

FINAL REPORT

OCTOBER 2015

Decision Regulatory Impact Statement—Work Health and Safety (Resources) Bill

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

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Executive summary and recommendations

The Department of Mines and Petroleum (**DMP**) Resources Safety Division is responsible for regulating safety and health in Western Australia's resources industries, including the mining, petroleum and dangerous goods sectors.

The Western Australian (**WA**) Government has committed to modernising resources industry safety legislation. 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**) legislation.

DMP engaged Marsden Jacob Associates (**Marsden Jacob**) to prepare a Consultation Regulatory Impact Statement (**C-RIS**) on the proposed WHS (Resources) Bill and to undertake an independent consultation with all relevant stakeholders. This Decision Regulatory Impact Assessment (**D-RIS**) follows on from the consultation and completes the consultation obligations required by the WA Department of Finance before the introduction of legislative change.

Consultation process

Marsden Jacob (with input from DMP) prepared a C-RIS, which sought stakeholders' comments on the proposed reform objective, the impacts of the reforms and transitional matters. DMP provided details of the 21 key changes arising from the proposed reform and the likely structure of the supporting regulations.

To assist stakeholders to comment on the proposed WHS (Resources) Bill, DMP also provided a mock-up of the proposed Bill (**Mock Bill**) and the proposed structure of supporting regulations.

The C-RIS and Mock Bill were published on 6 July 2015 and made available via the Marsden Jacob website. Key affected stakeholders were contacted throughout the consultation period, including by Safety Alert emails targeting more than 3,500 subscribers, to ensure widespread knowledge of the review and opportunities to provide input.

A stakeholder forum was held in Perth on 23 July 2015 and was attended by approximately 55 representatives from a range of industries, peak bodies, service providers and consultants.

The consultation was conducted over a period of six weeks until 14 August 2015. A total of 24 submissions were received, of which four were confidential. Non-confidential submissions were made available on the Marsden Jacob website.

Statement of issue

Currently, the legislation covering occupational health and safety and process safety in mining, petroleum and major hazard facilities (MHFs) is spread across multiple Acts and regulations. Furthermore, sections of the legislation have become outdated and no longer align with leading risk-based approaches to safety. DMP determined that legislative changes should address these issues and improve industry stakeholders' understanding of their obligations and responsibilities.

The health and safety of resource workers is an important industrial issue for WA. Injuries and fatalities impose significant costs on industry, the government and the broader community.

In WA, workers compensation payments for the mining and petroleum industries have an average value of \$57 million per year. Previous research indicates that the total cost of injury and illness to the WA economy is estimated to be around 10 times that value (\$570 million per year).

Up-to-date, relevant and outcome-focused legislation is needed to ensure that health and safety objectives are met and that the targeted outcomes are consistently and equitably provided for across the resources sector.

Objective of proposed change

Stakeholders broadly supported the consolidated and modernised legislation reform objective proposed in the C-RIS.

Marsden Jacob has sought to update the objective to include comments that clarify the intention without altering the meaning. Based on stakeholders' comments, Marsden Jacob recommends a slight modification of the reform objective (see Recommendation 1).

Proposed WHS (Resources) Bill

The WHS (Resources) Bill is the proposed approach to address identified issues and meet the reform objective. The Bill will consolidate the legislated safety obligations contained in 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*
- *Occupational Safety and Health Act 1984* (regulated by WorkSafe WA within the Department of Commerce).

DMP is also responsible for managing the cost-recovery provisions relating to safety contained in the *Petroleum and Geothermal Energy Safety Levies Act 2011*.

The WHS (Resources) Bill will lead to legislation that is outcome-based and combines the best features of the model WHS Act, as well as the National Mine Safety Framework. It will improve consistency between the industry sectors, as well as with the Commonwealth, but still include industry-specific provisions in the regulations.

In preparation for the RIS process, DMP identified substantive changes from current legislation in the proposed Bill, as well as the key differences between the Bill and the model WHS Act and other key areas of interest.

Twenty-one key areas of change were identified. Together, they encapsulate the proposed change. They are discussed in detail in Section 5.6 and Appendix 4.

Assessment against RIS criteria

This D-RIS requires an assessment of whether the legislative and/or regulatory change will meet its objective; whether it will be a net benefit to the economy; and whether it will have an impact on the environment, social justice, health, equity and other relevant areas.

Ability to meet objective

There was general support for the implementation of the proposed WHS (Resources) Bill. All respondents indicated that the proposed reform would either maintain or increase safety levels, and most indicated that it would deliver other benefits. Some respondents suggested minor edits to the objective, and those edits have been incorporated.

Whether the reform will be a net benefit to the economy

Most respondents considered that the proposed reform would deliver health and safety benefits and would also increase compliance costs. Analysis by KPMG in 2014 indicated that the implementation of WHS legislation in other jurisdictions has had a neutral or beneficial impact on the vast majority of businesses and government departments surveyed. While a number of respondents indicated that their costs would increase slightly, they confirmed that the benefits would outweigh the additional costs.

The conclusion that the reform would result in a net benefit was supported by some respondents to the C-RIS, although many were neutral as to benefits versus costs. No respondent indicated that the reform would result in a net cost.

In the 2014 KPMG study, some respondents had found that improvements to industry WHS processes and equipment delivered a significant reduction in incidents, which reduced their costs (such as workers compensation).

DMP notes that, because resources industry safety legislation was overdue for review, some WA Government costs may be incurred regardless of whether the legislation is consolidated under one Act.

Other impacts

Respondents' positive comments indicate that it is likely that the proposed reform will have a neutral or positive impact on the environment, but this is unquantified. It appears unlikely that the proposed reform will have an impact on social justice, equity and other relevant areas.

Distribution of impacts

It appears unlikely that the proposed reform will result in costs or benefits being distributed unfairly.

DMP has committed to providing resources to support small mining operations in the implementation of the reform.

Preferred option

Marsden Jacob considers that the proposed WHS (Resources) Bill would deliver a neutral or beneficial outcome for industry and a net benefit for the broader community compared with either making no change or consolidating the current legislation without modernisation.

Marsden Jacob acknowledges that a detailed consideration of costs and benefits is not possible without knowledge of the regulations. However, this risk can be managed. DMP has committed to extensive consultation through the Ministerial Advisory Panel, stakeholder workshops and a RIS process on the regulations during the development of the regulations.

Recommendations

In the recommendations below, Marsden Jacob has captured a number of the commitments made by DMP during the consultation, as well as constructive suggestions made by stakeholders that would maximise the benefits and minimise the costs of the reform.

Recommendation 1: Objective of the proposed changes

Marsden Jacob recommends that the objective of the proposed consolidation and modernisation of safety legislation be:

To develop a modern, adaptable regulatory framework that supports the delivery of world-class standards of health and safety in an efficient, equitable and consistent manner across mining, petroleum and MHFs. In addition, the regulatory framework must balance:

- *improved health and safety outcomes against regulatory costs*
- *consistency between industries against sector-specific requirements.*

Recommendation 2: Preferred option

Marsden Jacob recommends that the WHS (Resources) Bill be developed and considered by Parliament. The Bill should be progressed in parallel to (but independently of) general industry health and safety legislation reform.

The enactment of the reform legislation will be subject to further consultation during the development of regulations, including a RIS process. Progression of the regulations will be contingent on that RIS identifying a net benefit compared with the status quo.

Recommendation 3: Further consideration on elements of the legislation

The C-RIS sought comment from stakeholders on 21 key changes identified in the proposed WHS (Resources) Bill and also asked them to identify any other areas of concern. Marsden Jacob recommends incorporating a number of changes identified by stakeholders in specific elements of the proposed Bill on the basis that those changes would deliver further benefits:

- Five of the 21 key changes listed in Tables 1 and 22 require further consideration or action by DMP.
- Ten further recommendations relate to other elements of the Bill.

Recommendations relating to the 21 key areas of change

Marsden Jacob makes the recommendations listed in Table 1 in relation to the 21 key areas of change set out in the C-RIS.

Table 1: Recommendations relating to the 21 key areas of change

Change number	Title	Marsden Jacob recommendation
1	Applicable legislation	No change to the WHS (Resources) Bill proposal is required. Where appropriate, DMP should seek to align the WHS requirements for dangerous goods sites with the requirements for resources sites.
2	Application of the WHS (Resources) Act	No change to the WHS (Resources) Bill proposal is required. DMP has indicated that it does not plan to revise the definition of major hazard facilities (MHFs) but will review the MHF guidance material. DMP should communicate a clarification on workers' accommodation to stakeholders and ensure that the Parliamentary Counsel's Office is aware of the objective that right of entry provisions will not apply to accommodation sites. Determination will be resolved by the Parliamentary Counsel's Office.
8	Safety cases and safety management systems (SMSs)	DMP should clarify the naming convention for mining SMSs in the WHS (Resources) Regulations to differentiate them from the SMS component of petroleum/MHF safety cases.
9	Management and supervision / statutory positions	DMP should consider the comments provided by stakeholders on management and supervision / statutory positions in preparing the WHS (Resources) Bill.
11 & 12	Incident notification / Incident investigation	No change to the WHS (Resources) Bill proposal is required. DMP has committed to providing additional guidance on incident notification and reporting, and further detail will be included in the regulations.

Recommendations on other elements raised by stakeholders

Marsden Jacob recommends that DMP consider the recommendations outlined in Table 2. Appendix 5 includes further information about each item.

Table 2: Recommendations for DMP relating to other elements raised by stakeholders

Change letter	Topic	Marsden Jacob's conclusion / recommendation
A	Further consultation	No change to the WHS (Resources) Bill proposal is required. DMP has committed to further detailed consultation on the regulations through the Ministerial Advisory Panel, workshops and a formal RIS consultation process.
B	Alignment with general industry & Green Bill timing	No change to the WHS (Resources) Bill proposal is required. DMP and the Department of Commerce will ensure that alignment between resource industries and general industry is maintained, where appropriate, irrespective of whether the WHS Green Bill is delayed.
C	Reasonably practicable	In drafting the WHS (Resources) Bill, DMP should review the reasoning for the minor amendments to the definition of 'reasonably practicable' and should consider whether

		the benefits of the amendment outweigh the costs of being inconsistent with the definition used in other jurisdictions.
G	Differing approaches among sectors of resources industries	No change to the WHS (Resources) Bill proposal is required. DMP has committed to reviewing the need for separate regulations if the need arises during the preparation of the WHS (Resources) Regulations.
H	Codes of practice	No change to the WHS (Resources) Bill proposal is required. Marsden Jacob notes DMP's commitment to work with industry to ensure that the implementation of the WHS (Resources) Act is suitably supported by codes of practice.
I	Design obligations—Part 2, Division 3, sections 22 to 26A inclusive	No change to the WHS (Resources) Bill proposal is required; however, Marsden Jacob recommends that drafting instructions for the Bill ensure that the provisions cannot be interpreted as being retrospective.
K	Resources facility inspection records	Marsden Jacob recommends that the drafting instructions prepared by DMP for the WHS (Resources) Bill include the proposed change, requiring inspectors to provide a summary of inspection visits.
N	Health and safety representatives	Marsden Jacob recommends that DMP consult with the Ministerial Advisory Panel on whether it is necessary to clarify the wording of s. 84 of the WHS (Resources) Bill to make it clear that a worker has the right to cease work if that work may harm others.

Recommendation 4: Implementation, transitional arrangements and statutory reviews

Marsden Jacob recommends that DMP ensure adequate time for implementation. Implementation timing should be aligned with reforms to general industry health and safety legislation if possible, but only if that does not impose lengthy delays, as the WHS (Resources) Bill will deliver net benefits independently of the benefits from alignment with general industry legislation reforms.

Transitional arrangements should be developed in consultation with stakeholders. Further detail, including a number of comments on specific matters, is in Section 5.5.3.

Marsden Jacob recommends that the legislation be reviewed within two years to correct any identified deficiencies, followed by ongoing five-yearly reviews.

Recommendation 5: Cost-recovery levies and fees

Marsden Jacob recommends that DMP renew its commitment from the previous RIS that modernisation of the legislation will not affect MHF fees.

1. Background

The Department of Mines and Petroleum (DMP) Resources Safety Division is responsible for regulating safety and health in Western Australia's resources industries, including the mining, petroleum and dangerous goods sectors.¹

Legislated safety obligations for these industries are currently contained in six different parliamentary 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*
- *Occupational Safety and Health Act 1984* (regulated by WorkSafe WA within the Department of Commerce).

DMP is also responsible for managing the cost-recovery provisions relating to safety contained in the *Petroleum and Geothermal Energy Safety Levies Act 2011*.

The Western Australian (WA) Government has committed to modernising resources industry safety legislation.² This will ensure that the legislation is consistent with the modernised safety legislation used in other jurisdictions.

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) legislation.³

Following a previous consultation, DMP is proposing to consolidate the safety aspects of the mining, petroleum and MHF legislation outlined above into one Act—the WHS (Resources) Act.

1.1 The reform process

In WA, regulatory proposals are required to satisfy regulatory impact assessment (RIA) requirements.⁴

Guidance on the RIA requirements and process is outlined in the *Regulatory Impact Assessment Guidelines for Western Australia* (the *RIA Guidelines*), and the process is overseen by the Regulatory Gatekeeping Unit within the Department of Finance.

¹ For MHFs, WorkSafe is currently the regulator of occupational health and safety (OHS) under the *Occupational Safety and Health Act 1984*, and DMP regulates process safety under dangerous goods safety legislation.

² Modernisation of the safety legislation for dangerous goods commenced under a separate statutory review process. Modernisation and consolidation of safety legislation for mining, petroleum and MHFs is the subject of this regulatory impact statement process. Stakeholder consultation will continue throughout the reform process.

³ B. Marmion, *New Resources Safety Bill aims to save WA lives*, media release, 13 August 2014, Minister's Office, Perth, www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=MinisterialStatementsBarnett&StatId=342

⁴ There are a number exceptions in which the RIA process does not apply, including where impacts are expected to be minimal and where the RIA process would be of limited value. The full list of exceptions is in the

The first stage of the RIS process is the Consultation RIS (C-RIS). The C-RIS outlines a preliminary statement of the issue, the proposed objective for resolving the issue, options that are being considered to address the issue, and an initial assessment or information pointing to the potential impacts of adopting the proposed solutions.

The C-RIS is designed as a consultative process, the aim of which is to seek input from all stakeholders on the objective, the proposed options and the likely impacts. Transitional considerations are also covered.

The second stage of the RIA process is the Decision RIS (D-RIS). The D-RIS is required to analyse the impacts of the various options on all stakeholder groups, to consider comments received in the consultation period and to draw conclusions based on the analysis. From this analysis, a preferred option to achieve the policy objective is identified.

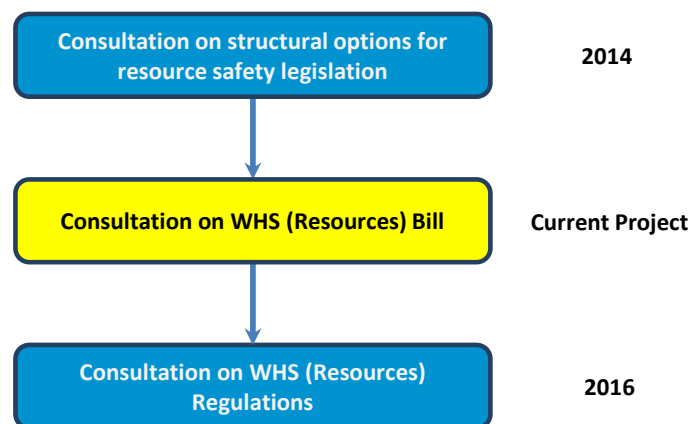
The D-RIS builds on the C-RIS to objectively weigh the costs and benefits of each option, discuss consultation outcomes and, on the basis of the analysis, recommend the option that provides the greatest net benefit for society as a whole. This analysis is set out in detail in Section 5.

Importantly, the *RIA Guidelines*⁵ specify that the D-RIS consider:

- a) whether the legislative and/or regulatory change will meet its objective
- b) whether it will be a net benefit to the economy
- c) whether the regulatory change will have an impact on:
 - the environment
 - social justice
 - health
 - equity
 - other relevant areas.

Due to the scale of the reform process for safety provisions in resources industries, DMP is undertaking the consultation in three separate stages, as described below and shown in Figure 1. This consultation is the second stage in the process.

Figure 1: The modernisation reform process for resource industry WHS legislation



RIA Guidelines,

http://www.finance.wa.gov.au/cms/uploadedFiles/Economic_Reform/RIA_Program/ria_guidelines.pdf

⁵ Appendix 3, 'RIS adequacy criteria'.

1.2 Results of 2014 consultation on structural options for resources industry safety legislation

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

- consolidate safety provisions for mining, petroleum and MHF operations into a single or a reduced number of Acts
- allow for a single regulator to cover all safety provisions at MHF sites.

All stakeholders had an opportunity to participate in this review by making submissions in response to a consultation paper (published on 3 November 2014 and inviting submissions by 19 December 2014) and through attendance at a stakeholder forum (held in Perth on 26 November 2014).

In February 2015, Marsden Jacob produced a D-RIS that recommended unifying safety legislation covering mining, petroleum and MHFs into a single Act with one regulator, DMP. The preferred option is summarised as:

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

Details on the structural options for resources industry safety legislation, including reports, presentations and public submissions, are available on Marsden Jacob's website.⁷

1.3 Current consultation on the WHS (Resources) Bill

This D-RIS and the current consultation form the second stage of the reform process for modernising resources industry health and safety legislation. The focus is on the content of the proposed WHS (Resources) Bill, which adopts a unified legislative structure for that legislation and a single regulator for safety on all resources sites (Option 1 as recommended in the first stage of reform).

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

⁶ Marsden Jacob Associates, *Decision RIS: Structure of Mining, Petroleum and Major Hazard Facilities Safety Legislation*, final report prepared for DMP, February 2015, p. 39, <http://www.dmp.wa.gov.au/20998.aspx>

⁷ See <http://www.marsdenjacob.com.au/structural-reform-resources-safety-legislation-wa/>

The Bill is based on the model WHS Act⁸ that has been introduced across Australia (apart from Victoria and WA).⁹ This provides for consistency with other jurisdictions, improving worker transferability and delivering benefits to industries operating in both WA and other jurisdictions where health and safety legislation is modelled on the WHS Act.

The Bill retains industry-specific chapters and regulations, which ensure that industry-specific risks are adequately and appropriately retained and dealt with separately.

In accordance with the RIS process and following discussions with the Regulatory Gatekeeping Unit,¹⁰ the C-RIS for the proposed WHS (Resources) Bill was published on 6 July 2015.

The **C-RIS** outlined a statement of the issue, a proposed objective for resolving the issue, a proposed reform to address the identified issue, and an initial assessment of the potential impact of the proposed reform. A mock copy of the proposed Bill and a table of 21 key areas of change were provided as an appendix to the C-RIS.

Stakeholders were invited to comment on the content of the C-RIS, the impacts of adopting the Bill, and transitional matters.

An overview of the consultation process is provided in Section 4. Submissions have been considered as part of the impact assessment in Section 5 and in appendices.

This **D-RIS** concludes the second stage of the RIA process. Following review by the Regulatory Gatekeeping Unit, the Minister will consider the recommendations, which include a recommendation for further consultation in the development of supporting regulations.

Details on the proposed WHS (Resources) Bill, including reports, presentations and public submissions, are available on Marsden Jacob's website.¹¹

1.4 Future consultation on WHS (Resources) Regulations

The third and final stage of the reform process will involve the development of supporting regulations and consultation on those regulations.

DMP has advised that the development of draft regulations in consultation with stakeholders will occur in late 2015. An RIS process for the changes is planned for early 2016.

Minutes from meetings of the Ministerial Advisory Panel (MAP) on Safety Legislation Reform indicate the current process and a method that interested stakeholders can use to stay informed and signal their further interest in the process. MAP minutes are available on the DMP website.¹²

⁸ 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>

⁹ Safe Work Australia, *Jurisdictional progress on the model work health and safety laws*, <http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/pages/jurisdictional-progress-whs-laws>

¹⁰ The Regulatory Gatekeeping Unit reviewed the draft C-RIS and provided written advice that it did not have any comments on the paper.

¹¹ See <http://www.marsdenjacob.com.au/work-health-safety-resources-bill/>

¹² See <http://www.dmp.wa.gov.au/19517.aspx>

2. Statement of issue

Currently, the legislation covering occupational health and safety (OHS), as well as process safety in mining and petroleum operations and MHFs, is spread across multiple Acts and regulations and involves multiple regulators for MHFs. There is potential for duplicated and inconsistent responsibilities and accountabilities where there are two or more Acts dealing with the same safety issues at a single worksite.¹³

DMP considers the current structure a hindrance to the consistent and efficient regulation of similar safety issues across different industries.

The current reform follows the consultation undertaken in late 2014 and a subsequent D-RIS on the ‘Structure of mining, petroleum and major hazard facility safety legislation’. The consultation determined that the most appropriate reform option is the consolidation of existing legislation into a single unified Act and the transfer of regulator responsibility for MHF OHS provisions to DMP.

The WHS (Resources) Bill is the proposed consolidated legislation. The Bill provides for:

- the modernisation of elements of the legislation that are outdated, prescriptive or unnecessarily complex, providing a consistent, outcome-focused approach to safety regulation across WA resources industries
- streamlined treatment of risk management processes and treatments for the same health and safety risks across different worksites and resources industries, so that all resource workers are equitably and appropriately covered
- regulation that reflects the industry’s increased use of risk-based approaches to safety and is adaptable to new processes and new technology.

The proposed Bill is outcome-based and combines the best features of the model WHS Act as well as the National Mine Safety Framework. It should deliver improved consistency between 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 affect health and safety obligations for employers and employees operating in those sectors. The following sections describe the scope of the potential impact on the WA resources sector and its employees.

2.1 Affected groups

Health and safety legislation for the resources industries mainly affects activities by companies, contractors and workers involved in the industries’ operations. Resources sector operations covered by the legislation include:

- mining operations—all phases, from exploration, to construction and operation, to decommissioning
- petroleum operations—from initial surveys to decommissioning and remediation, including for onshore and offshore facilities, pipelines, diving, geothermal operations and greenhouse gas storage operations
- MHFs—where a facility is declared by the regulator to be a major hazard facility based on the quantity of prescribed chemicals and associated risks (subject to or based on the regulator’s discretion).

¹³ Particularly where multiple types of operations (such as petroleum and MHF) co-exist on one site.

For both petroleum operations and MHFs, the proposed reform will cover both process safety (governing the overall safety of the facility) and OHS provisions.

The WA Government is affected through its role as the regulator responsible for monitoring compliance, granting approvals and administering relevant legislation.

A secondary group of stakeholders is indirectly affected by WHS legislation. It includes companies, contractors and workers providing services associated with the resources industries, such as professional engineering and legal services, as well as suppliers of material, parts and machinery used as inputs at resources sites covered under process and system safety provisions (that is, MHFs and petroleum operations).

An overview of the WA resources industries, including the number of workers currently employed in those industries, is in Table 3. As noted in the C-RIS, the number of workers engaged in mining operations in WA is more than an order of magnitude higher than the number engaged in petroleum and MHF operations.

Based on DMP employment numbers, mining and mineral exploration accounts for over 93% of the resources industries workforce, petroleum (onshore and offshore) accounts for roughly 2.5%, and MHF operations account for an estimated 4%.

The size of the industries (number of companies) and company profiles (number of employees) differ significantly among groups affected by the proposed reform.

