the same safety outcomes.

However, in other cases, the prescriptive requirements in the current Acts are not repeated in the proposed WHS (Resources) Bill – instead this prescription will be moved to the regulations or guidance material. In these cases, DMP has stated that their objective in preparing the regulations and guidance material will be

¹⁸ The 2012 RIS for WHS regulations undertaken by Marsden Jacob concluded that costs of adapting to the model regulations would be low for large business that operate across multiple jurisdictions. www.commerce.wa.gov.au/sites/default/files/atoms/files/final_report-ris.pdf

¹⁹ Under each of the proposed changes the ongoing costs will be dependent on the substantive requirements of the change – and so will be specified by the regulations.

to allow either cost savings without reduction in levels of safety or improvements in safety without increased compliance costs.

DMP has outlined that as the intent of the proposed WHS (Resources) Bill is to broadly reflect the current safety obligations, the ongoing costs of the proposed WHS (Resources) Bill will be similar to both the current costs and the costs under the base case. DMP has noted that there are specific requirements that may increase costs²⁰ for some stakeholders. These include:

- mining companies - proposed requirements for mines to maintain a Safety Management System as a “live” document may result in higher administrative costs; and
- petroleum exploration – expansion of safety cases for mobile drill rigs may impose additional costs.

The new legislation should result in improved consistency between the various industry sectors, as well as with other jurisdictions and this should reduce costs.²¹ This benefit would accrue in particular to *industry that works across multiple jurisdictions* as well as contractors and workers across all industry sectors. This is because training requirements and responsibilities would be the same (or similar) across sites and jurisdictions.

The proposed WHS (Resources) Bill may enable contractors working for businesses with operations in multiple states to move between sites more efficiently than is currently the case.

Consistent move to outcomes-based legislation

One of Western Australia’s objectives in preparing the proposed WHS (Resources) Bill is to develop or extend outcomes-based legislation.

This approach provides a legislative and regulatory environment that supports industry to identify innovative and efficient methods to achieve safety outcomes. Over time, this freedom to innovate should allow cost reductions and avoid the need to redraft provisions in the legislation as they become dated. As noted in the Australian Government Guide to Regulation:²²

Principles-based regulation allows maximum flexibility among affected groups as to how they achieve compliance

5.4.2 Health and safety impacts

DMP intends to reflect the substantive requirements of the current safety legislation under the proposed WHS (Resources) Bill and supporting regulations. For this reason it appears unlikely that there will be a substantial change in safety outcomes under the proposed WHS (Resources) Bill. However, through previous consultations on modernisation, five changes that have the potential to increase levels in safety appear possible under the proposed WHS (Resources) Bill. These are described in Table 8.

²⁰ The scale of any increase is currently unknown and is a key outcome of the consultation process.

²¹ The 2011 National RIS on the WHS regulations stated that “The harmonisation of work health and safety legislation is intended to contribute to creating a seamless national economy through reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions Page 18.

²² Department of the Prime Minister and Cabinet, *Australian Government Guide to Regulation*, 2014 <https://cuttingredtape.gov.au/handbook/australian-government-guide-regulation>

Table 8: Potential sources for increased levels of safety

Change	Description
Clearer roles and responsibilities	The proposed WHS (Resources) Bill has clear and consistent roles and responsibilities specified through the duty of care provisions (see changes 4, 5 and 6 in section 4). These provisions could increase the level of care given to workers who are not direct employees.
Less time required allow staff to focus on other work	A potential benefit of the proposed WHS (Resources) Bill is that it could result in reduced administrative costs. If this reduction occurs it will allow staff to focus on other work. In a small company the staff undertaking safety reporting may be the manager – for whom “other work” may be business development or other tasks in the business. However, in a larger company with dedicated safety staff, this may allow these staff time to focus on other safety work – that could result in increased levels of safety.
Staff have a renewed focus on safety	As the introduction of the proposed WHS (Resources) Bill will require some level of updated training for senior staff and people in safety roles, it is possible that this will focus organisations on their safety responsibilities and will drive improvements in safety.
Focus on identifying and addressing hazards	The risk-based approach to safety proposed in the proposed WHS (Resources) Bill focuses staff on identifying and addressing hazards – potentially resulting in improved levels of safety.
Tailoring safety to each site	The proposed WHS (Resources) Bill could result in a safety benefit through tailoring safety to each site’s specific needs