Table 3: Industries and employees potentially affected by WHS legislation

	Company numbers	Employee numbers (average figures for 2013–14)
Large mining (200+ employees)	50	Mining: 97,795 Mineral exploration: 2,375
Small to medium mining (1–200 employees)	1,120	
Petroleum & gas (production & exploration)	205	Onshore petroleum: 2,153 Offshore petroleum: 494
Petroleum & gas (Pipelines & networks)	26	
MHF sites	17 ^a	4,280 ^b
MHF and mining	2 ^a	
Prospective MHFs	4 ^a	
Contractors	18 ^a	
Geothermal operators	3 ^a	
Unions	3 ^a	

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

a Sourced from DMP contacts database.

b Employment figures at December 2014.

Sources: Marsden Jacob analysis of DMP data and Australian Bureau of Statistics, cat. no. 8165.0, Counts of Australian businesses, including entries and exits, Jun 2009 to Jun 2013, using WA businesses operating at the end of the financial year.

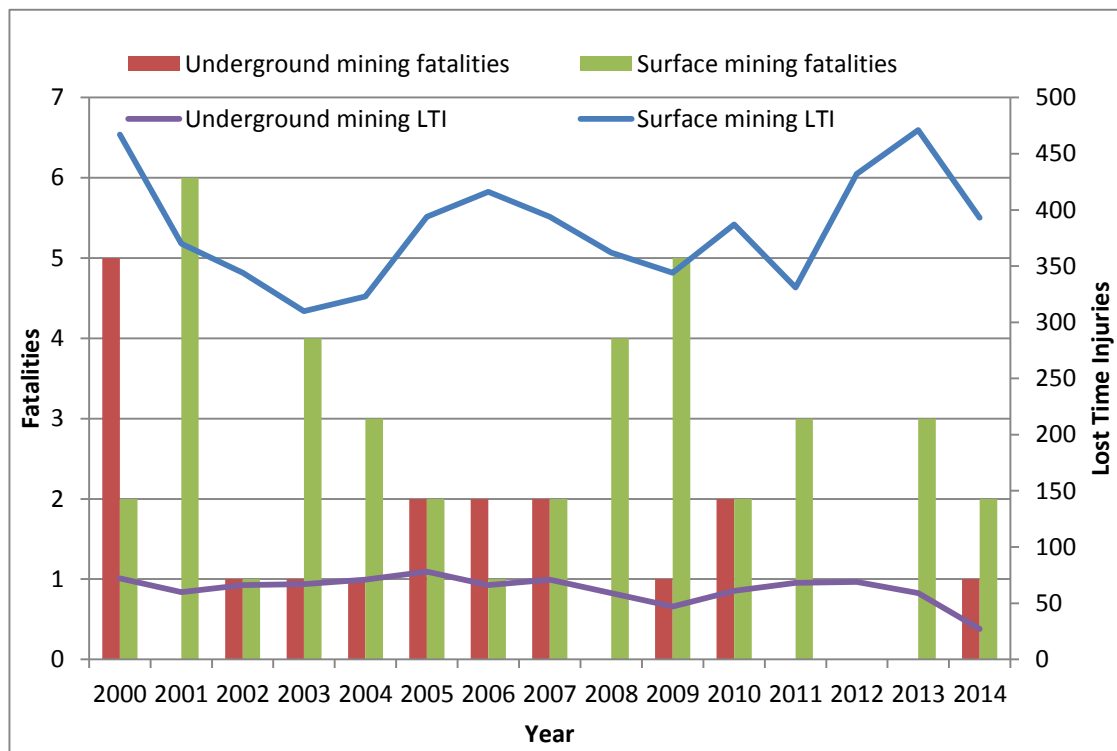
2.2 Numbers and cost of workplace injuries in the resources sector

The health and safety of resource workers is an important industrial issue for WA. Injuries and fatalities impose significant costs on industry, the WA Government and the broader community.

DMP collates figures on the number of lost time injuries and fatalities in the WA mining and petroleum industries.

There were a total of 58 fatalities on mine sites in the period from 2000 to 2014 (Figure 2). While no deaths occurred in 2012, there is no clear trend in deaths or injuries over the period.

Figure 2: Mining fatalities and lost time injuries in WA, 2000 to 2014



LTI = lost time injury.

Source: DMP, *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 in the WA petroleum industry over the same period. From 2009 to 2014, no fatalities occurred in relation to petroleum activities; an average of just under seven lost time injuries have occurred each year.

In WA, during the five years from 2008–09 to 2012–13, there were an average of 998 workers compensation claims per year. An average of \$57 million per year was paid in workers compensation for the mining and petroleum industries.¹⁴ Note that this data and cost estimate exclude fatalities.

¹⁴ Data was obtained from the Safe Work Australia National Data Set for Compensation-based Statistics using ANZIC industry codes. This query prevents the identification of incidents in MHFs.

Previous research indicates that the total cost of injury and illness on Australia is around 10 times the compensation paid. Based on this information, the total cost of workplace incidents for the resources industries in WA is estimated to be around \$570 million per year.¹⁵

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

¹⁵ Assuming that the ratio of workers compensation to total economic costs of work-related injuries is the same for the resources sector in WA as for all industry in Australia; Safe Work Australia, *The cost of work-related injury and illness for Australian employers, workers and the community: 2008–09*, p. 28, <http://www.safeworkaustralia.gov.au/sites/swa/statistics/cost-injury-illness/pages/cost-injury-illness>

3. Proposed approach to address the issue

The proposed WHS (Resources) Bill will consolidate the safety and cost-recovery provisions contained in the Acts listed in Section 1.

DMP has developed a diagram that demonstrates the proposed consolidation (Figure 3).

3.1 The proposed WHS (Resources) Bill

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

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

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

Other minor differences occur where:

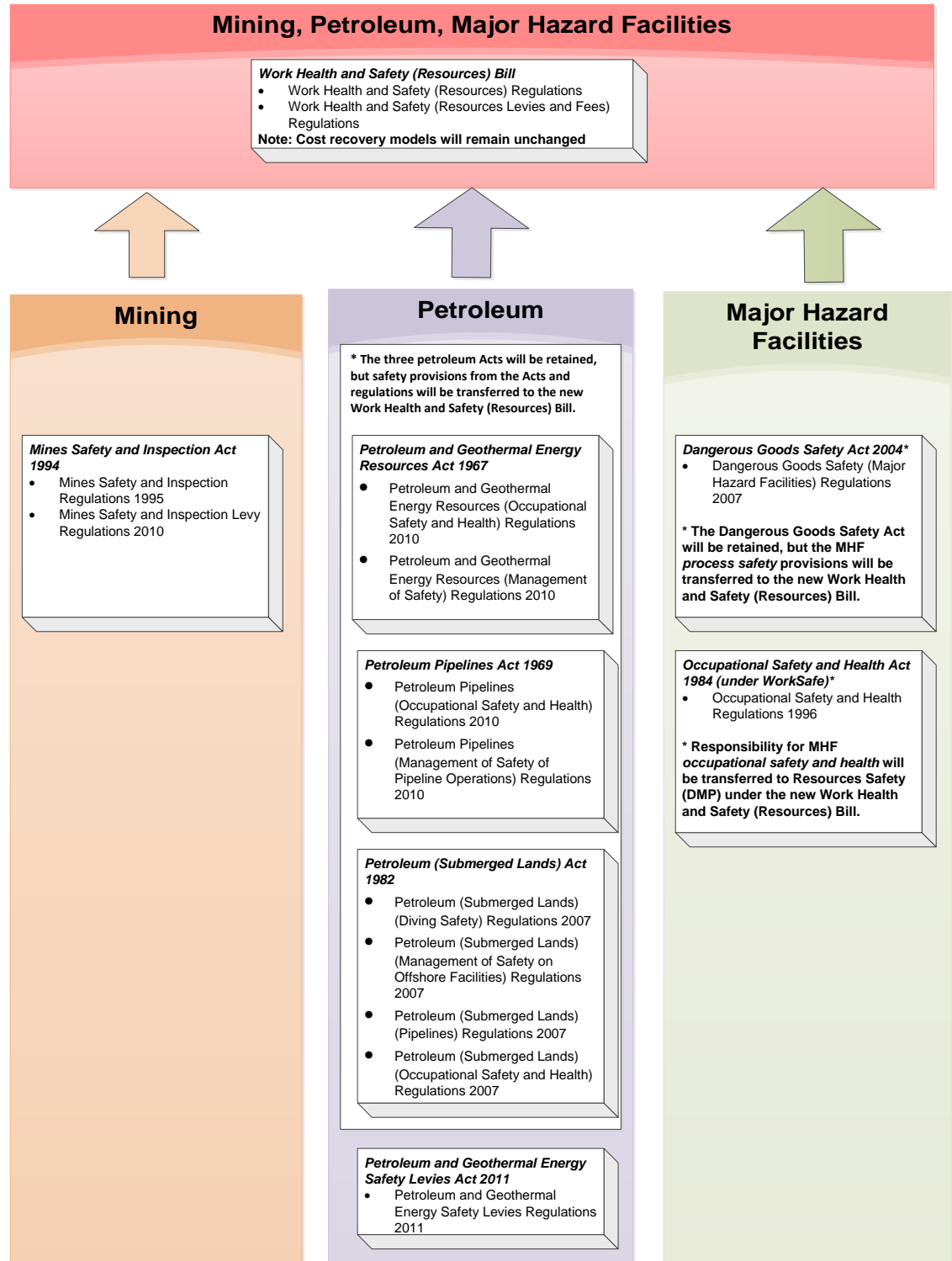
- it is appropriate that the proposed Bill be consistent with the current legislative provisions for resources industry safety
- or
- DMP has chosen to align with the additional mining sections set out in the National Mine Safety Framework.

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

DMP considers that the proposed Bill will meet the reform objective and aligns with the national model WHS Act. However, the legislation is not finalised, and changes based on stakeholders' comments in response to the C-RIS, including comments on drafting detailed in Sections 5.6 and 5.7, will help to ensure that the final WHS (Resources) Bill drafted by the Parliamentary Counsel's Office and presented to Parliament delivers the best outcomes.

Figure 3: Proposed consolidation of the resources industry safety provisions

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



3.2 Previous studies of WHS legislative reform

In addition to considering submissions provided by stakeholders, this D-RIS draws on the findings of two previous cost–benefit analyses examining the impact of WHS legislation:

- In 2009, Access Economics prepared a RIS for Safe Work Australia on the national introduction of the model WHS legislation (referred to in this report as the ‘**national RIS**’).¹⁶
- In 2014, KPMG completed an economic analysis, also for Safe Work Australia, to evaluate the impact of reforms following the introduction of harmonised WHS legislation in jurisdictions other than Victoria and WA (referred to in this report as the ‘**KPMG study**’).¹⁷

Because the proposed WHS (Resources) Bill is based on the model WHS Act, those analyses are directly relevant to the proposed reform.

Both reports compare WHS legislative reform that results in harmonised health and safety legislation being adopted against a ‘base case’ alternative, in which inconsistent health and safety legislation continued in each jurisdiction. That is, the reports essentially make the same comparison of WHS legislation based on the model Act with the existing legislation that Marsden Jacob’s assessment of the WHS (Resources) Bill seeks to achieve.

The findings of the KPMG study are important to this D-RIS, as the analysis reviews the costs and benefits of legislation based on the model WHS Act based on industries’ and governments’ experience over the previous 18 to 30 months.

The findings from the two studies are briefly summarised in Appendix 1.

3.3 Arrangements in other jurisdictions

When 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 OHS. A single consolidated Act covering health and safety for mining operations, petroleum operations and MHFs has already been implemented in two states. However, mine safety legislation has been, and continues to be, the subject of review in a number of states and territories.

The national model WHS Act and regulations include both mining and MHFs in the single Act and supporting regulations. The mining regulations under the model WHS legislation were finalised in 2013. This structure was adopted by South Australia, so OHS for the mining, petroleum and MHF industries is regulated under one Act in that state.

Victoria has not adopted any elements of the model WHS Act, but OHS for the mining, onshore petroleum and MHF industries is regulated under one Act in that state. Offshore petroleum regulation (within Victorian state waters) 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 Act 2011* and the *Work Health and Safety Regulation 2011* apply to all workplaces in NSW. This arrangement is supported by the *Work Health and Safety (Mines) Act 2013* and *Work Health and Safety (Mines) Regulation 2014*.

¹⁶ Access Economics, *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, report prepared for Safe Work Australia, 9 December 2009, www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/pc200912decisionregulationimpactstatementformohsact

¹⁷ KPMG, ‘The economic impact of WHS harmonisation’, report prepared for Safe Work Australia, November 2014 (unpublished).

The resources industry safety legislative framework for each of the major mining and industrial jurisdictions is set out in Table 4.

Table 4: Overview of resources industry safety regulatory structures in 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—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 Petroleum Regulations 2011 Onshore pipelines: <i>Pipelines Act 2005</i> (process safety)	<i>Work Health and Safety Act 2012</i> —slightly adapted from the model WHS Act Onshore facilities: <i>Petroleum and Geothermal Energy Act 2000</i> (process safety) Onshore pipelines: <i>Petroleum and Geothermal Energy Act 2000</i> (process safety) Note: The Petroleum and Geothermal Energy Act is considered a corresponding WHS law in SA.
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

3.4 Benefit of the proposed option

DMP considers that the proposed WHS (Resources) Bill would:

- meet the reform objective of delivering a modernised, consistent and outcome-based approach to the regulation of health and safety for the WA resources industries
- allow for additional benefits, as the approach would be consistent with other resources industries where the national model WHS Act has formed the basis for state legislation (as outlined in Section 3.3).

In addition, the model WHS Act has already been subject to consultation and a regulatory impact assessment, which found that there would be net benefits from adopting a streamlined, nationally consistent approach.

3.5 Key changes included in the proposed option

Because consultation has already occurred on the structural options for modernising resources industry health and safety legislation (see Section 1.1) and the model WHS Act has also been the subject of consultation at the national level, it was not considered necessary to identify legislative options for the proposed WHS (Resources) Bill.

Instead, the C-RIS set out the substantive changes from current legislation in the proposed Bill, as well as the key differences between the proposed Bill and the model WHS Act. Specifically, for the C-RIS, DMP 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 5; comments received from stakeholders about these areas are discussed in detail in Section 5.6 and Appendix 4.

Table 5: The 21 key changes

Change number	Topic
1	<p><i>Applicable legislation</i></p> <p>Legislation consolidates provisions from six existing Acts and is based on the national model WHS Act.</p>
2	<p><i>Application of the WHS (Resources) Act</i></p> <p>Scope of the WHS (Resources) Bill aligns with the model WHS Act. Definition of operations covered in the Bill aligns with definitions in current Acts, but with minor modifications to clarify and incorporate updates.</p>
3	<p><i>Decision on application of the WHS (Resources) Act or WHS Act to worksites</i></p> <p>New provisions, similar to those in the NSW WHS (Mines) Act, have been included in the WHS (Resources) Bill to clarify ministerial powers where doubt previously existed about coverage between resources industry and general industry safety legislation.</p>
4	<p><i>Primary duty of care</i></p> <p>The duty of care concept used in the WHS (Resources) Bill is simplified and broader than current definitions, consistent with modernised terminology.</p>
5	<p><i>Person having primary duty of care</i></p> <p>Responsibility is defined with reference to the definition of ‘operator’ under the WHS (Resources) Bill. The definition aligns with responsibility (and influence) over day-to-day operations (and therefore health and safety outcomes).</p>
6	<p><i>Other duty holders</i></p> <p>The concept of ‘other duty holders’ in the WHS (Resources) Bill extends the duty of care beyond current duties of designers, manufacturers, importers and suppliers. The extension recognises remote operations centres’ duty in ensuring worker safety.</p>
7	<p><i>Management of risk</i></p> <p>High-level provisions on general risk management are included in the WHS (Resources) Bill; detailed provisions are to be included in the regulations. This approach is consistent with current legislation, but with minor modifications to streamline and clarify terminology.</p>
8	<p><i>Safety cases and safety management systems</i></p> <p>The WHS (Resources) Bill includes provisions requiring a safety case for petroleum operations and MHFs and a safety management system (SMS) for mining operations, as well as high-level review and approval provisions. However, the detail of the safety case and SMS will now be mainly in the regulations.</p>
9	<p><i>Management and supervision / statutory positions</i></p> <p>Terminology used for prescribed statutory positions and operator representatives in current legislation has been updated for consistency in the WHS (Resources) Bill.</p>
10	<p><i>Penalties</i></p> <p>Penalties in the WHS (Resources) Bill have been updated to align with the model WHS Act to ensure consistency among adopting jurisdictions.</p>
11	<p><i>Incident notification</i></p> <p>Incident notification provisions in the WHS (Resources) Bill adopt clarified and consistent reporting across the resources industries.</p>
12	<p><i>Incident investigation</i></p> <p>The resources industries already investigate incidents on sites and facilities as part of current processes. The WHS (Resources) Bill formalises this process as a requirement.</p>

Change number	Topic
13	<p><i>Administration of the Act by the regulator</i></p> <p>The regulator (Resources Safety Commissioner) will be the chief administrator of the WHS (Resources) Act, and there will be only one type of inspector. The terminology facilitates shared definitions and aligns with terminology used in the model WHS Act.</p>
14	<p><i>Powers of regulator and inspectors</i></p> <p>The WHS (Resources) Bill allows for powers of the regulator and inspectors similar to those in the current legislation, but with consistency among industry sectors.</p>
15	<p><i>Enforcement measures</i></p> <p>The WHS (Resources) Bill includes provisions empowering inspectors to issue improvement, prohibition and non-disturbance notices. These are consistent with existing powers, with the exception of the power to issue non-disturbance notices for mining operations, which is formalised in the Bill.</p>
16	<p><i>Limitation period for prosecutions</i></p> <p>Proceedings under the WHS (Resources) Act must begin within two years after the offence first comes to the notice of the regulator. This aligns with the model WHS Act and updates existing provisions across industries to make them consistent.</p>
17	<p><i>Officer's liability</i></p> <p>The WHS (Resources) Bill places duty on officers of a corporation to exercise due diligence to ensure that the 'person conducting a business or undertaking' complies with any duty of obligation under the Act. The liability aligns with the model WHS Act and the definition of an officer under the Corporations Law.</p>
18	<p><i>Advisory committees</i></p> <p>In the WHS (Resources) Bill, the existing Mining Industry Advisory Committee is to be retained for mining operators and a new committee is to be formed to represent petroleum operators and MHFs.</p>
19	<p><i>Evidentiary provisions</i></p> <p>The evidentiary provisions that currently exist for resources industries are retained in the WHS (Resources) Bill in order to save time in court. The model WHS Act does not include similar evidentiary provisions.</p>
20	<p><i>Sharing and publication of information by regulator</i></p> <p>Consistent with the model WHS Act, provisions to enable the regulator to publish information for shared learning and education are included in the WHS (Resources) Bill. These provisions are not a feature of the existing Acts, but current processes include the publication of learnings from significant incidents and accidents, de-identified to remove personal or company details.</p>
21	<p><i>Board of inquiry</i></p> <p>The WHS (Resources) Bill formalises the Minister's ability to establish a board of inquiry to inquire into serious incidents and dangerous occurrences; any practice or safety matter that may adversely affect the health and safety of person; or any emerging or systemic issues affecting people's health and safety. The provisions align with the National Mine Safety Framework and the model WHS Act.</p>

In addition, the C-RIS found that the modern outcome focus of the proposed WHS (Resources) Bill meant that some detailed or prescriptive sections of the current resources industry safety Acts were not replicated in the proposed Bill. These detailed requirements will instead be included in the supporting regulations or guidance material.¹⁸

¹⁸ Marsden Jacob, *Consultation RIS: Work Health and Safety (Resources) Bill*, July 2015, p. 13.

4. Consultation process

In preparing this D-RIS, Marsden Jacob followed the formal documentation, guidance and advice of the Regulatory Gatekeeping Unit within the WA Department of Finance. This section summarises the consultation process.

4.1 Consultation regulatory impact statement

Marsden Jacob prepared a C-RIS that sought stakeholders' comments on the impacts of the proposed legislative reforms. Specifically, stakeholders were asked to comment on:

- the proposed reform objective
- the overall impacts of the proposed reform
- specific changes (and impacts), including the 21 key areas identified in Table 5
- transitional matters.

The Regulatory Gatekeeping Unit reviewed the C-RIS before publication, in accordance with the *RIA Guidelines*.¹⁹

To allow stakeholders to provide informed input on the proposed reform, DMP provided two documents to support the C-RIS: the proposed structure of the proposed Bill and supporting regulations, and a 'mock-up' version of the Bill.

The C-RIS and the Mock Bill were published on Marsden Jacob's website on 6 July 2015²⁰ at the beginning of a six-week open consultation.

As noted in the C-RIS, while these documents were prepared by DMP, the Parliamentary Counsel's Office will be responsible for drafting the Bill for Parliament and so the final WHS (Resources) Bill may vary from the Mock Bill.

4.1.1 Stakeholder forum

Marsden Jacob hosted a half-day forum on 23 July 2015, at which stakeholders could ask clarifying questions and provide comment in person.

Marsden Jacob received 77 responses to its request to attend the forum, and around 55 attendees were present on the day. Participants included a balanced range of industry and stakeholder organisations (Table 6).

After introductory presentations by DMP and Marsden Jacob and general questions and comments, participants considered the specific changes and impacts identified in the C-RIS in two stages:

- A general discussion examined topics considered less likely to result in ongoing changes to regulatory costs or safety outcomes, such as changes to terminology (necessary for the consolidation of the legislation) and differences between the proposed Bill and the model WHS Act.
- In a workshop, the forum examined key changes that were likely to result in longer term impacts on compliance costs, safety outcomes, or both.

¹⁹ Department of Finance, 2010, *Regulatory Impact Assessment Guidelines for Western Australia*, July 2010, http://www.finance.wa.gov.au/cms/uploadedFiles/Economic_Reform/RIA_Program/ria_guidelines.pdf

²⁰ <http://www.marsdenjacob.com.au/work-health-safety-resources-bill/>

A handout for the workshop component was emailed to attendees before the forum, and copies of the handout and presentations made on the day were made available on Marsden Jacob's website.

During the workshop, attendees worked in industry groups to discuss which of the key changes they supported or opposed, and why, before reporting back to the wider group. DMP and Marsden Jacob consultants moved between groups, answered questions and noted feedback.

Issues and questions raised during the forum were considered in the analysis in Sections 5 and 6 of this report.

Table 6: Stakeholder forum respondents and industry representation

Sector	Number of attendees	Number of companies/groups represented
Petroleum exploration & production operators	7	4
Pipeline operators	4	2
Mining	21	21
MHF operators	4	3
Associated service providers ^a	7	6
Safety specialists/consultants	8	6
Engineering consultants	5	5
Industry groups and professional associations	9	7
Legal consultants	3	3
Individuals	2	2
Project team	7	2
Total	77	61

^a Includes specialist services providers for resources sites, such as suppliers of remote communications services, mine ventilation, refrigeration equipment, crushing services, specialised packaged equipment, and associated construction and maintenance services.

Source: Marsden Jacob analysis of RSVPs to forum.

4.1.2 Written submissions

The C-RIS identified the implementation of the proposed WHS (Resources) Bill as DMP's preferred option for reform.

Questions put to respondents

Stakeholders were asked to comment on:

- the proposed objective of the changes (questions 1 and 2)
 - Is the objective identified appropriate?
 - Are there any other objectives that should be considered in assessing the options?
- the preliminary assessment of costs and benefits (questions 3 to 9)
 - In general, do you support the proposed WHS (Resources) Bill?

- Thinking about the whole package of changes, will they lead to any changes in health and safety at your workplace?
- Thinking about the whole package, will the changes provide other benefits, such as more efficient work or easier worker transferability?
- 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?
- Will the additional or new requirements in all the changes have any market or competition impacts on your business?
- Do you have concerns with particular provisions that are not included in the 21 key changes identified by DMP?—if so what are they?
- Are there particular changes (either from the 21 listed in section 4 of the Consultation RIS or other changes you have identified), you feel strongly about—either support or oppose?
- the timing for commencement and transitional provisions (questions 10 and 11).
 - Can you identify three changes where a delayed or gradual transition would provide the greatest benefit?
 - What do you think would be the most effective way to reduce these implementation costs for these changes or provide the greatest benefit?

Responses

Stakeholders were invited to provide written submissions to Marsden Jacob by 14 August 2015 via email or post.

Twenty-four submissions were received, of which four were confidential. Appendix 2 lists the non-confidential submissions. The content of the submissions is summarised in the impact assessment in Section 5 (Section 5.6 covers comments on the 21 key changes identified in the C-RIS and DMP's and Marsden Jacob's responses; Section 5.7 considers other changes).

Table 7 shows the number of responses received from each respondent group. Because some respondents identified themselves as belonging to multiple groups, the sum of respondents in the table exceeds 24.

Table 7: Summary of consultation responses received

Respondent group	Responses received
Mining	4
Petroleum and gas—production & exploration	1
Petroleum and gas—pipelines & networks	2
Major hazard facilities	4
Associated service providers	2
Engineering	4
Industry groups	2
Professional associations and unions	4
Individuals	2

Note: Some respondents represented several categories.

4.2 Other stakeholder contact

During the consultation period, stakeholders were advised and updated on the consultation by a number of methods, including website announcements, written correspondence to senior officers, Safety Alert emails, email correspondence and targeted telephone calls.

In addition, DMP met with a number of industry associations, companies, worker representatives and other stakeholders.

A summary of all stakeholder contact during the consultation is in Appendix 3.

5. Impact analysis

This section assesses whether the proposed legislative and regulatory change will:

- meet its objective
- be a net benefit to the economy
- have an impact on the environment, social justice, health, equity and other relevant areas.

This section also sets out the implementation and evaluation strategy for the reformed legislation.

In assessing the impact of the proposed WHS (Resources) Bill, Marsden Jacob considered comments received in submissions, the findings in earlier reports and its own research.

The impact assessment is divided into the following sections:

- an assessment of whether the proposed change meets the reform objective
- general comments on the proposed Bill
- a cost–benefit assessment covering economic and other impacts
- distributional considerations, including equity considerations
- comments received on individual changes
- the timing for commencement and transitional provisions.

Section 6 summarises Marsden Jacob’s assessment with reference to each of the RIS criteria.

5.1 Objective of the proposed change

The objective of the proposed change suggested in the C-RIS was:

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 framework 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.*

The C-RIS noted that implementing the proposed Bill would be likely to enhance consistency among industries and with other jurisdictions.

During the consultation, stakeholders were asked to comment on two questions:

Is the objective identified appropriate? (Question 1)

Are there any other objectives that should be considered in assessing the options? (Question 2)

Stakeholders’ comments

Of the 24 submissions received, 14 answered this question or offered feedback on the proposed objective. The responses are set out in Table 8. Only one submission (an individual in the mining sector) indicated

that they did not consider the objective to be appropriate.²¹ As this respondent also did not support the WHS (Resources) Bill, it appears that they have a general concern with the proposed reform.

Table 8: Summary of responses to ‘Is the objective appropriate?’

Response	Number of responses
Yes (including support suggesting an edit)	13
No	1
No comment	10
Total	24

Respondents suggested a total of eight edits to the objectives. One comment was made on each of the following topics:

- changing the phrase ‘regulatory burden’
- including ‘health’ as well as ‘safety’ (in the objective and elsewhere in the document)
- including the word ‘transparency’.

In addition, two comments were made on strengthening and clarifying the term ‘high standards of safety’. ACOR Consultants suggested that this could be linked to defined terms such ‘as low as reasonably practicable’ or ‘so far as is reasonably practicable’. Another submission suggested the use of alternative terms such as ‘leading practice or standard’, ‘world class standard’ or similar.²²

Finally, three submissions suggested further detail on the term ‘consistency’:

- *We [Australian Finance Conference and Australian Equipment Lessors Association] suggest that this also refer to consistency with other Australian States and Territories because not all jurisdictions have adopted the model Work Health and Safety legislation.*
- *The SIA would also wish to see WHS provisions applied consistently across Western Australia by both DMP and WorkSafe WA so that headquarters staff and those undertaking more hazardous work are treated similarly and there is less opportunity for unnecessary cost and confusion. We therefore support enactment of the WHS Green Bill.*
- *We [Angus Robinson, Chris Towsey, Jock Cunningham] also recommend design of a new regulatory structure that also ... provides consistency across jurisdictions (where possible and appropriate).*

Marsden Jacob recommendation

Given that a number of respondents supported the objective without suggesting edits, Marsden Jacob sought to include comments that clarified the intention without altering the meaning.

Based on the comments provided, Marsden Jacob recommends the slight modification of the reform objective to:

²¹ Submission from Glen Neeves.

²² Angus Robinson, Chris Towsey, Jock Cunningham.

To develop a modern, adaptable regulatory framework that supports the delivery of world-class standards of health and safety in an efficient, equitable and consistent manner across mining, petroleum and MHFs. In addition, the regulatory framework must balance:

- improved health and safety outcomes against regulatory costs*
- consistency between industries against sector-specific requirements.*

The edited objective does not link the standards of health and safety to terms such as ‘as low as reasonably practicable’ or ‘so far as is reasonably practicable’. Marsden Jacob considered that the amendment would be cumbersome. While the process by which health and safety outcomes are balanced against regulatory costs is a key part of the WHS legislation, that does not need to be stated explicitly in the reform objective.

5.2 General support for the proposed WHS (Resources) Bill

Respondents to the C-RIS were asked:

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

Of the 24 submissions received, 18 responded to this question. Only two indicated that they did not support the proposed Bill. Of the 16 positive responses, some gave conditional or in principle support, while others gave more emphatic and specific support (Table 9).

Table 9: Summary of responses to ‘Do you support the proposed WHS (Resources) Bill?’

Response	Number of responses
Yes ^a	16
No	2
No comment	6
Total	24

^a Includes conditional and in principle support.

Stakeholders’ reasons and concerns

Stakeholders were invited to provide reasons for their answer to this question and to raise any concerns.

Some cited greater consistency with the rest of Australia and consistency with other industries as their reason for supporting the proposed Bill.²³ Stakeholders supported moving away from a prescriptive model and towards a risk-based model, as the latter model would provide for more flexible responses to particular issues and hazards, resulting in better health and safety outcomes in the long term.²⁴ Some also identified benefits arising from having a single regulator and a single point of contact (that is, from a

²³ Confidential, CCA, AFC & AELA, APGA, APPEA, SIA, Confidential (in principle), ACOR, PACIA, Confidential (conditional on phased approach), CCI, Cunningham et al. (conditional), UnionsWA.

²⁴ CCA, SVT, BHP (conditional on regulations), BP (conditional on transitional issues being resolved), APPEA.

holistic approach to regulation), as well as benefits from collating data and experiences from similar industries.²⁵ Modernisation was also listed as a reason for supporting the Bill.²⁶

Some supporting submissions flagged a number of concerns. General concerns and conditions included the following:

- Increased resourcing would be required in the initial years, particularly as the move away from a prescriptive model is adopted.²⁷
- Stakeholders sought assurance that specialist skills, expertise and approaches to risk management would not need to be maintained following the change.²⁸
- Stakeholders were concerned about potential cost increases.²⁹
- There was a general concern about an excessive focus on ‘safety’ and a relative neglect of ‘health’ in documents prepared for the consultation.³⁰

Some stakeholders commented on specific aspects of the Bill, key changes or the distribution of costs. Those comments are included in Sections 5.6 and 5.7 of this report.

The two respondents who did not support the proposed Bill come from different sectors—one is an individual in the mining sector specialising in exploration, while the other (confidential) respondent is a business specialising in the petroleum sector.

The key reasons for not supporting the Bill included perceptions that:

- there would be a lack of adequate governance of the industry
- the new Act would be too focused on addressing worker safety
- the adoption of a risk-based approach would result in workplaces introducing very prescriptive safety systems
- the proposed Bill failed to adequately accommodate smaller operations (including the potential costs compared to the consequences of failing to meet obligations, relative to the size of the operations).

One submission highlighted the risk of businesses responding to less prescriptive legislation with their own prescriptive systems as a possible response due to appointed persons seeking to protect themselves from penalty. Furthermore, one respondent raised concerns about this change in relation to changing DMP responsibilities:

This new Act, by divulging all prescriptive measures, also reduces the responsibility of DMP to the Industry, and makes them a fines collector, rather than a leader in health and safety and mining operations in general. (Glen Neeves)

Marsden Jacob comment

The proposed WHS (Resources) Bill has a high level of general support across the resources sectors, although some respondents’ support is in principle or conditional.

²⁵ Confidential, APPEA, CCA.

²⁶ CME (conditional on regulations), APPEA.

²⁷ CCA, ACOR (considers proposed Bill does not undermine this requirement), AMMA.

²⁸ Confidential.

²⁹ Confidential.

³⁰ Occupational Health Society of Australia.

The two respondents that did not support the Bill are from different sectors of the resources industries. The majority of respondents in any sector did not object to the Bill.

The high level of general support can be interpreted as a perception among stakeholders that the benefits of the proposed reforms outweigh the costs.

5.3 Cost–benefit assessment

To assess whether the proposed WHS (Resources) Bill will provide a net benefit to the economy, Marsden Jacob used a standard cost–benefit analysis. The analysis considered two options over an extended period (10 years) and compared:

- the **‘base case’**—the consolidation of all resources industry safety legislation into one Act, *but with no changes to existing definitions, roles and responsibilities*
- the **reform option**—the consolidation of all resources industry safety legislation into one Act, with modernisation *as per the proposed WHS (Resources) Bill*.

Framework for the assessment

The framework for assessment used a method consistent with Australian Government cost–benefit analysis guidelines to identify the costs and benefits of legislative change.³¹ Specifically, the framework considered:

- the initial set-up 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).

Structure of the cost–benefit assessment

The cost–benefit assessment in this section is structured according to the following industry impacts:

- compliance cost impacts (Section 5.3.1)
- health and safety impacts (Section 5.3.2)
- other business impacts (Section 5.3.3)
- impacts on government (Section 5.3.4)
- environmental, social and other broader impacts (Section 5.3.6).

Marsden Jacob acknowledges that both compliance cost impacts and health and safety impacts can be considered either costs or benefits. For example, a decrease in compliance costs delivers a benefit to industry, whereas an increase in compliance costs represents a cost to industry. Conversely, an increase in safety is a benefit and a decrease in safety is a cost to the WA community.

The structure of the assessment should not be misconstrued as relating to costs, benefits and other impacts in turn; rather, each subsection includes both costs and benefits.

Furthermore, as noted in the C-RIS, changes in costs and benefits cannot be fully quantified in all circumstances. The data needed to quantify impacts was not readily available (or reliable) for a number of

³¹ The Australian Government handbook for cost–benefit analysis (2006) and the Australian Government guide to regulation (2014).

the identified costs and the benefits. Where that was the case, this assessment highlights available sources of information and describes the likely costs and benefits qualitatively.

5.3.1 Compliance cost impacts

Two forms of compliance costs associated with regulatory reform are relevant to the WHS (Resources) Bill:

- initial set-up costs
- changes to ongoing compliance costs.

Initial set-up costs would be incurred by both government and industry under the reform option, while the base case has no set-up costs. In contrast, changes to ongoing compliance costs require a comparison of the reform option and the base case and may be either positive or negative.

For industry, both set-up and ongoing costs may vary according to a stakeholder's type, size and activities.

Government cost changes can also be considered in terms of initial set-up costs and changes to ongoing compliance costs. These costs relate to the reform process and any subsequent change in the monitoring and regulatory oversight role.

The national RIS and the KPMG study (discussed in Section 3.2 and Appendix 1) provide evidence to suggest that the adoption of WHS legislation involves additional costs to both industry and government for the initial set-up and transition period. However, the evidence in relation to changes in ongoing compliance costs is less well established.

Changes in ongoing compliance costs reflect only the *additional* training, system/process updates and activities required or the *reduction* in those factors resulting from the incremental changes caused by the reform option compared to the base case.

Some stakeholders noted that the true compliance costs will only become apparent (and therefore potentially quantifiable) once details in the supporting regulations are known.³² However, as the KPMG study was undertaken after the provisions were in place, it provides a useful insight into the real costs and benefits—including those resulting from regulations.

Stakeholders' responses

Respondents to the C-RIS were asked whether they thought the whole package of changes would impose additional compliance or other costs for their businesses (Question 6).

Thirteen of the 24 respondents answered this question; a further three provided comments only.

Most respondents considered that there would be an increase in compliance costs (Table 10).

³² The regulations do not form part of this RIS. A separate RIS process for the detailed regulations is expected to be undertaken in 2016.

Table 10: Summary of responses to ‘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?’

Response	Number of responses
Yes	10
No	3
Comment only	3
Total	16

Some stakeholders identified increased costs as being driven by specific changes to requirements, and others commented on the cost estimates provided in previous RIS reports. Comments on specific requirements that would drive cost increases included:

An increase in Safety Case development costs. (Confidential submission linked to an MHF)

Additional training and time spent on developing each [safety management system] document would be required. (Cement Concrete & Aggregates Australia, p. 3)

The proposed inclusion of OSH, Dangerous Goods and MHF into the Safety Case, and the Licence to operate process, will significantly increase the size and complexity of the Safety Case document, as well as the entire process of safety assessment. (Confidential submission linked to an MHF)

Four submissions provided further detail on specific costs and reflected on the estimated cost of \$25 per private sector employee identified in the 2009 RIS by Access Economics. Each indicated that the \$25 estimate was too low; one stated that it was:

at least an order of magnitude too low. (Glen Neeves, p. 3)

APPEA quoted the Safe Work Australia analysis by KPMG:

[KPMG] did find a significant additional cost to businesses and government entities due to harmonization. KPMG though still concluded that the net benefits for all industries across Australia justified harmonisation, especially over the longer run, as the full benefits of achieving consistency across regulatory regimes were realised. (APPEA, p. 8)

The Chamber of Minerals and Energy commented that:

as a minimum, resource facility operators will be required to:

- *conduct a gap analysis of current procedures against the requirements of the new legislation to identify if any amendments are required;*
- *update legislative references in documents;*
- *update training materials; and*
- *conduct training for workers. (CME, p. 20)*

The Australian Petroleum Production & Exploration Association supported CME’s suggested minimum requirements (APPEA, p. 8). However, neither submission provided an estimate for the cost of these steps.

One stakeholder commented that additional costs would be limited to set-up costs (Risk Engineering Society, p. 3).

A number of submissions suggested that costs were difficult to know, given the information available at this point (CCAA, APGA and ATCO). CCAA suggested that costs would increase and commented that:

provided that effective guidance material is provided to small operators and that the health and safety management laws are applied proportionate to the risks and scale of the options then there should not be undue regulatory burden or costs for industry. (CCAA, p. 3)

Both APGA and ATCO indicated that they were unable to assess likely cost impacts without knowledge of the content of the regulations (APGA, p. 2; ATCO, p. 3). APGA stressed the importance of engagement for the development of the regulations but also stated that:

The changes that will impose operational costs on the pipeline sector will be contained in the regulations under the Workplace Health and Safety (Resources) Bill. (APGA, p. 2)

Two submissions provided estimates of additional cost. Glen Neeves estimated that at least two days per person should be allocated, at a cost of \$500 per person per day:

There is at least one day per person that should be allocated just for updating people on the legislative change, and the new Act. Plus probably another day per person for the changes to the regulations that will follow. The average cost per worker per day will be at least \$500. (Glen Neeves, p. 3)

BHP Billiton stated:

BHP Billiton is of the view that the \$25 per worker median estimate ... is well under anticipated actual implementation costs. However, we recognise that over the long term, these costs will likely be offset by savings realised from moving to an outcomes based approach. (BHP, p. 2)

Three submissions indicated that costs would not increase, but none provided any explanatory comments. Other submissions indicated that costs would vary across different workplaces (SIA, p. 4).

Marsden Jacob assessment

Based on the available information and stakeholders' comments, it is reasonable to expect that both the set-up and ongoing costs will vary from one facility to another.

If particular industry sectors have additional requirements imposed on them (such as altered safety case requirements for petroleum exploration), those sectors will have higher set-up costs.

Marsden Jacob calculates that the change in compliance costs from the KPMG study equates to \$51 per worker for implementation costs and \$171 per worker for ongoing costs.

As very few comments were received from stakeholders about changes to ongoing costs, the extent of changes in the longer term is less well known. Estimates prepared by KPMG and BHP Billiton and for the national RIS all indicate that the benefits resulting from the adoption of WHS legislation are likely to offset the costs of adoption.

The range of costs and the alternative sources' estimates are summarised in Table 11.

Table 11: Marsden Jacob suggested cost estimates

Cost type	Value used in cost-benefit analysis	BHP	Glen Neeves	KPMG	National RIS
Implementation cost per employee	\$51	>\$25	\$1,000	\$51	\$25
Ongoing cost per employee	\$171	(offset by benefits)	–	\$171 (offset by benefits)	–

Total cost impacts depend on the number of workers employed in the WA resources industries. A calculation of the number of workers (outlined in Section 2.1) multiplied by the cost per worker suggests that the set-up costs would approximate \$5.5 million per year and the ongoing costs would approximate \$18.3 million per year (Table 12).

Table 12: Business implementation and ongoing costs

Industry sector	Employee numbers	Set-up costs	Ongoing costs (per year)
Mining & mineral exploration	100,170	\$5,122,000	\$17,132,000
Onshore & offshore petroleum	2,647	\$135,000	\$453,000
MHF	4,280	\$219,000	\$732,000
Total	107,097	\$5,476,000	\$18,317,000

Source: Marsden Jacob analysis based on KPMG estimates, ABS data and DMP data.

5.3.2 Changes in health and safety outcomes

The objective of the reform is the delivery of a regulatory framework that supports ‘world-class standards of health and safety’. This section summarises stakeholders’ responses on health and safety changes.

Stakeholders’ responses

Respondents were asked whether they thought the whole package of changes would lead to any changes in health and safety at their workplaces (Question 4).

Twelve stakeholders responded to this question; one stakeholder provided a comment only. Of the respondents, 50% indicated that the proposed Bill would lead to an improvement in health and safety. The remaining 50% indicated that there would be negligible or no change in health and safety. No respondent thought there would be a decrease in safety (Table 13).

Table 13: Summary of responses to ‘Thinking about the whole package of changes, will they lead to any changes in health and safety at your workplace?’

Response	Number of responses
Yes	6
No	6
Comment only	1
Total	13

Stakeholders’ responses did not align to industry sectors, so it does not appear that safety benefits will be realised in only some industries or some business types.

None of the submissions attempted to quantify the level of safety improvement that might be achieved. Supporting comments included:

- *More efforts and resources allocated to achieving on-the-ground performance rather than maintaining systems and procedures.* (ACOR Consultants)
- *Smaller operations, where there isn’t a permanent work force or operation are likely to become very prescriptive under this new bill, or will have to provide a dedicated SSE [site senior executive] to manage operations.* (Glen Neeves)
- *[Our company] does not expect measurable improvements to health and safety performance within our organisation due to these changes. However, through the national harmonisation processes it is expected that we may see reductions in all industry injury rates.* (Confidential submission)

Marsden Jacob assessment

As set out in Section 2.2, the average value of workers compensation payments in WA resources industries is \$57 million per year; the estimated total cost of health and safety incidents in those industries is \$570 million per year. KPMG conservatively estimated that the introduction of WHS reform had resulted in a 0.9% decrease in incidents, or a benefit of \$5.1 million per year.

The C-RIS proposed five sources of health and safety benefits (Table 14). Respondents to the C-RIS did not comment on these sources, indicating that they did not hold a strongly opposing view.

Table 14: Potential sources of increased health and safety benefits

Change	Description
Clearer roles and responsibilities	The proposed WHS (Resources) Bill specifies clear and consistent roles and responsibilities through duty of care provisions (see changes 4, 5 and 6 in Table 5). 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 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 member 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 reform could allow those staff time to focus on other safety work, which could result in increased levels of safety.
Staff have a renewed focus on safety	The introduction of the proposed Bill will require some updated training for senior staff and people in safety roles. It is possible that this will focus organisations on their safety responsibilities and drive improvements in safety.
Focus on identifying and addressing hazards	The risk-based approach to safety in the proposed Bill focuses staff on identifying and addressing hazards, potentially resulting in improved levels of safety.
Tailoring safety to each site	The proposed Bill could result in a safety benefit through tailoring safety to each site's specific needs.

Source: Marsden Jacob analysis.

5.3.3 Other business impacts

The C-RIS identified other business impacts beyond direct cost changes and health and safety impacts. They included improvements in worker transferability arising from consistent approaches across resources operation sites and changes in efficiency and productivity as responsibilities and roles are clarified and approaches to risk management are optimised for resources-specific risks and operations.

Other benefits identified by KPMG

KPMG's survey included a short list of other possible business impacts that businesses could select (Table 15). While the list included in the survey is not exhaustive, respondents were not able to nominate other sources of benefit; nor were they asked to value the other possible benefits.

Table 15: Benefits of harmonisation identified by businesses and government

Area of benefit	Businesses that identified the impact (%)	Government departments that identified the impact (%)
Decrease in incident numbers	28.2	17.1
Decrease in workers compensation costs	15.3	20
Decrease in absenteeism / staff turnover	7.1	8.6
Decrease in time managing WHS incidents	16.5	20
Efficiencies	20	20
Increased productivity	11.8	8.6

Source: KPMG, 'The economic impact of WHS harmonisation'.

Stakeholders' responses

Respondents to the C-RIS were asked whether they thought the whole package of changes would provide other benefits, such as more efficient work or easier worker transferability (Question 5).

Twelve of the 24 respondents answered this question. Of those, 67% indicated that the proposed Bill would lead to other benefits (Table 16).

None of the submissions attempted to quantify the scale of the benefit; however, identified benefits included:

- expected improvements in worker transferability³³
- help in removing artificial barriers for service providers in the health and safety field, thus increasing competition³⁴
- in the long term, better support for the innovation and continuous improvement that are being introduced into safety management systems.³⁵

One respondent indicated that additional benefits could not be assessed at this time.³⁶ Another indicated that they expected a decrease in efficiency and work transferability between sites where operators have both MHF and non-MHF facilities.³⁷ Marsden Jacob understands that this situation would only arise if the provisions for general industry do not align well with those for resources industries, and that this situation would apply to around four sites in WA.

³³ Cement Concrete & Aggregates Australia.

³⁴ SVT Engineering Consultants.

³⁵ BP Kwinana Refinery.

³⁶ ACOR.

³⁷ PACIA.

Table 16: Summary of responses to ‘Thinking about the whole package, will the changes provide other benefits, such as more efficient work or easier worker transferability?’

Response	Number of responses
Yes	8
No	4
Comment only	3
Total	15

Marsden Jacob assessment

Respondents to the C-RIS and respondents to KPMG’s analysis indicated that other benefits would arise from the implementation of WHS-based legislation. However, the value of those benefits was not estimated in either consultation.

5.3.4 Impacts on government

The WA Government would incur costs in setting up and enforcing a future WHS (Resources) Act. The costs appear likely to be limited to the Resource Safety Division of DMP and so are likely to affect around 150 staff. While DMP has not estimated the cost impact, it made the following comments on the costs of implementing the proposed reform:

- All the costs of developing, implementing and enforcing the proposed legislation would be managed within the existing DMP budget (Marsden Jacob comments that the cost of implementation would be considered an opportunity cost even if it had no impact on the budget ‘bottom line’).
- The current resources industry safety legislation was overdue for review, so the cost of implementing the proposed reform is partly offset by the savings from avoiding that review.
- Beyond the set-up and implementation phase, the costs of regulating the new legislation would be roughly the same as the costs of regulating the current legislation, but with some potential for cost savings.