Source: Marsden Jacob analysis

5.4.3 Government costs and benefits

The WA Government will incur some setup costs to implement the proposed WHS (Resources) Bill, but these may not be a substantial increase over the base case.²³ This is because adoption of Option 1 (consolidation into a single act) from the previous consultation is assumed in both the base case and under the proposed WHS (Resources) Bill. The key difference would be that some additional drafting to align definitions, roles and responsibilities is needed under the proposed WHS (Resources) Bill, whereas in the base case the current definitions and provisions would largely remain unchanged (albeit existing in a single Act rather than multiple Acts).

It is noted that under the proposed WHS (Resources) Bill a number of additional information sessions, training and education related activities may increase as part of the transition. However, DMP advises that these activities would be performed within existing budget provisions.

It is also acknowledged that some additional work associated with streamlining site visits and regulatory functions related to DMP’s new role in regulating worker health and safety at MHFs would be required in the transition period.

In the longer term, it appears that ongoing costs under the proposed WHS (Resources) Bill are unlikely to be higher than under the base case.

²³ The National RIS on the WHS Act commented “costs to government are not likely to be significant” Page 64

5.4.4 Costs and benefits for employees and broader society

Both employees and the broader community appear unlikely to incur set-up or ongoing costs under the proposed WHS (Resources) Bill. Employees appear likely to benefit from increased mobility to move between industries and between jurisdictions due to the increased level of consistency.

In addition, both employees and the broader community would benefit if there were increased levels of safety.

5.4.5 Preliminary conclusions

Based on Marsden Jacob’s preliminary review and previous analysis, it appears that the proposed WHS (Resources) Bill will result in a range of costs and benefits as summarised in Table 9. However, any cost estimates are not specific to Western Australian resource industries.

Table 9: Structure for assessment of costs and benefits

Stakeholder group	Set-up costs	Ongoing compliance costs	Health and safety impacts
Industry working across multiple jurisdictions	Low set-up costs (~\$25 per worker)	Possible reduction	Potential safety benefits
Industry working in one jurisdiction	Some set-up costs (~\$25 per worker)	Steady	Potential safety benefits
WA State Government	Some set-up costs	Steady	
Employees	None	Increased mobility (through decreased training costs)	Potential safety benefits
Broader WA Community	None	None	Potential safety benefits

Source: Marsden Jacob preliminary analysis

In the preliminary assessment, Marsden Jacob has not considered each of the key changes separately, but welcomes stakeholder input on any or all of these changes. Sufficient stakeholder input will allow assessment of each of the key changes in the Decision RIS.

5.5 Other likely impacts of the proposed WHS (Resources) Bill

As the current cost of workplace incidents can be quantified, impacts on safety will be considered within the cost benefit analysis, rather than being considered separately.

Beyond possible impacts on worker safety, and changes to compliance costs, Marsden Jacob has not identified any other likely impacts²⁴ of the proposed WHS (Resources) Bill. We encourage any stakeholders who may have additional information to detail this in their responses.

5.6 Distribution of costs and benefits

As noted in section 5.3, industry that works across multiple jurisdictions may have slightly lower costs than industry working in one jurisdiction²⁵. The difference arises through a potential for lower set-up

²⁴ The RIS guidance suggests environmental, social justice and equity as other potential impacts.

²⁵ Through both lower set up costs and a possible reduction in ongoing costs.

costs as well as a possible reduction in ongoing costs. These cost differences appear small and are currently unquantified.

To avoid inequitable distribution of costs and benefits, DMP has committed to work with quarries and small mining operations to develop guidance and assist them in implementing the reformed legislation.

This commitment appears to remove a potential inequitable distribution of costs and benefits. However, comments are welcome from stakeholders regarding other potential requirements for guidance, as well as mitigation measures.