Using the KPMG source data, Marsden Jacob calculated that the total cost per government employee is \$18.³⁸ This cost appears very low in comparison to private industry costs; therefore, Marsden Jacob considers that it is not a fair estimate of the cost to a health and safety regulator.

Based on DMP’s comments, Marsden Jacob included a nominal government set-up cost of \$400,000 (for a team of four full-time staff for a one-year period), and no ongoing government cost.

5.3.5 Impacts on workers and the community

The C-RIS found that a small benefit would arise from improved protection for workers who are not employees, the potential for improved safety, and reduced barriers to the movement of workers between jurisdictions.³⁹ The C-RIS also proposed that it was unlikely that there would be any significant costs to workers.

³⁸ The report gives total government costs at \$34.6 million and estimates that 1.89 million people work in local, state or federal government.

³⁹ Based on the analysis of the national RIS on the model WHS Act.

In addition, the C-RIS found that the broader WA society would receive a portion of any safety benefit, as a reduction in incidents would benefit workers and the community through reduced costs.

Respondents to the C-RIS did not comment on these propositions, and so Marsden Jacob has assumed that no stakeholder holds a strongly contrary view.

5.3.6 Environmental, social and other broader impacts

The RIS Guidelines suggest that other relevant impacts, such as those on the environment, social justice, health and equity, should be considered. Health is covered in Section 5.3.2.

Equity for both industry and workers is a key aim of the reform. As set out in the objective, a consistent and modernised framework for health and safety for the WA resources industries should ensure that the same risks and the same conditions apply for workers and worksites regardless of their location or industry sector.

While Marsden Jacob did not identify any other likely impacts of the proposed WHS (Resources) Bill in the C-RIS, some stakeholders noted that process and facility safety are strongly linked to environmental safety at significant facilities. For example, on a petroleum project, oil well integrity is vital to process safety, environmental outcomes and worker safety.

In similar mining and industrial environments, maintaining or improving process safety would also be important in ensuring or maintaining environmental protection. As APPEA explained:

Oil and gas operations are by their nature integrated and cover a complex range of activities, such as:

- *subsea wells and infrastructure*
- *offshore facilities*
- *vessels doing work on petroleum facilities*
- *onshore wells, infrastructure and pipelines*
- *onshore facilities which are MHFs, e.g. LNG trains.*

The safety and integrity of oil and gas structures and wells is inherently integrated with risk to the environment, for example with the loss of well control providing the single biggest safety and environment risk faced by the oil and gas industry. (APPEA, pp. 6–7)

While it is likely that the implementation of the WHS (Resources) Bill could also result in environmental benefits, those benefits have not been quantified.

5.3.7 Net outcome for businesses

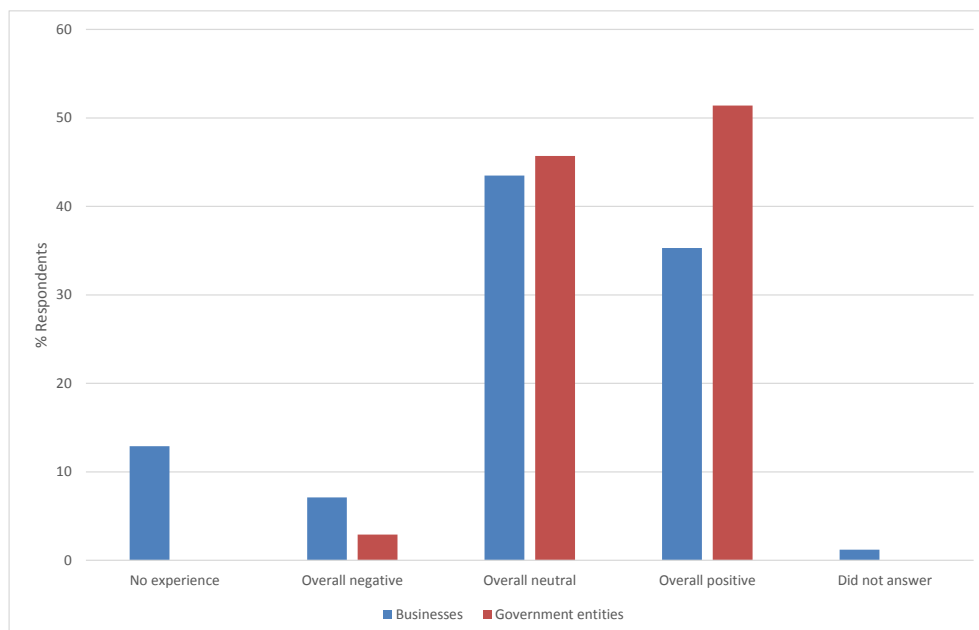
The KPMG study and some industry submissions to the C-RIS indicated that, while the implementation of WHS reforms will impose some additional costs, the net result will be a benefit to businesses.

The KPMG survey asked: *What has your business's experience with changes to WHS laws been like to date?*

In response to that question, the vast majority of businesses (79%) and government entities (97%) indicated that the implementation of WHS changes had had either a neutral or a positive impact on their business (Figure 4). KPMG concluded that:

a large proportion of respondents believe harmonisation delivers benefits in excess of associated costs.⁴⁰

Figure 4: KPMG analysis—businesses’ experience with changes to WHS laws



Comments by some respondents to the C-RIS supported this proposition. For example, APPEA referred to KPMG’s analysis for Safe Work Australia:

[KPMG] did find a significant additional cost to businesses and government entities due to harmonization KPMG though still concluded that the net benefits for all industries across Australia justified harmonisation, especially over the longer run as the full benefits of achieving consistency across regulatory regimes were realised.

Similarly, BHP Billiton stated:

BHP Billiton is of the view that the \$25 per worker median estimate ... is well under anticipated actual implementation costs. However, we recognise that over the long term, these costs will likely be offset by savings realised from moving to an outcomes based approach.

Based on the available information, it is reasonable to assume that the net impact on businesses will be neutral or slightly positive—that is, the benefits will be equal to or greater than the costs for industry.

5.3.8 Collation of Marsden Jacob’s assessment of costs and benefits

In reviewing the submissions, Marsden Jacob considered whether the information provided affected the preliminary cost–benefit analysis set out in the C-RIS.

A key additional source of data was KPMG’s analysis for Safe Work Australia evaluating the impact of the introduction of WHS harmonisation in jurisdictions where that has occurred (summarised in Appendix 1).

Based on responses to the C-RIS, most stakeholders consider that the reform option will result in both an increase in costs and an increase in benefits over the base case.

⁴⁰ KPMG, ‘The economic impact of WHS harmonisation’, p. 2.

Stakeholders' responses to the C-RIS aligned well with the findings of the Safe Work Australia evaluation; some expressly agreed with the key finding of that evaluation that the costs will be offset by benefits in the longer term.⁴¹

Based on stakeholder responses and the updated information, Marsden Jacob has revised the cost–benefit analysis provided in the C-RIS. As outlined above, the responses from the consultation and KPMG's analysis suggest that the total benefit of implementing WHS changes will be equal to or greater than the total cost of WHS over the period of the cost–benefit analysis.

The cost–benefit analysis for this D-RIS estimated the compliance costs and health and safety benefits; however, many benefits remained unquantified. Therefore, Marsden Jacob used a 'threshold analysis' to identify the minimum scale of other benefits arising from the implementation of the WHS (Resources) Bill (see Section 5.3.9). A threshold test is used to show the minimum value that an unknown benefit must reach, given the conclusion that the impact is neutral or beneficial.

Industry compliance cost impacts

Based on KPMG's estimated establishment costs for business of \$486.3 million and ongoing costs of \$1,626.5 million, Marsden Jacob estimates establishment costs at \$51 per person and ongoing costs at \$171 per person per year.

Based on the size of the resources industries in WA, the increase in compliance costs is an estimated \$5.5 million for implementation and \$18.3 million per year in ongoing costs.

Given that all jurisdictions other than WA and Victoria have already implemented WHS reform, these per person costs are unlikely to be accurate for businesses operating across multiple jurisdictions; rather, the true per person costs are likely to be lower for those businesses.

The industry compliance costs derived by this analysis are indicative only. They are used to demonstrate that the results of the threshold tests are realistic even when high compliance costs are used in the cost–benefit model.

Health and safety impacts

As set out in Section 2.1, the current cost of health and safety incidents in WA's resources industries is estimated to be \$570 million per year. KPMG conservatively estimated that the introduction of WHS changes had resulted in a 0.9% decrease in incidents. This would equate to \$5.1 million per year.

Industry comments on the C-RIS broadly supported the sources of benefits suggested in the consultation; for example, ACOR Consultants stated that the benefit would arise from *More efforts and resources allocated on achieving on-the-ground performance rather than maintaining 'systems and procedures'*.

Other business impacts

Industry respondents to the C-RIS indicated that efficiencies are a key driver of other benefits. BP Kwinana Refinery stated:

Experience suggests that objectives based regulations, over the long term, are better able to allow innovation and continuous improvement to be introduced into safety management systems.

⁴¹ APPEA's submission, pp. 8–9; see also BHP Billiton's submission, p. 2.

The KPMG study did not quantify these benefits. However, based on that study and the balance of responses from businesses to the consultation (Sections 5.3.1 to 5.3.3), Marsden Jacob concludes that the total benefits are equal to or greater than the costs. The minimum value of the benefits can be estimated using the threshold test set out in the compiled cost–benefit analysis (Section 5.3.9).

Government costs

Based on DMP’s comments, a one-off cost to government of \$400,000 has been applied to cover the set-up costs that would arise from developing regulations and guidance; no increases in ongoing costs are expected.

Environmental, social and other impacts

While it is likely that the implementation of the WHS (Resources) Bill would result in environmental benefits, those benefits are not quantified. It is also likely that the implementation of the Bill would result in broader social benefits, such as increased worker mobility; however, those benefits are also unquantified.

Net outcome for businesses

Based on the available information, it is reasonable to conclude that the net impact for businesses will be neutral or slightly positive; that is, the benefits will be equal to or greater than the costs.

5.3.9 Compiled cost–benefit analysis

For some elements of this cost–benefit analysis (such as industry compliance costs), there is a firm estimate of the cost. For some other elements (such as ‘other business impacts’ and increased worker mobility), stakeholders agree that the benefits exist but there is no estimate of the scale of the benefits.

Threshold cost–benefit test

Given the conclusion that the benefits for industry of implementing the WHS (Resources) Bill are at least as large as the costs, the value of ‘other business impacts’ can be assessed using a threshold test.

Put simply, the threshold test estimates the minimum value of those impacts that would be needed to ensure that the net overall impact is neutral, given the estimated compliance costs and health and safety impacts for business.

As described in Section 5.3.8, the compliance cost values used in this analysis should be seen as high estimates; the health and safety impacts are conservative estimates. On this basis, the value of the ‘other benefits’ would need to be at least \$13.9 million per year (based on a 10-year cost–benefit analysis and a 6% discount rate) for the overall outcome to be neutral or positive (Table 17). That value equates to \$130 per employee per year for WA employees in the resources industries.

Table 17: Annual values—other benefits threshold (\$ million)

Stakeholder group	Set-up costs	Ongoing compliance costs	Health and safety impacts	Other business impacts
Industry	–\$5.5	–\$18.3	+\$5.1	+\$13.9
WA Government	\$0.4	None	None	None
Employees	None	Increased mobility (through decreased training costs)	Flow-on health and safety benefit	None
Broader WA community	None	None	Flow-on health and safety benefit	None
Total	–\$5.9	–\$18.3 (+ benefits to employees)	+\$5.1 (+ benefits to employees and WA community)	+\$13.9

Notes: Based on a 10-year cost–benefit analysis using a 6% discount rate. Net costs are shown as negative values; net benefits are shown as positive values.

The cost saving of \$130 per employee per year equates to each worker saving one day’s time every 3.5 years.⁴² Given the likely movement of workers between sites and the potential to reduce the need for training or induction, Marsden Jacob finds that this saving is likely to be achieved.

Sensitivity analysis

To test the resilience of the cost–benefit analysis, Marsden Jacob considered the analysis under alternative scenarios of:

- health and safety benefit
- discount rates of 4% and 10%.

The national RIS for the model WHS Act suggested that the introduction of WHS changes would lead to a 1.4% improvement in levels of health and safety (compared to the 0.9% used by KPMG). Given that the total cost of health and safety incidents in the mining and petroleum industries is an estimated \$570 million per year⁴³, a 1.4% reduction equates to a benefit of \$8.0 million per year. Under this scenario, the benefit arising from other business impacts would need to be only \$11.1 million to derive a neutral or positive outcome (equating to a cost of \$103 per employee per year).

The use of alternative discount rates has minimal impact on the scale of the benefit arising from other business impacts (Table 18).

⁴² The calculation is based on a conservative wage of \$100,000 per worker and assumes that the worker works 220 days a year, giving a cost of \$455 per day.

⁴³ See Section 2.2.

Table 18: Benefit test using alternative discount rates

Discount rate	Annual benefit arising from other business impacts (\$ million)
4%	\$13.9
6%	\$13.9
10%	\$14.0

5.4 Distribution of costs and benefits

The proposed WHS reform is intended to deliver a framework that provides efficient, equitable and consistent standards of health and safety across three resources sectors. However, the distribution of costs and benefits will necessarily differ among the sectors, individual companies and individual workers.

This section examines the distribution of costs and benefits and considers whether the distribution impacts would result in undesirable or inequitable outcomes. It considers:

- differential impacts among firms operating in single and multiple jurisdictions
- impacts on smaller operations
- stakeholders' comments on competition and market impacts.

5.4.1 Single-jurisdiction and multi-jurisdiction activities

The national RIS for the model WHS Act found that benefits arising from the implementation of WHS reforms would accrue to companies and workers that work across multiple jurisdictions but that set-up costs would be borne by all operators.

In the C-RIS, Marsden Jacob queried the assumption that safety benefits would accrue only to companies operating in multiple jurisdictions. In addition, it proposed that such businesses may have already implemented changed WHS processes. Where that has occurred, it is likely that the costs and benefits have already been realised and that the remaining impact on costs and the benefits of the WHS (Resources) Bill will be quite small.

This proposition is supported by the KPMG study, which stated:

A number of multi-jurisdictional businesses noted that prior to harmonisation they had already harmonised their WHS requirements at a corporate level, with systems already developed and put in place to account for differences in legislation across jurisdictions.⁴⁴

However, the KPMG report did not include sufficient data to consider that variation quantitatively. In addition, respondents to the C-RIS did not comment on the distribution of costs and benefits between single-jurisdiction and multi-jurisdiction firms.

Based on the available information, Marsden Jacob considers that both the costs and the benefits of implementing the proposed Bill are likely to be smaller for multi-jurisdiction firms that have already implemented a form of harmonisation than for single-jurisdiction firms. However, there is insufficient data to consider this quantitatively.

⁴⁴ KPMG, 'The economic impact of WHS harmonisation', p. 4.

5.4.2 Impacts on smaller businesses

The introduction of the proposed WHS (Resources) Bill will necessarily affect small, medium and large resources companies to varying extents.

A proportion of the set-up costs will be fixed for each company, regardless of its size. These costs would include items such as systems and reporting costs, and the costs of training for the initial safety and resources officers.

Other set-up costs and ongoing costs are driven by employee numbers and therefore by the size of the company, the type of operation and the number of worksites. A company with a higher number of workers will necessarily include a larger number of health and safety representatives in its workforce.

The KPMG study noted:

Around three quarters of small businesses interviewed indicated there had been no material change to their costs due to WHS.⁴⁵

Stakeholders' comments

One individual (Glen Neeves) commented on the potential for an adverse distribution of costs and benefits for smaller operations as a consequence of outcome-based legislation:

Smaller operations, where there isn't a permanent work force or operation are likely to become very prescriptive under this new bill, or will have to provide a dedicated [site senior executive (SSE)] to manage operations. It also places an onerous responsibility on people who have to deal with a changing workforce, either because of seasonal work, or due to staff turnover. This will not introduce new and better culture which is the only method that has a definite correlation with improved safety standards.

In addition, Cement Concrete and Aggregates Australia's submission stated:

To ensure that the new risk management systems do not impose a significant regulatory burden on industry, especially smaller operators, CCAA strongly believes that the extractive industry requires additional guidance material to ensure that it implements effective risk management systems that will improve our industry's health and safety performance. In this regard, we believe it is essential that guidance material, similar to the Small Mines Health and Safety Management Kit, be made available to our industry.

Marsden Jacob assessment

As outlined in the C-RIS, 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 the potential for an inequitable distribution of costs and benefits and was supported by stakeholders. For example, Cement Concrete and Aggregates Australia stated:

Provided that effective guidance material is provided to small operators and that the health and safety management laws are applied proportionate to the risks and scale of the operation then there should not be undue regulatory burden or costs for industry.

⁴⁵ KPMG, 'The economic impact of WHS harmonisation', p. 4.

5.4.3 Stakeholders' comments on competition and market impacts

The RIS criteria require the consideration of any inter-jurisdictional trade in goods and services as well as the implications (if any) for competitive market outcomes.

Benefits in increased worker transferability are discussed in Section 5.3.5, and benefits for multi-jurisdiction firms compared with single-jurisdiction firms are addressed in Section 5.4.2. Other comments received in stakeholder submissions are considered in this section.

Stakeholders' comments

Respondents to the C-RIS were asked:

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

Of the 24 submissions received, 10 responded to this question (Table 19).

Table 19: Summary of responses to 'Will the additional or new requirements in all the changes have any market or competition impacts on your business?'

Response	Number of responses
Yes	6
No	4
Total	10

Of the four responses that indicated there would be no market or competition impacts, none commented on why that was the case. In contrast, all six of the positive responses detailed the reasons for the response. These responses varied in their suggestions that the changes to competitiveness would be positive (two responses), negative (three responses) or unclear (one response).

Two submissions commented that there would be benefits of increased competition in the safety field as a result of the proposed Bill. SVT Engineering stated:

It will help remove artificial barriers for service providers in the health and safety field, increasing competition. (SVT Engineering, p. 4)

ACOR Consultants also suggested beneficial impacts, including:

Acquiring new skills and capabilities; and attracting and retaining best talents that have skills, knowledge and experience in integrated application of work health and safety across mining, petroleum, and major hazard facilities. (ACOR, p. 3)

Three stakeholders linked to MHF operations raised concerns that any increase in compliance costs had the potential to reduce the competitiveness of WA operators compared to international and domestic operators. However, only one of these submissions (from a confidential MHF operator) made a firm comment that the proposed Bill would directly affect the ability of their business to compete:

... the package will increase compliance costs to our businesses impacting our national and international competitiveness. [Confidential] has the highest levels of MHF compliance fees compared to our competitors operating in different states.

BP Kwinana stated:

The Kwinana Refinery manufactures petroleum products in direct competition with other refineries in the Asian region that are not subject to these laws and regulations, and these refineries can and do import product into Australia. They are of course subject to laws and regulations in their own jurisdiction. It is important that Western Australia keeps focused upon reducing compliance costs for Industry so that they do not become a competitive disadvantage. Like all changes, these reforms do have the potential to impose unnecessary transition and longer term costs.

PACIA stated:

PACIA remains concerned that the expansion of DMP obligations with respect to OHS provisions will result in cost increases for MHF operators. The WA MHF scheme already imposes costs that exceed those imposed by comparable regulators in other jurisdictions. An increased cost to MHFs would add further strain on WA industry to remain competitive.

Finally, one submission acknowledged that competition and market impacts were possible, but that changes needed to be considered alongside the need for WA conditions to align with Australian standards. Robinson, Towsey and Cunningham stated:

This is difficult to predict. On one hand, if compliance costs are increased, then Australia may be disadvantaged compared with under-developed nations, however, Australian organisations should apply policies and processes that are no less stringent than those they experience elsewhere in Australia.

Other concerns raised by MHFs

In relation to MHF sites, PACIA stated:

PACIA is concerned that the potential cost and regulatory impact on MHFs that also operate non-MHFs may be excessive. This is due to having to deal with separate OHS regulators for each of the MHF and non-MHF facilities.

PACIA also noted in its submission that gains in health and safety were expected from WHS harmonisation (in response to Question 5), but went on to highlight the difference between benefits accruing to MHF-only operators and operators with both MHFs and non-MHF facilities (in response to Question 6):

PACIA considers that where a business operates MHF sites only, that there could be some minimal benefits associated with a consolidated regulator in streamlining the regulatory framework and reporting structure. However, [for] operators that have both MHFs and non-MHF facilities, we expect a decrease in efficiency and worker transferability between sites.

PACIA further observed that the drivers for decreases in efficiency and worker transferability for operators of MHF and non-MHF facilities are explained but not quantified:

The separation of duties between different regulators for the same legislative area at different sites risks duplication and additional complexity. Businesses could find themselves having duplicative dealings on [the] same issues with each regulator at different sites, which is neither cost effective nor efficient for either government or the business. It would also reduce transparency to businesses in regards to regulatory expectations and decisions associated with differences in interpretation of regulatory requirements between regulators. Internal systems would be underpinned by a degree of separation between sites due to different priorities, application management and decision making between regulators, which in turn would result in:

- *reduced internal transparency between sites for workers;*

- *decreases mobility in the movement of workers between sites; and*
- *a potential increase in overall cost and burden for businesses to manage.*

Marsden Jacob assessment

Based on stakeholders' responses, it appears that the MHF sector is the only industry sector that is concerned about market impacts. The MHFs are concerned that compliance costs will increase, which would reduce their competitiveness with other Australian or international producers. One of the comments was not specific about the source of the perceived compliance cost increase, one points to possible increases in fees and one refers to likely inefficiencies for companies that run both MHF and non-MHF facilities. Those comments are considered here.

Given that MHFs in most other Australian jurisdictions operate under the WHS legislation, it is unlikely that the imposition of the WHS (Resources) Bill in WA would increase costs disproportionately for WA operators, making them uncompetitive with other Australian producers.

In undertaking the previous RIS on the Structure of Mining, Petroleum and Major Hazard Facilities Safety Legislation, DMP stated that the proposed transfer of roles for OHS at MHFs would not result in an increase in fees for those sites.

DMP estimates that only four or so companies operate both MHF and facilities that would not be covered by the WHS (Resources) Bill. Apart from the costs of reporting to multiple regulators, costs will be limited if there is alignment between the proposed Bill and the legislation for general industry. This proposition appears to be supported by PACIA, which stated:

PACIA does accept that large transitional timeframes can help to resolve harmonisation lags between regulators, however operators caught between two regulators with their facilities, will be disadvantaged by the continual reduction in transitional allowances. These operators will not reap the full benefits of transitional alignments and could incur increased costs due to shorter management time to implement new management systems.

DMP has committed to working with WorkSafe WA to ensure that there is a high level of consistency with general industry. In addition, it has committed to work with stakeholders on the transitional arrangements to minimise costs to industry.

Based on DMP's commitments, Marsden Jacob considers it unlikely that the introduction of the WHS (Resources) Bill would result in market or competition impacts.

5.5 Implementation, transitional arrangements and statutory reviews

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

5.5.1 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. Different days may be fixed for different provisions.

DMP currently plans for the proposed 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

DMP currently proposes a commencement date of 1 January 2017 if the proposed Bill passes through Parliament and becomes an Act in 2016.

Marsden Jacob recommendation

Marsden Jacob recommends that DMP ensure an adequate timetable for implementation. Implementation timing should be aligned with reforms to general industry health and safety legislation if possible, but only if that does not impose excessive delays, as the WHS (Resources) Bill will deliver net benefits independently of benefits from alignment with general industry legislation reforms.

5.5.2 Transitional arrangements

When laws and regulations are changed, transitional provisions are developed. They cover the timing and arrangements for the phased introduction of the new laws. The transitional arrangements can be designed to minimise changeover costs and other impacts 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 proposes that, where there is no change in role or compliance requirements, the relevant provisions will be implemented when the Act commences. Where there is such a change, the relevant provisions will be implemented using a longer transition period that will be decided in consultation with stakeholders.

Marsden Jacob notes that Safe Work Australia has developed ‘transitional principles’ that support the model WHS Act.⁴⁶ The principles provide a framework that could be applied when implementing the WHS (Resources) Act.

Marsden Jacob recommendation

Transitional arrangements should be developed in consultation with stakeholders, considering the comments made on specific changes as outlined in Section 5.5.3.

5.5.3 Respondents’ comments on transitional arrangements

A total of 11 respondents provided comments on transitional arrangements. Of those, five made general comments on transitional arrangements:

- Two confidential respondents proposed the rapid implementation of the WHS (Resources) Act (for example, on commencement).
- CME recommended a pragmatic approach:

To minimise the cost burden from the introduction for the WHSR Bill, CME recommends the DMP take a pragmatic approach to policies and procedures of resource facility operators including permitting resource facility operators to continue to use existing policies and procedures which refer to current legislation but otherwise meet the substantive requirements of the WHSR Bill. (CME, p. 7)

⁴⁶ Safe Work Australia (undated), *Transitional principles—implementing the model WHS Act*, published 18 March 2011, <http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/model-whs-act/transitional-principles/pages/transitional-principles>

- PACIA commented that existing approvals should remain in place until renewals are required. PACIA pointed out that:

The implementation of any new requirements needs careful planning to avoid cyclical spikes in regulator activities (e.g. renewal challenges every 5 years). (PACIA, p. 8)

ACOR Consultants agreed with DMP's proposed implementation timeline and suggested that the following three changes would be the most effective way to reduce implementation costs or provide the greatest benefit through transition:

1. *recognition and accreditation of prior experience and learnings;*
2. *preparation of additional guidance or codes of practice prior to implementation; and*
3. *rapid implementation (e.g. on commencement). (ACOR, p. 5)*

In addition to the general comments, six stakeholders provided suggested transitional approaches for particular sections of the WHS (Resources) Bill in their submissions. Table 20 summarises those comments. Safety management systems and safety cases were the elements that were most commonly commented on.

Table 20: Suggested transitional approaches for particular sections of the WHS (Resources) Bill

Respondent	Topic	Proposed approach
PACIA	Safety cases	Documents supporting the new safety case regime need to be made available well in advance, which ensures sufficient time for familiarisation and implementation.
CCAA	Risk assessment	Delay implementation by 1 year. Allow companies time to plan data collection and analysis for key areas, such as health. Provide additional support and training to ensure that companies are able to comply effectively and efficiently.
CCAA	Safety management systems	Additional support and training will ensure that companies are able to comply effectively and efficiently. This will support companies in developing adequate controls in the early stages of implementation.
BP Kwinana Refinery	Existing safety cases	Existing safety cases should be grandfathered for the currency of their established terms. MHFs should initially be required to agree on a transition plan explaining how they will move personal safety into the safety case when it next becomes due.
BP Kwinana Refinery	Major hazard facilities	BP recommends a staged approach and that covers the following points: <ul style="list-style-type: none"> ○ Safety reports governing process safety risks at MHFs remain current for their remainder of their existing term. ○ MHFs should agree with DMP on a transition plan for changing the remainder of safety risks (that is, OHS or 'personal safety' risks). ○ MHFs should continue to manage personal safety according to current settings until the transition plan takes effect.
BP Kwinana Refinery	The regulator	BP suggested that the regulator will also need to transition to perform new functions (including the transfer to functions from WorkSafe to DMP and the move towards risk-based objectives rather than prescription). BP suggested that DMP:

		<ul style="list-style-type: none"> ○ seek advice from other agencies that have recently reformed, such as NOPSEMA ○ take care to maintain adequate focus upon both OHS and process safety ○ consider how reporting requirements complement or duplicate the internal requirements of the facility operators.
ATCO	Major hazard facilities	Subject to how much information is required to be supplied with the MHF notification, 1 year would be a reasonable transition period.
ATCO	New major hazard facilities	A period of greater than 2 years for preparation and submission of a safety case would be preferred.
Confidential respondent	Major hazard facilities	Recognition and accreditation of prior experience and learnings. Existing approved safety reports simply transition to licensed safety cases. Need for clear safety case assessment framework to support the licensing regime. The MHF licence regime should be implemented once the safety case assessment process has been developed and implemented.
Glen Neeves	Penalties, safety committee & due diligence on systems	Delay implementation by 1 year.
Glen Neeves	Safety management plan	Rapid implementation (for example, on commencement).
Glen Neeves	Exemption for small operations and contractors	Staggered start (such as short-term exemptions for some industries or smaller businesses).

5.5.4 Statutory reviews

Most legislation is subject to ongoing statutory reviews, usually every five years.

Given that the proposed reform consolidates a significant number of Acts and sets of regulations, as well as extensive modernisation, it is likely that some issues may be identified after implementation.

It is therefore prudent to consider a shorter initial period for the statutory review to address any identified shortcomings sooner, before reverting to the standard five-yearly reviews,

Marsden Jacob recommendation

Marsden Jacob recommends that the legislation be reviewed within two years to correct any issues identified after implementation, followed by ongoing five-yearly reviews.

5.6 Consideration of the 21 key areas of change identified in the C-RIS

The C-RIS identified 21 key areas of change and asked stakeholders to comment on them.

Table 21 summarises the numbers of comments received on each of the key areas of change. Areas with only positive comments are shaded in green and those changes are not considered further, as there appears to be support for them (this affects changes 5, 17 and 18).

Areas of change with no comments are also assumed to be supported by industry; they are shaded in grey and are not considered further (this affects changes 3, 6, 7, 13, 15, 16 and 19).

Table 21: Key areas of change identified in the C-RIS

Change number	Title	Number of comments received
1	Applicable legislation	1
2	Application of the WHS (Resources) Act	6
3	Decision on application of the WHS (Resources) Act or WHS Act to worksites	0
4	Primary duty of care	3
5	Person having primary duty of care	1
6	Other duty holders	0
7	Management of risk	0
8	Safety case and safety management system (SMS)	7
9	Management and supervision / statutory positions	4
10	Penalties	5
11	Incident notification	2
12	Incident investigation	5
13	Administration of the Act by the regulator	0
14	Powers of regulator and inspectors	1
15	Enforcement measures	0
16	Limitation period for prosecutions	0
17	Officer's liability	2
18	Advisory committees	2
19	Evidentiary provisions	0
20	Sharing and publication of information by regulator	4
21	Board of inquiry	1

Stakeholders' comments on the remaining changes are considered in detail in Appendix 4.

Very few respondents commented on the impact of costs and benefits on the 21 key changes. For this reason, the submissions are assessed against the reform objective set out in Section 5.1.

For each of the key changes, Marsden Jacob has outlined:

- a summary of the change from the C-RIS
- the submissions received
- DMP's position on the proposed amendment
- Marsden Jacob's recommendation about the change after considering the change against the reform objective.

None of comments received in relation to the 21 key changes was assessed as requiring significant change or reconsideration of the WHS (Resources) Bill. Therefore, the detailed assessment has been included in Appendix 4; this section summarises recommendations resulting from the analysis.

5.6.1 Recommendations relating to the 21 key areas of change

Marsden Jacob's recommendations are summarised in Table 22.

Table 22: Summary of recommendations relating to the 21 key areas of change

Change number	Title	Marsden Jacob's recommendation
1	Applicable legislation	No change to the WHS (Resources) Bill proposal is required. Where appropriate, DMP should seek to align the WHS requirements for dangerous goods sites with the requirements for resources sites.
2	Application of the WHS (Resources) Act	No change to the WHS (Resources) Bill proposal is required. DMP has indicated that it does not plan to revise the definition of MHFs but will review the MHF guidance material. DMP should communicate a clarification on workers' accommodation to stakeholders and ensure that the Parliamentary Counsel's Office (PCO) is aware of the objective that right of entry provisions will not apply to accommodation sites. Determination of applicability of WHS (Resources) Act will be resolved by PCO.
4	Primary duty of care	No change to the WHS (Resources) Bill proposal is required. Competency requirements will be covered in the regulations.
8	Safety cases and safety management systems (SMSs)	DMP should clarify the naming convention for mining SMSs in the WHS (Resources) Regulations, to differentiate them from the SMS component of petroleum/MHF safety cases.
9	Management and supervision / statutory positions	DMP should consider the comments provided by stakeholders in relation to management and supervision / statutory positions in preparing the WHS (Resources) Bill.
10	Penalties	No change to the WHS (Resources) Bill proposal is required.

Change number	Title	Marsden Jacob's recommendation
11 & 12	Incident notification / Incident investigation	No change to the WHS (Resources) Bill proposal is required. DMP has committed to providing additional guidance in relation to incident notification and reporting, and further detail will be included in the regulations.
14	Powers of regulator and inspectors	No change to the WHS (Resources) Bill proposal is required.
20	Sharing and publication of information by regulator	No change to the WHS (Resources) Bill proposal is required.
21	Board of inquiry	No change to the WHS (Resources) Bill proposal is required.

5.7 Consideration of other comments provided by stakeholders

Question 8 in the C-RIS asked:

Do you have concerns with particular provisions that are not included in the 21 key changes identified by DMP?—if so what are they?

A total of 17 respondents provided comments for this question or raised specific issues. The comments and issues were grouped under 20 topics. Only seven topics received more than one comment (Table 23).

None of the comments provided a summary of costs or benefits that would arise. For this reason, the potential impacts of any changes proposed in the comments were considered against the reform objective.

Appendix 5 considers each of the changes proposed in detail. It sets out the proposed change, DMP's comments on the change and Marsden Jacob's recommendation after considering the change against the reform objective.

5.7.1 Recommendations relating to other comments made

Marsden Jacob's recommendations on proposals made in other comments are summarised in Table 23.

Table 23: Summary of recommendations relating to other comments made

Change letter	Topic	Number of comments	Marsden Jacob's conclusion / recommendation
A	Further consultation	6	No change to the WHS (Resources) Bill proposal is required. DMP has committed to further detailed consultation on the regulations through the Ministerial Advisory Panel, workshops and a formal RIS consultation process.
B	Alignment with general industry & Green Bill timing	6	No change to the WHS (Resources) Bill proposal is required. DMP and the Department of Commerce will ensure that alignment between resources industries and general industry is maintained, where appropriate, irrespective of whether the WHS Green Bill is delayed.

Change letter	Topic	Number of comments	Marsden Jacob's conclusion / recommendation
C	Reasonably practicable	5	In drafting the WHS (Resources) Bill, DMP should review the reasoning for the minor amendments to the definition of 'reasonably practicable' and should consider whether the benefits of the amendments outweigh the costs of being inconsistent with the definition used in other jurisdictions.
D	Interaction with other Acts	3	No change to the WHS (Resources) Bill proposal is required.
E	Part 6 — Discriminatory, coercive and misleading conduct	2	No change to the WHS (Resources) Bill proposal is required.
F	Union right of entry	2	No change to the WHS (Resources) Bill proposal is required.
G	Differing approaches among sectors of resources industries	2	No change to the WHS (Resources) Bill proposal is required. DMP has committed to review the need for separate regulations if the need arises during the preparation of the WHS (Resources) Regulations.
H	Codes of practice	1	No change to the WHS (Resources) Bill proposal is required. Marsden Jacob notes DMP's commitment to work with industry to ensure that the implementation of the WHS (Resources) Act is suitably supported by codes of practice.
I	Design obligations— Part 2, Division 3, sections 22 to 26A inclusive	1	No change to the WHS (Resources) Bill proposal is required. However, Marsden Jacob recommends that drafting instructions for the Bill ensure that the provisions cannot be interpreted as being retrospective.
J	Duty of workers	1	No change to the WHS (Resources) Bill proposal is required.
K	Resources facility inspection records	1	Marsden Jacob recommends that the drafting instructions prepared by DMP for the WHS (Resources) Bill include the proposed change requiring inspectors to provide a summary of inspection visits.
L	Health— hierarchy of control and psychosocial hazards	1	No change to the WHS (Resources) Bill proposal is required.
M	Welfare	1	No change to the WHS (Resources) Bill proposal is required. The suggested change has been made.

Change letter	Topic	Number of comments	Marsden Jacob's conclusion / recommendation
N	Health and safety representatives	1	Marsden Jacob recommends that DMP consult with the Ministerial Advisory Panel on whether it is necessary to clarify the wording of s. 84 of the proposed Bill to make it clear that a worker has the right to cease work if that work may harm others.
O	Plain English	1	No change to the WHS (Resources) Bill proposal is required.
P	Union right to prosecute	1	No change to the WHS (Resources) Bill proposal is required.
Q	Independent auditors	1	No change to the WHS (Resources) Bill proposal is required.
R	Inspectors	1	No change to the WHS (Resources) Bill proposal is required.

5.7.2 Detailed drafting

In addition to these comments, four respondents (UnionsWA, APGA, CCI and APPEA) provided detailed drafting comments. Those comments are not considered in detail in this D-RIS, but have instead been provided to DMP to assist with the drafting of the WHS (Resources) Bill.

6. Assessment of the proposed reform against RIS criteria

As detailed in Section 1, Marsden Jacob used the responses to the C-RIS to assess the reform proposal against the RIS criteria. For simplicity, that analysis is summarised in Table 24.

Table 24: Summary assessment against RIS criteria

Criteria	Assessment
Whether the legislative change will meet its objective	Respondents suggested minor edits to the objective, but there was general support for the implementation of the proposed WHS (Resources) Bill.
Whether it will be a net benefit to the economy	Most respondents considered that the proposed reform would deliver health and safety benefits but would also increase compliance costs. Previous analysis by KPMG indicated that the implementation of WHS legislation has had a neutral or beneficial impact on the vast majority of businesses and government departments surveyed. This proposition was supported by some respondents to the C-RIS. No respondent indicated that the reform would result in a net cost.
Whether the regulatory change will have an impact on: <ul style="list-style-type: none"> the environment social justice health equity other relevant areas. 	It is likely that the proposed reform will have a neutral or positive impact on the environment, but that impact is unquantified. It is unlikely that the reform will have an impact on social justice, equity and other relevant areas. As health and safety form part of the objective, health was not considered separately here.
Whether the legislative change will result in costs or benefits being distributed unfairly	It is unlikely that the proposed reform will result in costs or benefits being distributed unfairly. DMP has committed to providing resources to support small mining operations in the implementation of the reform.

6.1 Achievement of objectives

As set out in Section 5.1, respondents agreed with the proposed objective and suggested some edits that have been incorporated. Respondents also provided general support for the implementation of the proposed WHS (Resources) Bill. The final objective for the reform (with edits underlined) is:

To develop a modern, adaptable regulatory framework that supports the delivery of world-class standards of health and safety in an efficient, equitable and consistent manner across mining, petroleum and MHFs. In addition, the regulatory framework must balance:

- *improved health and safety outcomes against regulatory costs; as well as*
- *consistency within the resource sector, with other industries and with other Australian jurisdictions against sector-specific requirements.*

6.2 Preferred option

Marsden Jacob concludes that the proposed reform would deliver a neutral or beneficial outcome for industry and a net benefit for the broader community compared with either making no change or consolidating the legislation without modernisation.

A detailed consideration of costs and benefits is not possible without knowledge of the regulations. However, this risk can be managed through detailed assessment of the content of the legislation and regulations in subsequent RISs.

Therefore, Marsden Jacob recommends that the WHS (Resources) Bill be developed as proposed and that the regulations be subject to further scrutiny through separate RIS processes. Close consultation with stakeholders should ensure that the new regulations are able to provide a net benefit compared with the status quo. The WHS (Resources) Bill should then be implemented as the preferred option.

The progression of the regulations will be contingent on the relevant RIS identifying a net benefit compared with the status quo.

Appendix 1: Previous studies assessing the costs and benefits of WHS changes

As noted in Section 3.2, Marsden Jacob identified two previous cost–benefit analyses examining the impact of WHS legislation.

- In 2009, Access Economics prepared a RIS for Safe Work Australia on the national introduction of the model WHS legislation (referred to in this report as the ‘national RIS’).⁴⁷
- In 2014, KPMG completed an economic analysis, also for Safe Work Australia, to evaluate the impact of reforms following the introduction of harmonised WHS legislation in jurisdictions other than Victoria and WA (referred to in this report as the ‘KPMG study’).⁴⁸

Because the proposed WHS (Resources) Bill is based on the model WHS Act, these analyses are directly relevant to the proposed reform.

The KPMG study

In 2014, Safe Work Australia commissioned KPMG to undertake industry surveys to evaluate the impact of implementing WHS harmonisation.⁴⁹ That analysis is currently unpublished; however, relevant key findings are summarised here.

Costs

The KPMG study concluded that the harmonisation of WHS has resulted in increased costs: 43% of businesses and 71% of government agencies indicated that there had been an ‘increase’ or ‘significant increase’ in WHS costs (Figure 5).

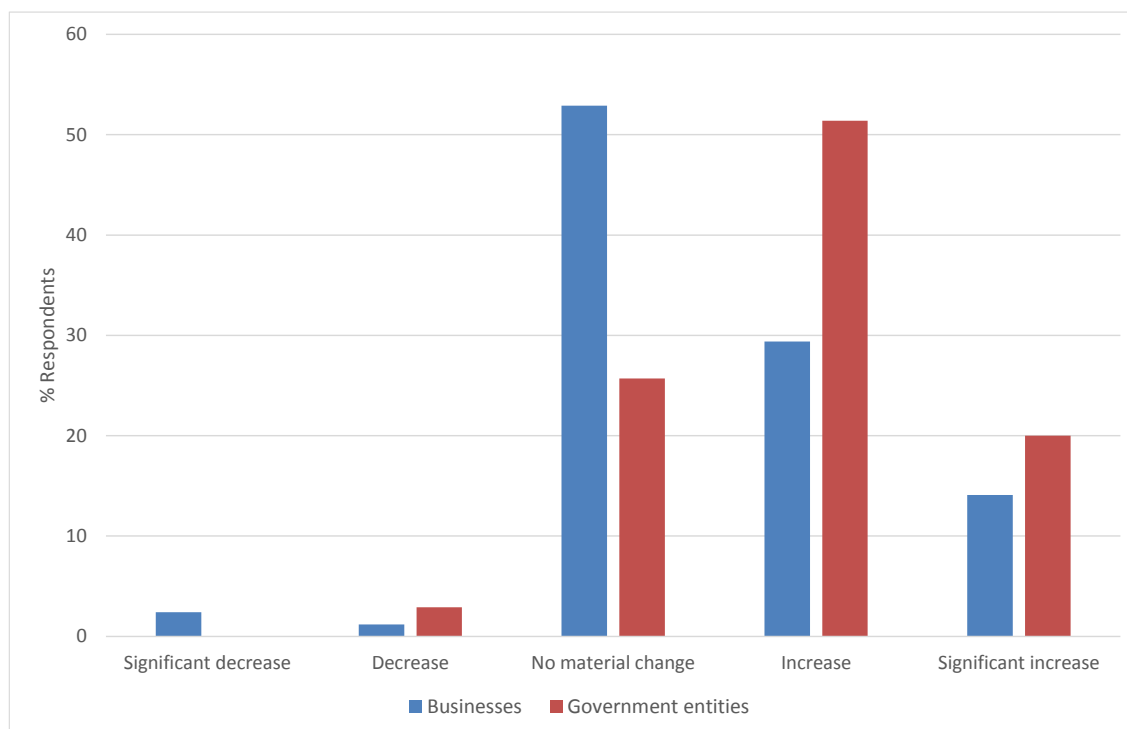
While 57% of businesses indicated that costs had not increased, around three-quarters of small businesses interviewed indicated there had been no material change to their costs due to harmonisation.⁵⁰

⁴⁷ Access Economics, *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, report prepared for Safe Work Australia, 9 December 2009, www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/pc200912decisionregulationimpactstatementformohsact

⁴⁸ KPMG, ‘The economic impact of WHS harmonisation’.

⁴⁹ The analysis considered all Australian jurisdictions that had implemented WHS, and so excluded WA and Victoria.

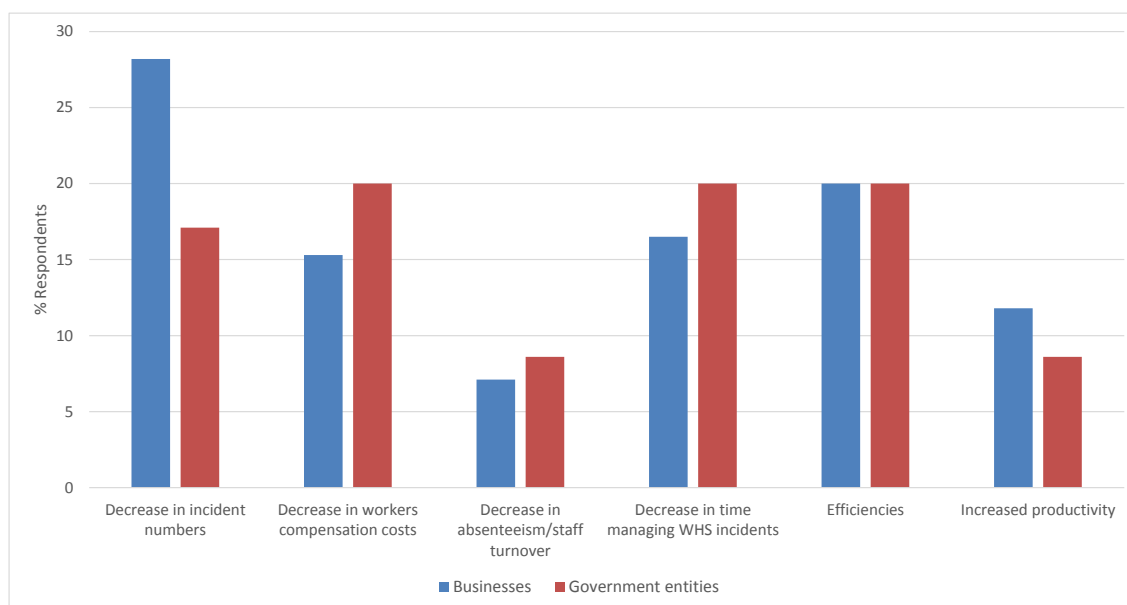
⁵⁰ KPMG, ‘The economic impact of WHS harmonisation’, p. 4.

Figure 5: Overall impact of changes in WHS laws on costs

Source: KPMG, 'The economic impact of WHS harmonisation', 2014, Tables 21 and 37.

Benefits

The analysis also found that businesses and government entities attributed a range of benefits to harmonisation (Figure 6).

Figure 6: Benefits of harmonisation

Source: KPMG, 'The economic impact of WHS harmonisation'.

Several of the benefits identified arise from a perceived reduction in the number of incidents, a decrease in compensation costs and a decrease in time spent managing incidents. The scale of this benefit varied

greatly: 21% of businesses and 17% of government entities directly attributed a reduction in incidents to harmonisation; the scale of the reduction ranged from 23% to 80%.

Comparison of costs and benefits

KPMG noted that a number of the benefits could not be quantified and used a conservative estimate of the reduction in incidents arising from the harmonisation of WHS. On this basis, the economic impact since harmonisation is an estimated net cost of \$1.9 billion (Table 25).