Consultation questions: Preliminary assessment of costs and benefits

3. *In general, do you support the proposed WHS (Resources) Bill? (yes or no and reasons or concerns)*

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4. *Thinking about the whole package of changes, will they lead to any changes in health and safety at your workplace?*

Overall, the changes will lead to an improvement in health and safety	
Overall, there will be negligible or no change in health and safety	
Overall, there will be a reduction in health and safety	
If so, how much and in what way	

5. *Thinking about the whole package, will the changes provide other benefits, such as more efficient work or easier worker transferability?*

Yes	
No	
If so, how much and in what way(s)	

6. *Do you believe there will be additional compliance or other costs for you / your business because of additional or new requirements in the whole package of changes?*

Yes	
No	
If so, how much and in what way(s)	

7. Will the additional or new requirements in all the changes have any market or competition impacts on your business?

Yes	
No	
If so, how much and in what way(s)	

8. Do you have concerns with particular provisions that are not included in the 21 key changes identified by DMP?

Change - please refer to the section number and title of the provision in the indicative version of the Bill	Concern

9. Are there particular changes (either from those listed in section 4 or other changes you have identified), you feel strongly about – either support or oppose?

- ***Please explain the reason and describe the change in costs and/or other changes that are likely to arise?***

Strongly support	
Change	Reason
1	
2	
3	
4	

*Please add additional lines as required

Strongly oppose	
Change	Reason
1	
2	
3	
4	

*Please add additional lines as required

5.7 Timing for commencement and transitional provisions

In addition to considering the final content of the proposed WHS (Resources) Bill, it is necessary to consider the process and timing of changes from the current legislation to the proposed WHS (Resources) Bill.

Timing for the passage of the proposed WHS (Resources) Bill and regulations

To ease transition problems, the commencement date for the proposed WHS (Resources) Act will be specified when the Act is proclaimed and different days may be fixed for different provisions.

DMP currently plan for the proposed WHS (Resources) Bill to pass through Parliament in early 2016, at the same time as consultation on the draft regulations. The regulations will be gazetted in late 2016.

Commencement date

If the proposed WHS (Resources) Bill passes through Parliament and becomes an Act in 2016, then DMP currently propose a commencement date of 1 January 2017.

Transitional arrangements

When laws and regulations are changed, transitional provisions are developed. These cover the timing and arrangements for the phased introduction of the new laws. The transitional arrangements can be designed to minimise the impact and changeover costs for both Government and businesses.

DMP will develop transitional provisions through stakeholder consultation, via the Ministerial Advisory Panel on Safety Legislation Reform, working in conjunction with WorkSafe WA and NOPSEMA.

In summary, DMP propose that where there is no change in role or compliance requirements, the relevant provisions will be implemented when the Act commences. Where there is a change in role or compliance requirements, then the relevant provisions will be implemented using a longer transition period that will be decided in consultation with stakeholders.

Consultation questions: Timing for commencement and transition provisions

When laws and regulations are changed, the arrangements and timings for introducing and enforcing the new laws are often referred to as transitional provisions. The transitional provisions used can have a significant impact on the changeover costs for both Government and businesses.

As set out in the Consultation RIS, the transitional provisions will be developed in consultation with the Ministerial Advisory Panel as well as NOPSEMA and WorkSafe WA. However, stakeholder input is welcome on whether particular changes should be implemented quickly or slowly.

10. Can you identify three changes where a delayed or gradual transition would provide the greatest benefit?

1st change	
2nd change	
3rd change	

11. What do you think would be the most effective way to reduce these implementation costs for these changes or provide the greatest benefit?

	1st Change	2nd Change	3rd Change
Rapid implementation (e.g. on commencement)			
Delay implementation 1 year			
Delay implementation 2 years			
Delay implementation by more than 2 years			
'Staggered start' (such as short-term exemptions for some industries or smaller businesses)			
Recognition and accreditation of prior experience and learnings			
Preparation of additional guidance or codes of practice prior to implementation			
Other (please specify)			

6. Consultation responses and next steps

6.1 Your input is requested

Marsden Jacob is seeking stakeholder views and responses on the advantages and disadvantages of the proposed WHS (Resources) Bill.

Marsden Jacob and DMP have detailed the key changes in section 4. However, it is possible that stakeholders may identify other potential concerns, benefits or costs.

Stakeholders are invited to:

- answer "guide questions" which are provided in the Consultation RIS; and
- provide general comments on the proposed WHS (Resources) Bill and the content of the Consultation RIS.

If stakeholders choose not to follow the suggested questions, then they should focus their comments on comparing the advantages and disadvantages (e.g. estimates of likely costs) of modernising versus not modernising the consolidated legislation.