Table 25: Estimated net economic impact since harmonisation

Element	Value (\$ million)
Total business cost	\$2,112.8
Government cost	\$34.6
Total costs	\$2,147.5
Total benefits	\$260.3
Net cost	\$1,887.2

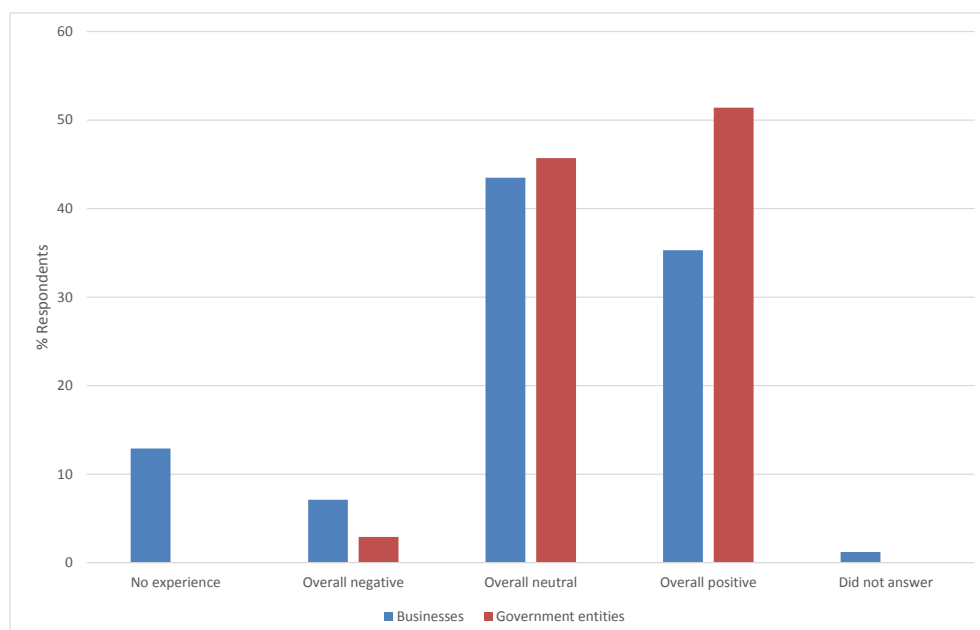
Source: KPMG, 'The economic impact of WHS harmonisation', Table 1.

KPMG calculated that this equates to a net cost per employee of \$164 (a \$44 implementation cost and an ongoing cost per employee of \$120 per year).

However, when asked 'What has your business's experience with changes to WHS laws been like to date?', the majority of businesses (79%) and government entities (97%) indicated that the changes had had either a neutral or a positive impact on their business (Figure 7). Based on these responses, KPMG concluded that:

a large proportion of respondents believe harmonisation delivers benefits in excess of associated costs.⁵¹

Figure 7: Businesses' experience with changes to WHS laws



⁵¹ KPMG, 'The economic impact of WHS harmonisation', p. 2.

The national RIS

A national RIS was undertaken when the national model WHS Act was being prepared.⁵² The national RIS is a useful reference for assessing elements of the proposed legislative reform in WA.

The national RIS consultation considered all industries but did not deal with the WA resources industries in detail. However, the conclusions drawn by the national RIS are likely to be indicative of the costs and benefits 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 (Table 26).

Table 26: Summary of findings from the national RIS on the model WHS Act

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

Source: Access Economics, *Decision Regulation Impact Statement for a model Occupational Health and Safety Act*, Table 8.1 and Section 8.

⁵² Access Economics, *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, report prepared for Safe Work Australia, 9 December 2009.

Total net benefit identified

The national RIS did not quantify the net benefits of the model WHS Act. Instead, it concluded:

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.⁵³

An Access Economics survey estimated the impact on businesses and other stakeholder groups, but due to a limited sample size of 26 usable responses, Access Economics concluded that the results were not robust. Despite the qualification of a small sample size, the survey provides a useful indicator for the current RIS.

The 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. Based on the survey, Access Economics 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 in firms that operate in only one jurisdiction.

The total distribution of costs and benefits is summarised in Table 27.

Table 27: Estimated national benefits of WHS harmonisation (per year)

Class	Net benefit (\$m)
Single-state firms	–223.5
Multi-state firms	179.3
Total firms	–44.3
Workers	114.8
Rest of society	110.2
Total	180.7

Source: Access Economics, *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, Table 7.3 and Appendix C.

Importantly, Table 27 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 incidents.⁵⁴ Given that the same legislation and requirements would apply to single-state and multi-state firms, it was assumed that safety benefits would not accrue equally to all workers.

⁵³ Access Economics, *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, p. 70.

⁵⁴ Access Economics, *Decision Regulation Impact Statement for a Model Occupational Health and Safety Act*, p. 64.

Appendix 2: Submissions received

Marsden Jacob received 24 submissions on the C-RIS (Table 28). Twenty were non-confidential and have been published on Marsden Jacob's website.

Table 28: List of submissions received

	Organisation	Resource category ^a
1	ACOR Consultants	Mining; petroleum; major hazard facility (MHF); gas pipelines; dangerous goods storage, handling and transport
2	ATCO Gas Australia	Petroleum, MHF, gas pipelines
3	Association of Mining and Exploration Companies (AMEC)	Mining exploration
4	Australian Finance Conference (AFC) and Australian Equipment Lessors Association (AELA)	Mining, petroleum, MHF
5	Australian Mines and Metals Association	Mining, petroleum, MHF
6	Australian Petroleum Production & Exploration Association (APPEA)	Petroleum, MHF
7	Australian Pipelines and Gas Association (APGA)	Petroleum, gas pipelines
8	BHP Billiton	Mining, petroleum
9	BP Refinery Kwinana	Petroleum, MHF
10	Cement Concrete & Aggregates Australia (CCAA)	Extractive (quarry)
11	Chamber of Commerce and Industry WA (CCI)	Mining, petroleum, MHF
12	Chamber of Minerals and Energy (CME)	Mining
13	Glen Neeves	Mining
14	Jock Cunningham, Angus Robinson and Chris Towsey	Mining
15	Occupational Health Society of Australia WA	Safety professionals
16	Plastics and Chemicals Industries Association (PACIA)	MHF
17	Risk Engineering Society WA	Mining, petroleum, MHF
18	Safety Institute of Australia WA	Mining, petroleum, MHF, work health and safety
19	SVT Engineering Consultants	Mining, petroleum, MHF
20	UnionsWA	Mining, petroleum, MHF, gas pipelines
21	Confidential	Mining, petroleum
22	Confidential	Petroleum, MHF, gas pipelines
23	Confidential	Petroleum, MHF

Organisation		Resource category ^a
24	Confidential	Petroleum

a Categories are based on the details provided in completed cover sheets for submissions. Where a stakeholder did not complete a cover sheet, Marsden Jacob made an educated guess as to the relevant categories.

Appendix 3: Stakeholder contact during consultation

In addition to the stakeholder forum held on 23 July 2015 and the formal submission period (7 July to 14 August 2015), stakeholders were advised and updated on the consultation via website announcements, Safety Alert emails, email correspondence and targeted telephone calls.

In addition, DMP met with a number of industry associations, companies, worker representatives and other stakeholders.

The timing and nature of this stakeholder engagement are detailed in this appendix.

Website announcements

- *6 July:* Marsden Jacob announced the consultation via a news article on its website and launched a web page dedicated to the consultation.⁵⁵
- *10 July:* DMP updated the Consultation on Safety Legislation Reforms—RIS webpage to include details and links for this consultation on the WHS (Resources) Bill.⁵⁶
- *17 July:* DMP added another link from the DMP home page to the newsflash article about the stakeholder consultation and forum. The article was added to the ‘Events’ section of the DMP website on the Stakeholder Forum.
- *3 August:* A newsflash article on DMP website home page was updated: ‘Have your say on safety reforms’.⁵⁷

Email correspondence

- *6, 7 July:* DMP sent emails to a number of different contact lists with details and links for the consultation. This email was received by 3,878 recipients, including:
 - industry safety and health representatives
 - industry operational managers
 - unions
 - consultants
 - contacts from the 2014 RIS consultation
 - contacts from DMP’s Safety Regulation System database
 - attendees of stakeholder forums (on ‘as low as reasonably practicable’ and minerals exploration)
 - members of the Ministerial Advisory Panel on Safety Legislation Reform (MAP)
 - members of the Mining Industry Advisory Committee

⁵⁵ For the announcement post, see <http://www.marsdenjacob.com.au/consultation-open-work-health-and-safety-resources-bill/>. For the main web page, see <http://www.marsdenjacob.com.au/work-health-safety-resources-bill/>

⁵⁶ <http://www.dmp.wa.gov.au/20998.aspx>

⁵⁷ http://www.dmp.wa.gov.au/7105_21676.aspx

- *14, 17, 21 July*: DMP emailed a resources Safety Alert to around 3,500 subscribers (mainly industry and unions, plus some consultants and service providers):
 - *14 July*: included details and links for this consultation
 - *17, 21 July*: reminded recipients about the stakeholder forum and requested that they RSVP; included links to the consultation
- *22 July*: Marsden Jacob emailed the 77 people who had responded about attending the stakeholder forum. The email provided a copy of the forum handout and outlined the agenda for the day.

Telephone calls

- *August*: Towards the close of submissions and following receipt of submissions, Marsden Jacob made several phone calls to stakeholders about submissions.

Stakeholder forum and presentations

- *23 July*: Marsden Jacob hosted a stakeholder forum and workshop. An estimated 55 people attended on the day. Four representatives from DMP delivered a presentation on the reform process and responded to questions.
- *29 July*: Marsden Jacob presented to members of the MAP. The presentation covered the RIS process and the questions raised by stakeholders at the 23 July forum.

Advisory panels and committees

- *Ministerial Advisory Panel on Safety Legislation Reform (MAP)*: This tripartite panel was formed specifically to advise on the development of the WHS (Resources) Bill and regulations. Membership comprises an independent chairperson, an independent expert, and representatives from eight industry peak bodies, three unions and the regulator. It has met nine times since being established in January 2014. Meeting papers are all uploaded to the DMP website.⁵⁸
- *Mining Industry Advisory Committee*: This tripartite statutory advisory committee deals with current mine safety legislation and guidance material, but is also briefed on the work of the MAP.

DMP stakeholder meetings

During the consultation period, representatives of DMP met with sector-specific groups of stakeholders from industry, as well as unions, to discuss the overall reform and consultation processes, clarify the changes and address any sector-specific concerns.

Many other meetings and discussions on the Bill have occurred, including the following:

<i>22 May</i>	Petroleum (NOPSEMA)
<i>10 June</i>	Petroleum and MHFs (APPEA) and Association of Mining and Exploration Companies (AMEC)
<i>9 July</i>	Petroleum and drilling (APPEA, IADC and petroleum/MHF industry representatives—Chevron, BHP)
<i>20 July</i>	MHFs (PACIA and KIC—CSBP Kwinana)

⁵⁸ <http://www.dmp.wa.gov.au/19517.aspx>

<i>23 April, 7 August</i>	Pipelines (APGA representatives from DBP, APA, Monadelphous)
<i>3 August</i>	Mining (Rio Tinto)
<i>11 August</i>	Unions (AWU, AMWU, CFMEU, UnionsWA) Petroleum and MHFs (EnergySafety)
<i>17 August</i>	Mining, petroleum and MHFs (BHP Billiton)

In preparation for and as part of the consultation, DMP also met with WorkSafe representatives to discuss the transfer of MHF OHS regulatory roles.

Appendix 4: Consideration of stakeholders' comments on 21 key areas identified in the C-RIS

In the C-RIS, DMP identified 21 key areas of change that may be of particular interest to stakeholders (Table 29).

Table 29: The 21 key changes

Change number	Topic
1	<i>Applicable legislation</i> Legislation consolidates provisions from six existing Acts and is based on the national model WHS Act.
2	<i>Application of the WHS (Resources) Act</i> Scope of the WHS (Resources) Bill aligns with the model WHS Act. Definition of operations covered in the Bill aligns with definitions in current Acts, but with minor modifications to clarify and incorporate updates.
3	<i>Decision on application of the WHS (Resources) Act or WHS Act to worksites</i> New provisions, similar to those in the NSW WHS (Mines) Act, have been included in the WHS (Resources) Bill to clarify ministerial powers where doubt previously existed about coverage between resources industry and general industry safety legislation.
4	<i>Primary duty of care</i> The duty of care concept used in the WHS (Resources) Bill is simplified and broader than current definitions, consistent with modernised terminology.
5	<i>Person having primary duty of care</i> Responsibility is defined with reference to the definition of 'operator' under the WHS (Resources) Bill. The definition aligns with responsibility (and influence) over day-to-day operations (and therefore health and safety outcomes).
6	<i>Other duty holders</i> The concept of 'other duty holders' in the WHS (Resources) Bill extends the duty of care beyond current duties of designers, manufacturers, importers and suppliers. The extension recognises remote operations centres' duty in ensuring worker safety.
7	<i>Management of risk</i> High-level provisions on general risk management are included in the WHS (Resources) Bill; detailed provisions are to be included in the regulations. This approach is consistent with current legislation, but with minor modifications to streamline and clarify terminology.
8	<i>Safety cases and safety management systems</i> The WHS (Resources) Bill includes provisions requiring a safety case for petroleum operations and MHFs and a safety management system (SMS) for mining operations, as well as high-level review and approval provisions. However, the detail of the safety case and SMS will now be mainly in the regulations.
9	<i>Management and supervision / statutory positions</i> Terminology used for prescribed statutory positions and operator representatives in current legislation has been updated for consistency in the WHS (Resources) Bill.
10	<i>Penalties</i>

Change number	Topic
	Penalties in the WHS (Resources) Bill have been updated to align with the model WHS Act to ensure consistency among adopting jurisdictions.
11	<i>Incident notification</i> Incident notification provisions in the WHS (Resources) Bill adopt clarified and consistent reporting across the resources industries.
12	<i>Incident investigation</i> The resources industries already investigate incidents on sites and facilities as part of current processes. The WHS (Resources) Bill formalises this as a requirement.
13	<i>Administration of the Act by the regulator</i> The regulator (Resources Safety Commissioner) will be the chief administrator of the WHS (Resources) Act, and there will be only one type of inspector. The terminology facilitates shared definitions and aligns with terminology used in the model WHS Act.
14	<i>Powers of regulator and inspectors</i> The WHS (Resources) Bill allows for powers of the regulator and inspectors similar to those in the current legislation, but with consistency among industry sectors.
15	<i>Enforcement measures</i> The WHS (Resources) Bill includes provisions empowering inspectors to issue improvement, prohibition and non-disturbance notices. These are consistent with existing powers, with the exception of the power to issue non-disturbance notices for mining operations, which is formalised in the Bill.
16	<i>Limitation period for prosecutions</i> Proceedings under the WHS (Resources) Act must begin within two years after the offence first comes to the notice of the regulator. This aligns with the model WHS Act and updates existing provisions across industries to make them consistent.
17	<i>Officer's liability</i> The WHS (Resources) Bill places duty on officers of a corporation to exercise due diligence to ensure that the 'person conducting a business or undertaking' complies with any duty or obligation under the Act. The liability aligns with the model WHS Act and the definition of an officer under the Corporations Law.
18	<i>Advisory committees</i> In the WHS (Resources) Bill, the existing Mining Industry Advisory Committee is be retained for mining operators and a new committee is to be formed to represent petroleum operators and MHFs.
19	<i>Evidentiary provisions</i> The evidentiary provisions that currently exist for resources industries are retained in the WHS (Resources) Bill in order to save time in court. The model WHS Act does not include similar evidentiary provisions.
20	<i>Sharing and publication of information by regulator</i> Consistent with the model WHS Act, provisions to enable the regulator to publish information for shared learning and education are included in the WHS (Resources) Bill. These provisions are not a feature of the current Acts, but current processes include the publication of learnings from significant incidents and accidents, de-identified to remove personal or company details.
21	<i>Board of inquiry</i> The WHS (Resources) Bill formalises the Minister's ability to establish a board of inquiry to inquire into serious incidents and dangerous occurrences; any practice or safety matter that may adversely affect the health and safety of person; or any emerging or systemic issues affecting people's health and safety. The provisions align with the National Mine Safety Framework and the model WHS Act.

As set out in Section 5.6, Marsden Jacob assessed comments received on each of the key areas of change (except where no comments or only positive comments were received).

Respondents commented on 11 of the 21 key changes. For each of the key changes, this appendix outlines:

- a summary of the change from the C-RIS
- the submissions received
- DMP's position on the proposed amendment
- Marsden Jacob's conclusion or recommendation.

Very few of the respondents provided comment on the impact of costs and benefits of individual key changes. For this reason, the submissions are assessed against the reform objective set out in Section 5.1.

Change 1—Applicable legislation

Description of the change in the C-RIS

The proposed WHS (Resources) Bill is based on the national model WHS Act.

Mining: The Bill incorporates additional provisions and corresponding definitions from the National Mine Safety Framework (NMSF).

Petroleum: The three petroleum Acts will be retained, but safety provisions from those Acts are being consolidated in the proposed Bill. Offshore petroleum facilities in Commonwealth waters will continue to be regulated by NOPSEMA under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (OPGGSA).

MHF: MHF process safety and OHS provisions are consolidated in the proposed Bill. Regulation of OHS will transfer from WorkSafe to Resources Safety Division at DMP.

Stakeholders' comments

The Risk Engineering Society WA submission indicated strong support for the alignment and consolidation of multiple pieces of legislation under a single Act:

The new Act lifts all workplaces to the same level. Consistency of approach possible between various sites (previously under different Acts). (Risk Engineering Society, p. 5)

However, the Risk Engineering Society also expressed opposition to dangerous goods sites being left out of the proposed legislation:

Dangerous Goods Act and Regulation should also be incorporated under this WHS Act. There are some major Dangerous Goods storage sites that need to be incorporated into this legislation ... Dangerous Goods sites should be subject to the same laws. (Risk Engineering Society, pp. 2, 5)

DMP's position

The proposed WHS (Resources) Bill was the recommended option arising from the RIS on the Structure of Mining, Petroleum and Major Hazard Facilities Safety Legislation finalised in February 2015.

In preparing the reform options, DMP discussed the inclusion of dangerous goods sites as an option. However, the Parliamentary Counsel's Office, which will draft the bill for Parliament, advised that it is not appropriate to include dangerous goods sites in the consolidated legislation, as they involve quite different safety concepts, such as dangerous goods transport. This is because dangerous goods can be stored in places where DMP will have no jurisdiction on WHS matters.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill is required. Where appropriate, DMP should seek to align the WHS requirements for dangerous goods sites with the requirements for resources sites.

Change 2—Application of the WHS (Resources) Act

Description of the change in the C-RIS

All: Scope aligns with the model WHS Act.

Mining: The proposed definition of 'mining operation' reflects the NMSF definition but has been modified slightly to align with the model WHS Act and the Mining Act. The inclusion of mines operated by local government and tourist mines reflects a national-level decision. The regulation of OHS at these sites will transfer from WorkSafe to Resources Safety Division.

Petroleum: The definition of 'petroleum operation' will be the same for onshore and offshore operations. Under a separate process, the *Petroleum and Geothermal Energy Resources Act 1967* (PAGERA) and the *Petroleum Pipelines Act 1969* (PPA) are being modified to include greenhouse gas storage. This will also be incorporated into the new WHS (Resources) Act.

MHF: The declaration of MHFs will be similar to the current process.

Stakeholders' comments, DMP's position and Marsden Jacob's conclusion

A total of six submissions were received covering a broad range of topics regarding the application of the WHS (Resources) Act. Topics raised in submissions, DMP's response and Marsden Jacob's recommendation are summarised in Table 30.

Table 30: Application of the WHS (Resources) Act—summary of stakeholders’ comments, DMP’s positions and Marsden Jacob’s conclusions or recommendations

Topic	Submission	DMP comment	Conclusion or recommendation
Determination of applicability of WHS (Resources) Act	1 submission (Robinson, Towsey & Cunningham) commented that the provisions do not align with the WHS Green Bill.	<p>The legislation for WorkSafe and DMP will ensure that where one applies the other will not apply; these provisions will be provided by the Parliamentary Counsel’s Office.</p> <p>In addition, powers have been given to the Minister to decide which regulator has jurisdiction if ambiguity arises.</p>	<p>No change to the WHS (Resources) Bill proposal is required.</p> <p>Marsden Jacob recommends that drafting instructions to the Parliamentary Counsel’s Office note the reasons for the proposed application of the Act.</p>
Resource facility operator definition	1 submission (Chamber of Minerals and Energy) provided drafting suggestions for the definition of ‘resources facility operator’.	Detailed drafting by the Parliamentary Counsel’s Office will resolve confusion (DMP does not do the formal drafting).	<p>No change to the WHS (Resources) Bill proposal is required.</p> <p>Marsden Jacob recommends that drafting instructions note that clarification of the definition of ‘resources facility operator’ is required.</p>
Major hazard facilities classification	1 submission (ATCO Gas) raised concerns that the definition of MHFs could be reinterpreted, potentially making ATCO an MHF and increasing its costs.	<p>The classification of MHFs is made according to a set of criteria that will not be altered as a result of the modernisation process.</p> <p>DMP will continue to have the discretionary power to declare (or not declare) a site as an MHF, taking into account the quantity of specific dangerous goods, the location and the need for risk controls.^a</p> <p>There will <i>not</i> be a specific threshold value at which a site will automatically be declared an MHF. It is possible for a site to have a quantity of specific dangerous goods in excess of the threshold limit and not be declared an MHF.</p>	No change to the WHS (Resources) Bill proposal is required.

Topic	Submission	DMP comment	Conclusion or recommendation
Major hazard facilities— explanation of classification	1 submission (Chamber of Minerals and Energy) recommended that DMP develop an explanatory memorandum in consultation with industry to ensure that there is appropriate flexibility, clarity and certainty on the process for classifying MHFs.	DMP already publishes general guidance on the Chief Officer's discretionary power not to classify a site an MHF. Once the Act is in place, DMP will review the guidance material.	No change to the WHS (Resources) Bill proposal is required. Marsden Jacob notes that DMP has committed to clarifying the MHF guidance material.
Remote facilities definition	1 submission (Chamber of Minerals and Energy) provided drafting suggestions.	Detailed drafting by the Parliamentary Counsel's Office will resolve confusion (DMP does not do the formal drafting).	Marsden Jacob recommends that DMP consider detailed drafting to respond both to the stakeholder and through the MAP process.
Accommodation	5 submissions commented on accommodation (Robinson et al., APPEA, CME, BHP and AMMA) AMMA and BHP commented that the duty of care and accommodation should not allow union right of entry to private accommodation. APPEA and CME provided detailed drafting to cover this.	DMP has obtained advice that the provisions do not provide right of entry to accommodation facilities. Unions have right of entry to workplaces under section 49I of the <i>Industrial Relations Act 1979</i> , but this applies only during working hours onto 'premises where relevant employees work'. Section 49I does <i>not</i> provide unions with right of entry to residential accommodation as defined in the WHS (Resources) Bill. It does provide right of access to the <i>workplace</i> of accommodation workers (e.g. cleaners, cooks and gardeners) but only while they are on duty at work, not while they are off duty or sleeping.	No change to the WHS (Resources) Bill proposal is required. Marsden Jacob recommends that DMP communicate this clarification to stakeholders and ensure that the Parliamentary Counsel's Office is aware of the objective that right of entry provisions will not apply to accommodation sites.