Stakeholder forum

To provide comments in person and ask questions of the consultants, a stakeholder forum will be held on **Thursday, 23 July 2015**. The forum will be held in Perth CBD from 8.45am till 12 noon.

To register your interest, please email your name, organisation, and contact details to whs@marsdenjacob.com.au.

Note: If there is excessive demand, a second forum will be held in the following week.

Cover sheet and consultation questions

Stakeholders are requested to attach a completed copy of the cover sheet to their submission. A copy of the cover sheet and consultation questions are available in Microsoft Word format here:

- [Cover sheet and consultation questions](#)

Please provide written feedback on the proposed options by **Friday, 14 August 2015**.

Submission Address:

Marsden Jacob Associates
Level 1, 220 St Georges Terrace
Perth 6000 WA

By email to: whs@marsdenjacob.com.au

Conditions of submission and confirmation of receipt

When your submission is received by Marsden Jacob Associates, you will be sent a confirmation receipt.

All submissions will be made available to the public on Marsden Jacob and DMP's websites. If you do not wish your submission to be made public, please clearly mark it "IN CONFIDENCE". Your receipt will note your preference.

All comments received by 5.00pm WST, Friday 14 August 2015, will be considered.

6.2 Consideration of responses

Marsden Jacob will assess the consultation responses against the RIS criteria and provide independent advice to DMP. We encourage submissions to address the consultation questions directly where possible. These questions are designed to assist in the estimation of likely benefits and costs resulting from the proposed changes to stakeholders.

6.3 Next steps

Marsden Jacob Associates will compile and analyse all responses that are received and prepare a comprehensive report for the Minister for Mines and Petroleum.

Following the analysis of submissions, a Decision RIS will be prepared setting out the recommended approach. The Decision RIS will be published on DMP's website and is expected to be completed by November 2015.

6.4 Enquiries

All enquiries about this consultation process should be addressed to:

Alex Marsden Principal Marsden Jacob Associates (08) 9324 1785 amarsden@marsdenjacob.com.au

7. Glossary

Disclaimer: This glossary has been compiled to support this report and with the purpose of facilitating stakeholders understanding of the document content. The terms defined in this glossary provide a simplified version of actual definitions. Stakeholders should defer to legislated definitions and information provided by the relevant Government departments when making decisions or for further clarification.

Term	Definition
CRAC	Critical Risk Advisory Committee. A new committee to be formed under the new WHSR Act to represent petroleum, pipelines and MHFs – See Key Change number 18.
Consultation RIS	Consultation Regulation Impact Statement. Refers to the document released for consultation under a Regulatory Impact Assessment. This document outlines the policy issue to be addressed and explains the objectives in resolving the issue, proposes alternative options to address the issue and sets out the agency's general early understanding of the impacts of the options.
DGO	Dangerous Goods Officer. A person appointed under s.27 of the <i>Dangerous Goods Safety Act 2004</i> .
DGSA	<i>Dangerous Goods Safety Act 2004</i> .
DMP	Department of Mines and Petroleum, Western Australia.
Decision RIS	Decision Regulation Impact Statement. Refers to the document prepared for the decision maker, containing a complete examination of the issue following consultation, assessing the costs and benefits of the options considered to address the issue, and recommending the option that yields the greatest net benefit to the community as a whole.
LTI	Lost Time Injuries. Work injury that results in an absence from work for at least one full day or shift any time after the day or shift on which the injury occurred
MHF	Major Hazard Facility. Defined in the <i>Dangerous Goods Safety Act 2004</i> based on quantities of hazardous chemicals set out in Regulations or otherwise declared by the Chief Officer.
MIAC	Mining Industry Advisory Committee. A statutory committee currently under s.14A of the <i>Occupational Safety and Health Act 1984</i> .
Miners Right	Miners Right is granted under s.20 of the <i>Mining Act 1978</i> . A Miner's Right allows the holder to prospect on Crown land and take and keep samples and specimens of any ore or material up to 20 kilograms. However, a Miner's Right does not authorise the holder to carry out mining operations. For full definition refer to see www.dmp.wa.gov.au/10871.aspx
Model WHS Act	Model Work Health and Safety Act.
MSIA	<i>Mines Safety and Inspection Act 1994</i> .
NMSF	National Mine Safety Framework.