^a See <http://www.dmp.wa.gov.au/7325.aspx>

Change 4—Primary duty of care

Description of the change in the C-RIS

The duty of care concept has been simplified and made broader. The WHS (Resources) Bill removes ambiguity in the relationship between an employer and employee, even where the relationship is through a subcontract arrangement. A ‘person conducting a business or undertaking’ (PCBU) has a primary duty of care towards *all* workers, including contractors and labour hire workers.

Responsibility for worker health and safety at MHFs will be transferred from WorkSafe WA to Resources Safety Division within DMP.

Overview

Four submissions commented on the primary duty of care changes. Three related to control provisions and one related to worker competency.

Stakeholders’ comments—control provisions

Three stakeholders (Robinson et al., the Safety Institute of Australia and the Chamber of Commerce and Industry) raised two issues about control provisions:

- Robinson et al. and the Safety Institute of Australia commented that the control provisions included in the WHS Green Bill (s. 17) are excluded from the WHS (Resources) Bill.
- The Chamber of Commerce and Industry recommended that the word ‘influence’ be removed from the phrase ‘capacity to influence and control’ in s. 16 of the WHS (Resources) Bill.

DMP’s position—control provisions

DMP based its proposed Bill on the model WHS Act, which uses the phrase ‘capacity to influence and control’. The direct control may be with one PCBU, but another person can influence the work of that PCBU. The responsibility should also lie with the person who can influence. The responsibility of duty holders is established in s. 16 of the WHS (Resources) Bill.

The control provisions in s. 17(2) of the WHS Green Bill were excluded from the WHS (Resources) Bill because they are based on the South Australian WHS Act and do not occur in the model WHS Act.

Marsden Jacob conclusion—control provisions

No change to the WHS (Resources) Bill proposal is required.

Marsden Jacob notes that, given that the WHS Green Bill for general industry does not align with the model WHS Act, DMP must elect to either align with the WHS Green Bill (and South Australia) or align with other jurisdictions. The text that DMP has selected is consistent with the model WHS Act, on the basis that this is appropriate for the resources industries’ structure.

Stakeholders’ comments—worker competency

One stakeholder (Glen Neeves) commented that:

Corporate body should be required to demonstrate a workers level of competence to carry out duties on a site, including mental and physical health and prowess, as well as a

measure of their ability to comprehend and implement instructions, before the person is sent to site. (Glen Neeves, p. 4)

DMP's position—worker competency

DMP noted that s. 19(3) of the proposed Bill covers the training duties of the PCBU and that competency requirements will be covered in the regulations.

Marsden Jacob conclusion—worker competency

No change to the WHS (Resources) Bill proposal is required. Competency requirements will be covered in the regulations.

Change 8—Safety cases and safety management systems

Description of the change in the C-RIS

Under the WHS (Resources) Bill, a mining operation will be required to prepare a safety management system (SMS). All MHFs and petroleum operations (including pipelines, geothermal energy operations and greenhouse gas storage operations) will require safety cases, with the exception of diving operations (which will require diving SMSs).

Details of safety cases and SMSs will be in the regulations.

Note that mining operations will use SMSs, not safety cases.

Mining:

- *For proposed new mining operations:* Initially, an outline of the SMS will be required instead of the current project management plan. The full SMS will be required by the time mining operations commence.
- *For existing mining operations:* A full SMS will be required.

Petroleum:

- *Offshore pipelines:* The pipeline management plan required under the *Petroleum (Submerged Lands) Act 1982* (PSLA) will be replaced by a safety case.
- *Petroleum and geothermal energy operations:* The current SMS under the PAGERA will be replaced by a safety case.
- *Petroleum facility:* The safety case currently required under the PSLA will be retained.
- *Pipeline operations:* The safety case currently required under the PPA will be retained.
- *Diving:* The registration of diving SMSs will be retained as per current legislation.

MHFs: The safety report, which currently covers only process safety and excludes worker OHS, will be renamed as a safety case. The safety case will include coverage of both process safety and worker OHS.

Overview

A total of seven submissions were received on safety cases and SMSs. Two stakeholder comments related to the application of safety cases for mining, while five comments related to the content and requirements of safety cases and SMSs.

Stakeholders' comments—safety cases for mining

ACOR Consultants stated that safety cases should be required for mining:

To develop and encourage risk management approach in mining sector and to enhance and sustain effectiveness of safety performance and in particular with regards to contractor health and safety management.

In direct contrast, AMEC stated:

AMEC notes the stated intention that Mining will use Safety Management Systems and not a safety case regime.

In addition, the Chamber of Minerals and Energy (CME) proposed that the differing approach for mining should be noted in the objects of the Act:

CME recommends the objects of the WHSR Bill be amended to make the different approach to risk management in the petroleum and mining sectors explicitly clear. Specifically, CME recommends clause 3(ab) of the WHSR Bill be amended to:

- *separate out the references to safety cases and safety management systems; and*
- *recognise petroleum operations and MHFs will be subject to a safety case and mining operations will be subject to a safety management system.*

DMP's position—safety cases for mining

DMP has consistently stated that mines will not be subject to safety cases as part of the modernisation of safety legislation. It indicated that it did not consider it appropriate to note this difference in the objects of the Act. The WHS (Resources) Regulations will clearly delineate the differing requirements for mining, petroleum and MHFs.

Marsden Jacob conclusion—safety cases for mining

No change to the WHS (Resources) Bill proposal is required.

Stakeholders' comments—content of safety cases / SMSs

An engineering consultancy stated in a confidential submission:

SMS should describe all production process both mechanical and chemical or electrical and demonstrate how the safety of life and asset is being ensured. Any brownfield modification or expansion should go through the same process.

APPEA stated:

APPEA does not support the extension of the safety case regime to certain oil and gas exploration activities such as seismic and survey vessels not related to the drilling or extraction/production or transport of hydrocarbons.

Certain Exclusions from Safety Case Requirements: APPEA supports the specific exclusions in the current DMP and NOPSEMA regimes being retained.

APPEA notes that the 'petroleum operator' will be the person in overall control and registered, and this could include a drilling contractor of a MODU (as the facility operator) being registered as the operator or one titleholder nominated as the operator as part of a joint venture arrangement. Other parties will also retain duties, including the

titleholder in the case of a Modular Offshore Drilling Unit (MODU), and other titleholders in the case of a joint venture arrangement.

APPEA recommends the provision dealing with a situation where no selection of an operator has been made under section 5G (3) should be removed. An operator must be registered.

Risk Engineering Society WA stated:

The Act as it stands deals with start up or front end risk minimisation. The ongoing safety and risk management is mentioned in Section 8 but the Act makes no provision to require the preparation of a Safety Case or Report or SMS.

The risk determination process is not linked to any standard and could be linked to the principles of AS/NZS ISO 31000.

Noting that current PAGERA SMS requirements differ from NOPSEMA (and also other States' SMS requirements) in that the PAGERA SMS does need to include the hazard identification component—it would be beneficial to ensure this PAGERA SMS structure is not applied to the proposed mining SMS (so as to avoid confusion on more commonly applied SMS requirements across industries and states). The proposed mining SMS should be supplemented with the hazard identification component (as is done for petroleum via NOPSEMA and as is required in other States for SMSs).

PACIA stated:

The inclusion of OHS matters in a safety case review is not supported by PACIA. A safety case has always been about managing high risk elements to avoid catastrophic events—i.e. managing those hazards which have a low frequency, but high impact. Inclusion of OHS matters which deals with smaller consequence accidents, such as trips and falls, could undermine the focus from higher risk elements. These two areas are considered separate within the model WHS regulatory framework and should be managed separately.

The benefit is unclear in regards to this proposal. If pursuing a OHS review at the same time with safety case has some improved efficiencies for DMP and thus reducing overall costs to MHFs—then there could be some merit in regards to stewarding review at the same time with safety case reviews, but on the condition that it is not included as part of a safety case assessment. Maintaining additional elements in safety cases will add significant burden, cost and complication to an already complicated area.

PACIA strongly recommends separation between these two elements.

PACIA's comments were also supported by a confidential submission.

DMP's position—content of safety cases / SMSs

The content of petroleum/MHF safety cases and mining SMSs will be covered in the regulations.

The intent of the legislation for petroleum is to cover the complete life cycle of a project, from survey through to rehabilitation. Where DMP does not have the relevant expertise to regulate, these will be excluded from the scope in the regulations.

DMP notes that OHS matters are currently included in safety cases for petroleum facilities and that the proposed inclusion of OHS matters in MHF safety cases would bring MHFs into alignment with petroleum operations. This commonality will provide operators with the option to have their whole operation, from the offshore facility to the onshore MHF, regulated under one safety case.

DMP intends for all petroleum and MHF operations to register the operator. This will be covered by a regulation similar to the current offshore legislation.

Marsden Jacob recommendation—content of safety cases / SMSs

DMP should clarify the naming convention for the mining SMSs in the WHS (Resources) Regulations to differentiate them from the SMS component of petroleum/MHF safety cases.

Change 9—Management and supervision / statutory positions

Description of the change in the C-RIS

This is not a new requirement; it is a change in terminology.

Stakeholders' comments

Four submissions contained comments on the changed terminology for management and supervision / statutory positions.

APPEA stated:

APPEA recommends an amendment to the definition of 'site senior executive'. Current definition of SSE as 'the most senior natural person representing the resources facility operator at the site' could be problematic. APPEA recommends the definition be amended so that the resources facility operator must ensure that a person is appointed as the 'operator's representative' who has the day to day management and control of that facility and that such a person is there at all times. It must always be clear who that person is at any point in time and the details should be displayed in a prominent place. APPEA does not support the need for any guidance on the 'qualifications' of such a person for the oil and gas sector, but it should be clear that they do have the capacity and authority to have day to day management and control.

BP Kwinana Refinery stated that clarity is needed on the question of:

How does this legal obligation intersect with the existing Company Director's position and obligations.

ATCO stated:

The current definition for site senior executive, reads as meaning '... the most senior natural person representing the resources facility operator at the site.'

This definition is confusing and infers this person as being '... at the site' at the time of powers under the Act being applied.

Recommend amending the definition to read 'site senior executive means the most senior natural person representing the resources facility operator.'

Section 90 of the Draft WHS(R) Bill 2015 with respect to Provisional improvement notices introduces another term, site senior representative, that is not defined.

Recommend the Act define site senior representative to clarify the difference to site senior executive and resources facility operator.

CME recommended that the drafting of the definition of 'site senior executive' (SSE) be amended:

- *the SSE be appointed as having responsibility for the resource facility by the resources facility operator rather than the most senior natural person representing the resources facility operator automatically being the SSE;*
- *the word ‘at the site’ is replaced by the words ‘of the resources facility’; and*
- *the transition period to the obligations being imposed on an SSE be sufficiently lengthy to allow individuals the time to obtain appropriate training on their duties.*

DMP's position

DMP will review the definition of SSE in the light of submitted comments.

Specific sites, such as unmanned, pipeline and exploration operations, will be dealt with differently.

Marsden Jacob recommendation

DMP should consider the comments provided by stakeholders in relation to management and supervision / statutory positions in preparing the WHS (Resources) Bill.

Change 10—Penalties

Description of the change in the C-RIS

The penalties in the proposed Bill are consistent with the model WHS Act for general industry.

Stakeholders' comments

Five respondents commented on the proposed penalty provisions.

An engineering consultancy supported the provisions in a confidential submission:

Penalties should be significant amount of business revenue so that penalties are not treated as merely financial decisions and act as a deterrent, but at the same time it should be proportionate to the breach so that the business does not go broke.

UnionsWA welcomed the WA Government's decision adopt the uniform penalty provisions in the Act, but commented that:

UnionsWA advocates the introduction of industrial manslaughter legislation. There is strong community concern in relation to workplace deaths. Fines or financial penalties alone are not a sufficient deterrent. Death at the workplace should be treated in a similar way to vehicular manslaughter, with criminal sanctions available in the most egregious cases.

BP Kwinana Refinery stated that clarity is needed on the questions of:

What is the definition of ‘reckless conduct’ and how does the phrase intersect with other legal concepts such as duty of care, negligence and gross negligence.

The Chamber of Minerals and Energy (CME) referred to its submission for the Green Bill as also being relevant to the WHS (Resources) Bill:

- *the penalties [in the Green Bill] be reviewed to provide for enforcement mechanisms which improve safety outcomes by encouraging innovation in achieving compliance with the Act;*

- *the [Green Bill] include enforceable undertakings as an alternative enforcement mechanism in the terms included in the Model WHS Act;*
- *if enforceable undertakings are a feature of the [Green Bill], an enforcement policy be developed [by WorkSafe WA] which clearly articulates appropriate transparent criteria for considering and entering into enforceable undertakings.*

CCI stated:

CCI recommends that the Draft Bill establish penalties that reflect the current WA legislation in scale and that they are clearly identified as maximum penalties.

CCI recommends that the Government provides its regulators with a range of effective enforcement options, including access to enforceable undertakings.

DMP's position

DMP stated that the penalties included in the proposed WHS (Resources) Bill are consistent with the model WHS Act.

Penalties set in legislation are maximum amounts. It is for the courts to decide the penalty to be applied, depending upon the circumstances of each case.

Both current legislation and the proposed Bill enable court enforceable undertakings following a prosecution, rather than as an alternative to prosecution.

Provisions on enforceable undertakings offered by a person or company have been removed (ss. 216–222), as they are not considered appropriate for the resources industries.

The phrase 'reckless conduct' is consistent with the model WHS Act and so is in force in other jurisdictions in Australia. The term 'reckless' is defined through case law; some further explanation is available from Safe Work Australia.⁵⁹

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

Changes 11 and 12—Incident notification and incident investigation

Description of the change in the C-RIS—Incident notification

Mining: The reporting process will not change. Mining companies already notify incidents by phone immediately, and then file an online report using the Safety Regulation System (SRS).

Petroleum: The reporting system will change. The new WHS (Resources) Act will require immediate reporting of incidents, after the initial phone call.

A uniform online reporting system will be implemented for all resources industries. The SRS will replace the current paper reporting form.

MHFs: The reporting system will change. The new WHS (Resources) Act will require immediate reporting of incidents, after the initial phone call.

⁵⁹ Safe Work Australia, *Guide to the model Work Health and Safety Act*, October 2012, www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/717/Guide-to-the-WHS-Act.pdf

A uniform online reporting system will be implemented for all resources industries. The SRS will replace the current paper reporting form.

Notifiable instances and lost time injuries will be reported to Resources Safety Division, rather than WorkSafe.

All: Some minor changes have been made to terminology to facilitate shared definitions.

Description of the change in the C-RIS—incident investigation

The resources industries already investigate incidents on sites and at facilities as part of current processes. The new legislative provision formalises this as a requirement.

Mining: The new provision aligns with the NMSF and formalises current processes.

Petroleum and MHFs: The proposed Bill formalises current processes.

Stakeholders' comments

A number of respondents commented on incident notification and incident investigation together. For this reason, those comments are presented together here.

Two respondents commented on incident notification.

A confidential submission stated:

The need to immediately report incidents places an undue burden on operators. It is not always possible to provide all of the required information immediately. The immediacy of reporting assumes an immediate response by DMP, which is not always warranted, required or possible. The existing system of reporting i.e. as soon as possible is appropriate and adequate.

It is also noted that under the existing DG the incident report form is required as soon as practicable. There is no requirement to provide a report in 21 days' time.

Comment is that for MHFs, there is no specific requirement in the MHF legislation for an operator to undertake incident investigation. This is true, however the DG S&H Regulations relates to MHFs, and Reg 120 of the DG S&H Regs does require investigations to be undertaken.

Angus Robinson, Chris Towsey and Jock Cunningham stated:

Resources facility operators will have a new obligation to prepare a report on any notifiable incident if requested to do so by the DMP.

This brings into question the operator's right to assert legal professional privilege over the operator's internal incident investigations. A report to the Department of Mines and Petroleum (DMP) would be for the purpose of complying with the new statutory obligation, rather than the dominant purpose of obtaining legal advice, or for use in existing or contemplated litigation, which is the test for the existence of legal professional privilege.

Under the WHS(R) Bill, the DMP will be empowered to require a resources facility operator to conduct an independent study, audit, test, validation or investigation in relation to any WHS related matter at the facility, to be carried out by an engineer or other qualified professional person (at the resources facility operator's own expense), and to be submitted to the DMP within a specified time.

This will impose additional financial burdens on the operator who will have to engage independent consultants to meet this requirement. This burden would be lessened if the

operator was free to use its own suitable personnel. If the regulator requires the investigation to be independent, the regulator would be reasonably expected to have its own suitably qualified personnel to conduct such an investigation at its own internal cost.

Further, the WHS(R) Bill permits the DMP to publish any information concerning investigations of possible contraventions of the WHS(R) Bill or issuance of notices, without incurring any liability in defamation.

Such an action may have the potential the potential of unfairly damaging the operator's reputation.

Five respondents commented on incident investigation. Of those, two (from ACOR Consultants and a confidential respondent) supported the proposed provisions. The confidential respondent stated:

DMP should collect the incident data and report and use it for statistical purposes and educating and enriching the industry without naming and shaming. Also incidents and safeguards taken should be communicated to the employees of relevant owner and operating organisation. In non-minor, non-trivial cases independent 3rd party specialist should be engaged for the investigation.

However, three respondents proposed clarifications. In particular, APPEA stated:

The provisions relating to incident reporting and notification (sections 36 to 38) need further clarification and some amendment.

APPEA supports a primary objective of promoting the reporting of incidents and dangerous occurrences being to achieve rapid and effective whole of industry learning and continuous improvement in safety performance, backed up by a second requirement for compliance and enforcement purposes.

APPEA seeks additional information be provided by DMP on the intent behind the amendment to the definitions of 'serious injury or illness' and 'dangerous incident', and what the intent is for further detail in supporting regulations.

In particular, APPEA notes the potential lack of clarity arising from the inclusion of the words '... includes but not limited to...' in the definition of serious injury or illness; and would seek further discussion on what might be deemed an appropriate and flexible framework to determine what '...has the potential to expose' in the definition of 'dangerous incident'.

APPEA would seek further clarification on the term 'medical treatment', which could be interpreted very broadly and could too easily become an onerous regulatory reporting requirement but that achieves little for improved safety outcomes.

Under section 38 it is not in all cases practicable to require 'immediate' reporting of incidents. APPEA recommends section 38 be amended to the effect that the resources facility operator must report the incident to the Regulator as soon as practicable after e.g.

- *Initiation of an emergency response (medical treatment, evacuation of personnel, incident scene secured); and*
- *the first occurrence of the reportable incident; or*
- *if the reportable incident was not detected by the resources facility operator at the time of the first occurrence—the time the resources facility operator becomes aware of the reportable incident; and*
- *must contain all material facts and circumstances concerning the reportable incident that the resources facility operator knows or is able, by reasonable search*

or enquiry, to find out; and any action taken, or proposed to be taken, to stop, control or remedy the reportable incident.

BP Kwinana Refinery stated:

In the first instance we recommend that the DMP requires the facility operator to provide its internal notifications and investigations rather than establishing parallel requirements.

CME stated:

CME recommends the definitions of ‘serious injury or illness’ and ‘dangerous incident’ be amended to remove ambiguity and additional guidance be provided on matters the DMP considers would require notification as serious injuries or illnesses and as dangerous incidents (and therefore trigger a full investigation).

CME recommends the WHSR Bill be amended to include a specific obligation on workers and others at the resources facility to notify the resources facility operator of dangerous occurrences of which the worker or other person becomes aware.

CME recommends the implementation of the SRS system for petroleum and MHF operators be progressed by the DMP as a matter of priority to streamline the provision of information to the DMP. Additionally, CME recommends DMP prepare information material or training sessions to assist petroleum, pipeline and MHF companies in the transition to the new reporting system.

DMP's position

Table 31 shows DMP's position on stakeholders' comments on incident notification and investigation.

Table 31: Incident notification and incident investigation

Topic	DMP's position
Timing and method of notification	<p>The current mines safety and inspection legislation, which has been applicable since 1994, requires immediate notification, and this has not caused any difficulty in reporting for the industry.</p> <p>Where necessary, DMP understands that certain actions (e.g. emergency response procedures) need to be taken before an operator notifies DMP of a notifiable incident.</p> <p>The terms used in these provisions are consistent with the model WHS legislation. Safe Work Australia has provided guidance on the subject and, if necessary, DMP will provide further guidance material.</p>
Requirement to provide a report	<p>The incident notification and the investigation report are two separate requirements.</p> <p>Incident notification is about preliminary information on the incident, and should be submitted immediately (see comments above).</p> <p>The investigation report will be required once the investigation is complete and must be completed within a reasonable time.</p>
Definitions of ‘serious injury or illness’ and ‘dangerous incident’	<p>The term ‘serious injury or illness’ is defined in detail in s. 37 of the WHS (Resources) Bill, and ‘dangerous incident’ is defined in s. 38. Both these sections have provisions for further detail to be provided in regulations.</p>

Topic	DMP's position
Requirement for workers to notify the resources facility operator of dangerous occurrences	<p>DMP is aware that some legislation requires workers to notify their employer of hazards or incidents, such as s. (20)(2)(d) of the <i>Occupational Safety and Health Act 1984</i>.</p> <p>However, s. 28 in the proposed Bill provides a general requirement for workers (while at work) to:</p> <p>(c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU [person conducting a business or undertaking] to allow the person to comply with this Act</p> <p>(d) cooperate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.</p> <p>DMP considers that these powers are broader than the suggested change and require workers to comply with the facility's procedures for reporting hazards and incidents.</p>
Impact on legal privilege	DMP's advice is that the preparation of an investigation report has no impact on legal professional privilege.
Requirement to use an independent consultant	DMP already has powers under current legislation to require an independent audit/verification/consultant—this is not a new requirement.
Publication of information about incidents and investigations	This provision has been added to align with DMP's policy of transparency. Sharing the learnings from incidents and investigations is important for safety in order to prevent recurrences.
Use of the Safety Regulation System (SRS)	<p>DMP's SRS is currently used for the notification of mining incidents and is being expanded to be the reporting system for all resources industries.</p> <p>SRS guidance material will be provided at the appropriate time.</p>
Form of notification	DMP will specify the information required and the form of notification. It will be a requirement that industry collect this information as a minimum.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required. DMP has committed to providing additional guidance about incident notification and reporting. In addition, further detail will be included in the regulations.

Change 14—Powers of regulator and inspectors

Description of the change in the C-RIS

The provisions in the WHS (Resources) Bill are similar to the provisions in current legislation, but have been made consistent across all industry sectors.

Stakeholders' comments

One submission (Angus Robinson, Chris Towsey and Jock Cunningham) commented:

The power of an inspector to require the production of documents and answers to questions will now only be exercisable where the Inspector has reasonable grounds to believe that the person compelled is capable of giving information, documents or evidence in relation to a possible contravention of the WHS(R) Bill.

Inspectors' current duty to take all reasonable steps in the exercise of their powers to cause as little inconvenience, detriment and damage as is practicable, does not appear in the WHS(R) Bill.

This appears to be a dilution of the power of the Inspector, which would be a backward step.

DMP's position

DMP stated that the relevant sections of the proposed Bill are aligned with the model WHS Act and so give the regulator and inspectors the same powers that regulators currently use in other jurisdictions.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

Change 20—Sharing and publication of information by regulator

Description of the change in the C-RIS

The requirement in the proposed Bill for information sharing and publication aligns with provisions in the model WHS Act.

It is proposed that radiation management plans approved for planned uranium mining operations will be published before the construction of the mines. For plans approved after the new WHS (Resources) Act is implemented, the full plan will be published.

The requirement for the publication of learnings from significant incidents and accidents merely formalises a current process. Such publications are de-identified to remove personal or company details.

Stakeholders' comments

Four submissions commented on the sharing and publication of information.