Term	Definition
	The National Mine Safety Framework was first endorsed in March 2002 and included 'nationally consistent legislation' as the first of seven strategies focussed on key areas where consistency across jurisdictions would be most beneficial. ²⁶ The framework focused only on the mining sector and this first strategy was subsequently subsumed into the Council of Australian Governments' Work Health and Safety (WHS) Harmonisation following a national commitment in July 2008 which sought to cover all occupational health and safety legislation regardless of sector.
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority. A Commonwealth Statutory Agency regulating health & safety, structural integrity & environmental management of all offshore petroleum facilities in Commonwealth waters, and in coastal waters where state powers have been conferred.
OPGSA	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (Commonwealth), regulated by NOPSEMA.
OSH Act	<i>Occupational Safety and Health Act 1984</i> , regulated by WorkSafe WA.
PAGERA	<i>Petroleum and Geothermal Energy Resources Act 1967</i> .
PCBU	Person Conducting a Business or Undertaking. New defined term in the proposed WHS (Resources) Bill A broad term defined under the model WHS Act to cover businesses, employers and volunteer groups. www.safeworkaustralia.gov.au
Petroleum	For the purposes of this document unless otherwise specified, petroleum includes geothermal energy operations and greenhouse gas storage operations.
PMP	Project Management Plan. Used in mining, PMP requires management of identified risks at the time of commencement of mining operations. There is no requirement to update this document as the mining operations expand or change. The PMP is not an enforceable document.
PPA	<i>Petroleum Pipelines Act 1969</i> .
PSLA	<i>Petroleum (Submerged Lands) Act 1982</i> .
RGU	Regulatory Gatekeeping Unit. Established to advise on, administer and support the Regulatory Impact Assessment process in Western Australia. Currently resides within the WA Department of Finance.
RIA	Regulatory Impact Assessment. The process applied to regulatory proposals introducing regulatory instruments including primary legislation approved by the Cabinet and enacted through the Parliament (and other regulatory policy proposals approved by the Cabinet), subordinate legislation enacted through the Governor in Executive Council, remaining forms of subordinate legislation and quasi legislation. The Regulatory Impact Assessment Guidelines for Western Australia is available on the Department of Finance's website at: http://www.finance.wa.gov.au/cms/content.aspx?id=16898 .

²⁶ <http://industry.gov.au/resource/Mining/NationalMineSafetyFramework/Pages/default.aspx>

Term	Definition
ROC	<p>Remote Operations Centre.</p> <p>A building or place located remotely from the resources operation, to manage, monitor and control the day-to-day operation of resources sites, including people and equipment (vehicles, plant, trains, ports).</p>
Safety Case	<p>The safety case is a detailed document comprising of a facility description, a Safety Management System and a formal safety assessment (risk assessment). It outlines the types of safety studies undertaken, the results of those studies and the safety management arrangements to address the findings of those studies. It should emphasise consultation, employee participation and a goal-setting approach to safety, rather than prescriptive rules.</p> <p>In effect, the operator is advising the safety regulator about the nature of the operation and demonstrating that all hazards with the potential to cause a major accident have been identified and assessed, and measures have been taken to ensure that the risks to people are eliminated or minimised to a level that is as low as reasonably practicable.</p> <p>The safety case must be accepted by the Minister (or the Minister's delegate) before operations may commence.</p>
Safety Report	<p>Similar to a Safety Case, but focused on process safety. The safety report is the primary document submitted by the operator of a facility classified as an MHF to demonstrate that systems at the facility are appropriate to eliminate or reduce as low as reasonably practicable the risk of a major incident.</p> <p>Safety reports currently apply to MHF. Requirements are outlined in regulations under the <i>Dangerous Goods Safety Act 2004</i>.</p>
SMS	<p>Safety Management System.</p> <p>A comprehensive and integrated process for managing health and safety risks. This will include policies, operating procedures, risk management, emergency planning, change management, worker training, consultation, contractor selection, performance monitoring, auditing, incident investigation and continuous improvement.</p>
SSE	<p>Site Senior Executive.</p> <p>New defined term in the proposed WHS (Resources) Bill</p>
RIS	Regulatory Impact Statement.
WHS (Resources) Act or WHSR Act	<p>Work Health and Safety (Resources) Act.</p> <p>The proposed Act being considered through this RIS process.</p>

Appendix 1: Common questions

What will happen to safety levies and fees under the new legislation?

Cost recovery for safety regulatory services is currently applied using different methodologies, under separate Acts and sets of regulations.

The levy and fee provisions will be consolidated under the proposed Work Health and Safety (Resources) Bill and regulations.

Later, the Department will undertake a wider review of cost recovery legislation, with a separate consultation process.

Will Safety Cases be introduced for Mines?

No. DMP has confirmed that safety cases will not be introduced for mines as part of these reforms. Under the proposed WHS (Resources) Bill, mines are required to prepare a Safety Management System (SMS).

Will petroleum and major hazard facilities be adopting the mining-style SMS, instead of the current safety case approach?

No. A safety case approach will be used in petroleum and MHF industries, similar to the current arrangements. There will be no diminution of safety.

Will a petroleum safety case be the same as an MHF safety case?

It is proposed that the structure of a Safety Case for an MHF and a petroleum operation will be the same, though some specific details may differ.

The basic parameters of the risk assessment and the SMS are intended to be the same across mines, MHF and petroleum.

The scope of a petroleum safety case will be expanded to cover public risk, but it is intended that DMP's proposed WHS (Resources) Bill will maintain alignment with the OPGGSA.

What will happen to the OSH requirements for Major Hazard Facilities?

Currently, occupational safety and health at MHFs is regulated by WorkSafe WA under the *Occupational Safety and Health Act 1984* and process safety is regulated by DMP under the *Dangerous Goods Safety Act 2004*, using a Safety Report (similar to a safety case).

Under the new WHS (Resources) legislation, DMP will be the sole regulator, using a safety case approach to cover both process safety and worker health and safety.

What's wrong with the current legislation and why use a risk-based approach?

The resources industry increasingly uses a risk-based approach to safety and continues to introduce new technology, so the legislation needs to be less prescriptive and more adaptable to change.

The proposed Work Health and Safety (Resources) Bill is based on model Work Health and Safety legislation used nationally. The new legislation should result in improved consistency between the various industry sectors, as well as with the Commonwealth, but still includes industry-specific provisions in the regulations. This consistency brings potential benefits in terms of worker training and transferability.

DMP also considers that, while many elements of the current legislation are outcomes-based, there are some parts that are outdated prescriptive, and unnecessarily complex.

What differences are there between the proposed WHS (Resources) Bill and the model WHS Act?

The proposed WHS (Resources) Bill is based on the national model WHS Act, with some modifications to suit the Western Australian working environment. Differences include:

- the addition of provisions that are specific to mining, petroleum, pipelines, geothermal energy, greenhouse gas storage and MHFs; and
- some provisions of the model WHS Act that have not been adopted by Western Australia.

How does the new legislation affect Remote Operations Centres (ROCs)? For example, a mining company has a ROC office in Perth, which controls the autonomous trucks on mine sites in the Pilbara.

The PCBU at the ROC office in Perth will have a duty of care to protect the safety and health of mining workers located at the Pilbara mine site (e.g. to ensure that the autonomous trucks controlled from the Perth ROC do not harm a worker at the Pilbara mine site).

However, their safety and health for the office employees working at the ROC office in Perth is regulated by WorkSafe WA.

Why haven't the costs and benefits of implementing these changes been quantified in more detail?

The WHS (Resources) Act is aimed at modernising and consolidating the safety legislation covering mining, petroleum and major hazard facilities (MHFs) in Western Australia.

As different costs and benefits will arise for each business or stakeholder, it is not possible to predict the costs and benefits that will arise for each of the key changes or the reform as a whole in advance of the consultation.

The Government therefore requires detailed input from stakeholders on the impacts and benefits of the proposed reforms.

Appendix 2: Proposed structure of WHS (Resources) Act and regulations

NOTE: This proposed structure document has been prepared for public comment purposes only and should be considered indicative. It does not necessarily represent the Government's settled position.

The content and structure of this document is subject to changes resulting from:

- **the public consultation process;**
- **the Parliamentary drafting process; and**
- **any amendments to the national model WHS Act.**

The proposed Work Health and Safety (Resources) Bill 2015 is based on the national model Work Health and Safety Act, which has already undergone extensive public consultation. Provisions not adopted by Western Australia include workplace entry by WHS entry permit holders and enforceable undertakings.

It also draws on the current legislation for regulating safety in the Petroleum sector. Some of the definitions from the Offshore Petroleum and Greenhouse Gas Storage Act 2006 have been simplified, but the same outcomes are intended.

Work Health and Safety (Resources) Act: *High-level, common provisions, with some sector-specific chapters*

Introduction

Objects of the Act

Interpretation (definitions) – some common, some sector-specific

Application of the Act

Health and safety duties – some common provisions, some sector-specific.

Incident notification

Authorisations

Consultation, representation and participation.

Discriminatory, coercive and misleading conduct

Functions and powers of the regulator

Securing compliance – appointments and powers of inspectors

Enforcement measures

Review of decisions

Legal proceedings

General – some common provisions, some sector-specific

Resources Safety Advisory Committees (Mining Industry Advisory Committee; Petroleum and Major Hazard Facilities Advisory Committee)

Regulation making powers

NOTE: The below structure is based on the national model Work Health and Safety Regulations and is indicative only. The content of the regulations will be subject to change during development and as a result of the stakeholder consultation process. Some detailed requirements may be moved to guidance material.

Work Health and Safety (Resources) Regulations:
Detailed generic and sector-specific provisions

GENERIC PROVISIONS (Chapters 1 – 8, 11)

Chapter 1 - Preliminary

Definitions and other introductory matters, application of the Act and the Regulations

Chapter 2 – Representation and participation

Work groups, health and safety representatives, procedure for resolution of health and safety issues – covered by Act.

Workplace entry (not adopted by WA)

Chapter 3

Managing risks to health and safety: Identify hazards; hierarchy of control measures; review of control measures

General workplace management

Chapter 4

Noise: Meaning of exposure, managing hearing loss.

Hazardous manual tasks: Manage risk of a musculoskeletal disorder associated with a hazardous manual task.

Confined Spaces

High risk work *(to be licensed by WorkSafe)*.

Demolition work *(to align with WorkSafe)*.

Electrical safety and energised electrical work

Chapter 5

Plant and Structures: Guarding, operator controls, emergency stops and warning devices; additional control measures for specific types of plant; registration *(with WorkSafe)* of plant and structures.

Chapter 6

Construction Work

Chapter 7

Hazardous Chemicals

Lead: control risk of lead contamination

Chapter 8

Asbestos: Management and removal. (Naturally-occurring asbestos will be covered in mining chapter)

Chapter 11

General: Review of regulator's decisions, exemptions, prescribed serious illnesses

NOTE: The below structure is based on the national model Work Health and Safety Regulations and is indicative only. The content of the regulations will be subject to change during development and as a result of the stakeholder consultation process. Some detailed requirements may be moved to guidance material.

Chapter 9: PETROLEUM & MAJOR HAZARD FACILITIES

- **Safety Case**
 - Safety case requirements
 - Formal Safety Assessment (hazard identification and risk control measures)
 - Emergency Response Plans
 - Safety Management Systems
 - Review of safety case
 - Consultation with workers
- **Diving project and Diving Safety Management System (DSMS)**
- **Definitions**
- **Incident reporting**
- **Petroleum Operator Registration**
- **List of offshore structures and vessels not classed as petroleum facilities**
- **Determination and declaration of MHF**
- **Licensing of MHF and conditions**
- **Specific duties of operators (not general duty of care)**
- **Specific duties of workers**
- **Additional duties to provide information to visitors and the local community.**

NOTES:

- *Some of the generic provisions may be dis-applied, where covered by the Safety Case.*
- *Includes geothermal energy, greenhouse gas storage and diving.*

Chapter 10: MINING

- **Safety Management System (SMS)**
 - Principal Hazard Management Plans (PHMP) - hazard identification and risk control measures
 - Principal Control Plans (PCP) – specific controls
- **Definitions (mining-related)**
- **Incident reporting**
- **Management of mines and appointments (statutory positions)**
- **Commencement of mining operations (outline of SMS)**
- **Mine survey plans**
- **Geotechnical considerations**
- **Winders, shaft sinking, underground mining, mining-specific radiation safety**
- **Mine records**
- **Naturally-occurring asbestos**
- **Board of Examiners**