ACOR Consultants supported this change, commenting that the provisions:

Encourage continuous improvement and learning and adoption of Safety In Design

However, the other three respondents raised concerns or suggested amendments. CME stated:

CME recommends further clarity be provided on the intent of the provisions providing DMP with the power to release information relating to safety incidents. While CME supports the role of the regulator in promoting the sharing of safety lessons learned, it is important there is clarity on how these provisions will be used.

CME recommends the WHSR Bill be amended to remove the specific reference to the publication of radiation management plans.

CME recommends a nuanced approach to the publication of information is required based on an assessment of the information being in the public interest and appropriately managing commercially sensitive information.

AMEC stated:

The Paper states that it is proposed that Radiation Management Plans approved for planned uranium mining operations will be published prior to construction of these mines.

It is unclear to AMEC on the rationale for Radiation Management Plans to be highlighted in the publication of information by the regulator.

Publication of any such data for uranium related projects should be 'normalised' and treated in the same manner as any other commodity group.

Any sharing and publication of information should be considered in conjunction with the current development of Mining Amendment Regulations for transparency being undertaken within the DMP Environment Division.

Angus Robinson, Chris Towsey and Jock Cunningham stated:

The WHS(R) Bill is relatively silent about hazards from radiation except for the mention in section 271B, (1) (e) which states that radiation management plans may be published. Item 20 in section 4 of the consultation document also mentions radiation management plans but indicates that these relate to the mining of uranium. Care is needed to distinguish between radiation management plans that relate to the mining of radioactive ores (which might include mineral sands) and the radiation management plans that relate to the use of radiation-based instrumentation which will be subject to separate radiation safety legislation.

The question can be asked whether radiation safety legislation will be referenced in the proposed bill?

DMP's position

DMP commented that this provision has been added to align with its transparency policy.

Sharing the learnings from incidents and investigations is important for safety in order to prevent recurrences of incidents.

Due to the sensitivity of managing hazards associated with radiation, DMP has adopted a transparency policy to address community concerns.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

Change 21—Board of inquiry

Description of the change in the C-RIS

The provision for boards of inquiry aligns with the NMSF and the model WHS Act.

It formalises current ministerial powers to establish an inquiry, such as inquiries into major incidents.

Stakeholders' comments

The Chamber of Minerals and Energy stated:

In the interests of streamlining the WHSR Bill, CME recommends the provisions relating to boards of inquiry be deleted.

DMP's position

DMP commented that the board of inquiry provisions align with the NMSF.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

Appendix 5: Consideration of stakeholders' comments on other elements of the Mock Bill

As described in Section 5.7, Marsden Jacob assessed each of the comments received from respondents on 'other concerns'. Comments have been grouped, and the topics labelled A through R.

For each topic, Marsden Jacob has outlined:

- the stakeholders' comments
- DMP's position on the amendments suggested in the comments
- Marsden Jacob's conclusion or recommendation.

None of the comments included a discussion of costs and benefits of the identified concern. For this reason, the submissions are assessed against the reform objective set out in Section 5.1.

A. Further consultation

Stakeholders' comments

Six submissions commented on the need for further consultation on either the regulations or the Bill.⁶⁰

For example, BHP Billiton commented:

BHPB would welcome the opportunity to review official versions, which we understand have been drafted by the Parliamentary Counsel's Office and approved by the Minister.

Similarly, AMMA recommended:

Given this is an 'indicative' version of the Bill only, stakeholders have another opportunity to provide feedback on a subsequent version of the Bill before it is finalised and tabled in parliament.

All the respondents also commented on the need for consultation on the regulations. For instance, APPEA commented:

APPEA's support would also be contingent on reviewing the detail of the accompanying Regulations. The supporting regulations are critical to APPEA's support for the Bill, being as they are the mechanism by which the different resources industry sectors will be regulated.

Some respondents commented that they should see the regulations, while others indicated that the regulations should be consulted on through the Ministerial Advisory Panel (MAP) ahead of the planned formal consultation:

it is crucial that AMEC is afforded the opportunity to provide confidential input prior to completion [of the regulations] in order to minimise the cost of compliance.

DMP's position

All comments will be considered and will assist in the preparation of drafting instructions for the Parliamentary Counsel's Office.

⁶⁰ APGA, APPEA, BHP Billiton, CME, AMEC and AMMA.

DMP has involved stakeholders in the development of the WHS (Resources) Bill from an early stage in the development process through the MAP,⁶¹ as well as through stakeholder working groups and workshops on specific issues, and this process will continue.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required. DMP has committed to further detailed consultation on the regulations through the MAP, workshops and a formal RIS consultation process.

B. Alignment with general industry and timing of the WHS Green Bill

Stakeholders' comments

Six respondents commented on the need for alignment between the resources industries and general industry and the timing of WorkSafe's WHS Green Bill.

On the topic of alignment, all respondents highlighted the need for alignment between the Bills. For example, CCI stated:

CCI believes that changes to the resource industry WHS legislation also needs to align with the legislations for general WHS.

CME identified particular elements that should align between the resources industries and general industry:

CME recommends the WHSR Bill be amended to incorporate best practice elements from the Green Bill, including the consultative provisions regarding Ministerial delegation of jurisdictions and inclusion of the 'control test' for PCBUs to ensure control remains an important element of determining what is reasonably practicable.

CME also stated:

If the Green Bill does not progress, consequential amendments to the existing [Occupational Safety and Health] Act will be required to minimise inconsistency and duplication with the WHSR Bill.

Respondents put forward a range of views on the topic of coordinating the timing of the Green Bill and the WHS (Resources) Bill.

CCI stated that the Bills should be progressed together:

CCI would recommend that the Government adopt a co-ordinated approach in progressing the Work Health and Safety Bill 2014 and the Work Health and Safety (Resources) Bill 2015.

APGA indicated concerns should the Green Bill be delayed or not progress:

We are concerned should the Green Bill either be delayed or not progressed. Such an outcome would fail to deliver one of the objectives of the reform process, which is to streamline OHS regulatory frameworks. Most businesses would be subject to at least two different OHS legislative frameworks under this scenario.

⁶¹ See the DMP website: www.dmp.wa.gov.au/19517.aspx

AMMA went further, indicating that the status of the Green Bill could affect views of the WHS (Resources) Bill:

If the Work Health & Safety Bill is not planned to be progressed at this point in time, this is something employers should be made aware of in the context of considering this current Bill.

In contrast, CME and BHP Billiton stated that the WHS (Resources) Bill should progress even if the Green Bill stalls:

CME's strong preference continues to be for the Work Health and Safety Bill 2014 for general industry (the Green Bill) and the WHSR Bill to progress through parliament together. However, in the event this does not occur CME recommends the WHSR Bill be progressed as a priority incorporating the amendments outlined below.

DMP's position

The WA Work Health and Safety Bill 2014 (also known as the Green Bill) was the subject of consultation from October 2014 to January 2015. The WA Government is considering feedback from the consultation.

DMP considers that the modernisation of safety provisions for the resources industries is a key priority, as the current legislation is long overdue for review and does not need to be delayed if the Green Bill is delayed.

DMP will continue to work with the Department of Commerce to ensure that the legislation is aligned as much as possible.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required. DMP and the Department of Commerce will ensure that alignment between the resources industries and general industry is maintained, where appropriate, irrespective of whether the WHS Green Bill is delayed.

C. Reasonably practicable

Stakeholders' comments

Five respondents commented on the use of the term 'reasonably practicable' in the Mock Bill.

SVT Engineering Consultants stated that the concept:

allows the flexibility to keep pace with advances in technology and methods, and allows greater freedom to manage without increasing the risk.

However, SVT and some other respondents noted that some of the terminology is undefined and 'contestable'. For example, UnionsWA stated:

We object to the use of contestable wording in the proposed legislation, such as 'reasonably practicable'. This runs counter to the ostensible purpose of reviewing these laws i.e. 'reducing red tape'. The new laws will instead open the door to protracted legal arguments and evaded responsibilities from employers and their lawyers as they argue over what 'reasonably practicable' means. Indeed it is impossible to take the claims of 'reducing red tape' and 'regulatory burdens' seriously in this legislation while such proposals remain in place.

In addition, APPEA sought clarification on the interpretation of the terminology:

Whilst it would appear to be analogous, APPEA would seek assurance that the legal concept of ‘as low as reasonably practicable’ which is embedded across all of Australia’s oil and gas industry safety management is legally the same as ‘so far as is reasonably practicable’.

Angus Robinson, Chris Towsey and Jock Cunningham noted that the definition of ‘reasonably practicable’ in the Mock Bill varied slightly from the model WHS Act:

The definition of ‘reasonably practicable’, which was previously consistent throughout the harmonised WHS Acts across Australia, has been altered in the WHS(R) Bill to remove two uses of the word ‘risk’.

DMP’s position

DMP indicated that the term ‘reasonably practicable’ has been widely used in resources industry safety legislation for a number of years and is well understood. Safe Work Australia also issued a guideline in 2013 on ‘How to determine what is reasonably practicable to meet a health and safety duty’,⁶² and that guideline provides additional guidance for industry.

DMP noted that the model WHS Bill and WHS Green Bill do not define the terms ‘hazard’ and ‘risk’, but that these terms are vital in assessments made for mining SMSs and petroleum/MHF safety cases. Therefore, the definitions of ‘hazard’ and ‘risk’ were added to the WHS (Resources) Bill to provide clarity for the resources industries. This change was also recommended in the National Mine Safety Framework.

Marsden Jacob recommendation

In drafting the WHS (Resources) Bill, DMP should review the reasoning for the minor amendments to the definition of ‘reasonably practicable’ and should consider whether the benefits of the amendments outweigh the costs of being inconsistent with the definition used in other jurisdictions.

D. Interaction with other Acts

Stakeholders’ comments

Three stakeholders commented on the interaction of the WHS (Resources) Bill with other Acts.

Two respondents (APPEA and the Safety Institute of Australia) focused particularly on petroleum activities and the interaction of the proposed Bill with the Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act, 2006* (OPGGSA).

The Safety Institute of Australia noted that:

Safety and efficiency [are] improved if the OPGGSA and WA legislation are as consistent as possible. The Bills/Agostini report on the 2008 Varanus Island gas pipeline explosions illustrates that where different legislation applies both within State jurisdiction and with the Commonwealth via the then NOPSAs confusion and serious problems can arise.

APPEA also commented on the manner in which the OPGGSA and its associated regulations draw together the linkages between oil well integrity, safety and the environment:

⁶² <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/774/Guide-Reasonably-Practicable.pdf>

Oil and gas operations are by their nature integrated and cover a complex range of activities, such as:

- *subsea wells and infrastructure*
- *offshore facilities*
- *vessels doing work on petroleum facilities*
- *onshore wells, infrastructure and pipelines*
- *onshore facilities which are MHFs, e.g. LNG trains*

The safety and integrity of oil and gas structures and wells is inherently integrated with risk to the environment, for example with the loss of well control providing the single biggest safety and environmental risk faced by the oil and gas industry.

The Chamber of Commerce and Industry of WA noted that there were provisions in the Mock Bill that overlap with existing industrial relations legislation:

There are several provisions in the Draft Bill which either duplicates or conflicts with existing industrial relations legislation. In an effort to reduce the level of red tape and regulatory burden on employers CCI would encourage the Government to minimise the level of overlap.

CCI recommends that provisions which overlap or are inconsistent with industrial relations legislation should not be included in the Draft Bill and believe this could be achieved by:

- *Removing the discrimination provisions prescribed in Part 6 of the Draft Bill and to the extent deemed necessary, by reference, extend coverage of the General Protection provisions of the Fair Work Act 2009 to those workers who do not fall within its scope ; and*
- *Delete s. 81(3) of the Draft Bill relating to access to the workplace for worker representative or alternative[ly] specify that where the representative is an official of a registered union that such access must be in accordance with the right of entry requirements specified by the Fair Work Act 2009 and/or the Industrial Relations Act 1979 (WA).*

DMP's position

DMP commented that it is liaising with NOPSEMA, the Department of Transport and the offshore petroleum industry to ensure clear jurisdictional boundaries, where possible.

It is aware that existing industrial relations legislation applies to all workplaces, but considers that the need for consistency with the model WHS Act and other jurisdictions outweigh the benefits of removing these provisions.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

E. Part 6 — Discriminatory, coercive and misleading conduct

Stakeholders' comments

Angus Robinson, Chris Towsey and Jock Cunningham stated:

Unlike the WHS Bill, the WHS(R) Bill proposes that the protection against discriminatory conduct for a prohibited reason should not extend to prospective workers. The question can be asked whether the rights of prospective workers are protected elsewhere?

OR an alternative:

By removing the application of this part of the Act to prospective workers, the Act is silent about prospective workers. The question can also be asked whether it is the intention to expressly exclude prospective workers or are they protected elsewhere? This should be clarified.

CME recommended that:

provision be included in the Green Bill to ensure protections from discriminatory conduct cannot be used maliciously by workers.

DMP's position

DMP commented that 'prospective workers' have been specifically omitted from the discriminatory, coercive and misleading conduct provisions.

It noted that this amendment is consistent with the WA Green Bill for general industry.

Its reasoning is that the WHS (Resources) Bill uses a broad definition of the term 'worker' that would include a person on a resources facility for the purpose of a job interview.

DMP and WorkSafe WA consider that the term 'prospective worker' is hard to define and could raise legal difficulties.

DMP is not aware of accusations that workers have used the discriminatory conduct provisions maliciously. In its view, this does not merit amending the Bill and varying it from the model WHS Act.

Marsden Jacob recommendation

No change to the WHS (Resources) Bill proposal is required.

F. Union right of entry

Stakeholders' comments

UnionsWA stated:

UnionsWA is disappointed with the exclusion of union right of entry from the WA Work Health and Safety (Resources) Bill 2015.

'Right of entry' for union representative is about a worker's right to access representation by their own collective organisation. Without such a right within the [occupational safety and health (OSH)] system, workers lack an independent means to hold their employers to account.

We believe that union right of entry under WHS legislation recognises the trade union movement's role in building safer workplaces. Whenever a union officer enters with a WHS permit, it is the intention of the permit holder to engage constructively to improve the lives of union members. Leaving union right of entry in the Industrial Relations Act seeks to delegitimise union involvement in OSH and will frame right of entry solely as an industrial relations issue rather than a health and safety issue.

Additionally, not only should right of entry for permit holders be included in the proposed Bill but they should be strengthened to include permit holders being able to take photos and make recordings where doing so does not hinder work being carried out; and to provide for the permit holder to issue PINs on the same basis as a HSR. Any PINs issued by permit holders could be challenged by the employer on the same basis as a PIN issued by a HSR, in which case an inspector could be invited to review the PIN as an independent umpire.

In contrast, AMMA stated:

AMMA's long-running stance in relation to union access to worksites has been that the preferred persons with responsibility for entering sites to investigate safety issues should be the regulators and inspectors with the responsibility for administering and enforcing the safety legislation in each jurisdiction.

Having said that, AMMA has no problem with employees exercising their right to be represented by their union, and the union on their behalf raising any health and safety issue with the employer and inspector, without necessarily having to enter the workplace themselves.

In short, AMMA maintains that a right of entry for union officials must set appropriate boundaries to ensure such rights are not used as a means to pursue industrial agendas.

DMP's position

DMP commented that the WA Government has always stated that it does not plan to adopt the union right of entry provisions from the model WHS Act. The government has consistently held that right of entry for the purposes of OHS is already provided for under the *Industrial Relations Act 1979*. The proposed change is considered to create duplication, which risks creating confusion and opportunities for inconsistencies to arise.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

G. Differing approaches among sectors of resources industries

Stakeholders' comments

APGA commented that the differing approaches among sectors of the resources industries should be recognised in the WHS (Resources) Bill. Specifically, APGA highlighted the differences between the pipeline industry and other resources industries:

APGA maintains that pipeline specific regulation will deliver the best outcome and maximises the objectives of ensuring the safety of the workforce and the public without imposing additional unnecessary cost on the industry. We submit that:

- (1) *The pipeline sector has a good safety record which is, in part, due to a well understood and effective safety regime, and the industry has a sound working relationship with regulatory agencies.*
- (2) *Owners and Operators of petroleum pipelines have significantly different requirements from that of owners and operators in other industries to be covered by the Bill.*
- (3) *The concept of ALARP [‘as low as reasonably practicable’] is well established within the pipeline industry as part of the overall risk management approach and this needs to be maintained under the new regime.*

CME stated:

Given ongoing concerns raised by industry sectors, and in particular the oil and gas sector, regarding full consolidation within the WHSR Bill, CME recommends Option 2 continue to be carried as a contingency and requests further information be provided on the potential implementation of this option.

CME recommends in reviewing the WHSR regulations MAP be provided with additional information regarding options for the future structure of resources safety legislation and the opportunity to consider whether mining and petroleum regulation is best placed in a single consolidated set of regulations or whether it is preferable to develop separate sets of regulation specific to industry sectors.

DMP’s position

DMP commented that the 2014 RIS consultation supported consolidating resources industry safety legislation under one Act and that the Minister for Mines and Petroleum had therefore requested that DMP prepare the WHS (Resources) Bill and supporting regulations. It does not propose to prepare draft legislation aligning with Option 2 unless it becomes apparent that the proposed WHS (Resources) Bill is fatally flawed.

DMP noted that preparing and consulting on multiple versions of modernised resources industry safety legislation would impose substantial costs on both government and industry and would be likely to delay the preparation and implementation of either option.

It considers that pipeline safety objectives align well with other sectors of the resources industries and that there does not appear to be any need to create separate regulations for pipelines. The proposed legislation would not substantially affect work practices or costs for petroleum pipelines.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required. DMP has committed to review the need for separate regulations if the need arises during the preparation of the WHS (Resources) Regulations.

H. Codes of practice

Stakeholders’ comments

Angus Robinson, Chris Towsey and Jock Cunningham stated:

Codes of Practice (CoP) should also include established ‘Standards’ and this is welcome and strongly supported. However, it appears that the Minister may approve CoP unilaterally and/or on recommendation of the advisory committees to be established.

Clarification should be made whether this means that a body may submit a proposed CoP for approval directly to the Minister OR through the designated advisory committee.

Often, and especially where new technology or applications develop, no single CoP is applicable and it is necessary to apply relevant sections of multiple CoP. It is unreasonable to expect the Minister to approve all relevant CoP or parts thereof. An example can be drawn from the CoP for remote control of mobile mining equipment, which for a period excluded teleoperated and automated equipment while such equipment was in wide use. Equipment developers and operators were able to draw on other relevant standards to achieve the highest standard of safety. Use of only 'approved' standards may impose significant delays.

The question can be asked whether clause 275(4) will allow for the use of CoP that have not been approved by the Minister?

DMP's position

DMP stated that stakeholders may submit recommendations to the relevant statutory committee. The requirement to develop a code of practice rests with the committee. All codes of practice are approved by the Minister, as happens in other states.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required. Marsden Jacob notes DMP's commitment to work with industry to ensure that the implementation of the WHS (Resources) Act is suitably supported by codes of practice.

I. Design obligations—Part 2, Division 3, sections 22 to 26A inclusive

Stakeholders' comments

Angus Robinson, Chris Towsey and Jock Cunningham stated:

Obligations will be imposed on designers, manufacturers, importers/suppliers and installers in relation to the safe design, supply and erection of plant, substances and structures. This is strongly supported. This is an issue recently identified in an article published by The AusIMM. This article reported on the design of large off-highway haul trucks, where the tail of the truck tray is at the same altitude as the driver's cabin, frequently resulting in a fatality or serious injury to the driver in a nose-to-tail collision ...

However:

Introduction of these obligations may create an unintended consequence that could make the truck designers, manufacturers, importers and suppliers retrospectively liable for previous fatalities.

This consequence could be addressed by insertion of a clause into the WHS(R) Bill to prevent retrospective claims on existing equipment.

DMP's position

DMP commented that these provisions will not be applied retrospectively.

Marsden Jacob recommendation

No change to the WHS (Resources) Bill proposal is required. However, Marsden Jacob recommends that drafting instructions for the Bill ensure that the provisions cannot be interpreted as being retrospective.

J. Duty of workers

Stakeholders' comments

UnionsWA stated:

We object to the inclusion in the Bill of overly prescriptive language for workers. This is particularly bad in the language of section 28(d) in the WA Bill. We believe that the duties placed upon the workers in (a), (b) and (c) are sufficient, while (d) adds complexity and confusion into the legislation and does little to expand upon a worker's duties in (c) to 'comply with any reasonable instruction' from the PCBU.

DMP's position

DMP stated that s. 28 of the Mock Bill reflects the provisions in the model WHS Act. It considers that, in order to maintain consistency, the section should not be amended.

DMP also noted the difference between:

- s. 28(c) While at work, a worker must *comply*, so far as the worker is reasonably able, with any reasonable instruction (emphasis added)
- s. 28(d) While at work, a worker must *co-operate* with any reasonable policy or procedure.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

K. Resources facility inspection records

Stakeholders' comments

PACIA stated:

The current system of inspector visits can occasionally lack transparency. There is currently no requirement on inspectors to provide a record or summary of visits to MHF sites. The interpretation on any corrective action between the inspector and operator can be viewed differently, which can lead to misinterpretation of correct action to be taken. Furthermore, since the inspector does not need to provide the notice or summary at the time of inspection, there is no way that operators can seek prompt reconsideration or review of inspection recommendations. This needs to be resolved by the regulator at a later stage. It may be preferable to discuss any issues while the inspector is still present on-site and familiar with the conditions. This could increase administrative efficiency and reduce costs by precluding the need for the operator to re-visit the issue at a later date.

Therefore, to improve the transparency and efficiency of MHF audits, it is recommended that there needs to be an obligation on inspectors to provide a summary of inspection visit(s).

DMP's position

DMP stated that it agrees with the proposed change. It will consider the most appropriate location and wording to include the change.

Marsden Jacob recommendation

Marsden Jacob recommends that the drafting instructions prepared by DMP for the WHS (Resources) Bill include the proposed change requiring inspectors to provide a summary of inspection visits.

Marsden Jacob notes that the change will improve the transparency of audits and allow for improved communication on any identified actions, which is likely to facilitate the efficient achievement of health and safety outcomes.

L. Health—hierarchy of control and psychological hazards

Stakeholders' comments

CCI stated:

CCI supports in principle the inclusion of psychological health in the definition of health, however it is such a broad and complex area of personal well-being that it is difficult to identify and manage hazards and risks in the workplace.

Employers have expressed concerns over the subjective nature of the status of a person's psychological health and their ability to address it appropriately using work systems and relying on risk management structures.

Work related mental health issues are already recognised as falling within the occupational safety and health area as seen in the complex area of bullying in the workplace.

CCI maintains and supports the Australian Chamber of Commerce and Industry's position in national debates that the hierarchy of controls is not able to be competently applied to psychosocial hazards. Psychological health is a concept that often relies on individual perceptions. Employers experience great difficulty ascertaining which conditions are work related, affected by work, can impact on safe work and are not work related but affect the worker's psychological health.

It is particularly difficult for employers to provide and maintain a workplace free from risk of harm to psychological health or psychosocial well-being as there is an endemic predisposition to mental health issues within many workers based on the general demographic prevalence of mental health conditions.

CCI believes that this is an area that should be approached carefully by the WA Government, and comprehensive consultation should be undertaken prior to the introduction of any specific compliance requirements in relation to psychological health protection by employers (PCBUs). Due to the complexity and multifactor contributory nature of mental health issues, it is critical that only those aspects directly related to work activities and the workplace are captured by the compliance expectations of the extended definition of health.

In the context of the question of 'control' it must be recognised that controlling the factors which could affect the happiness, response and mental well-being of individual workers is almost impossible.

The increasing prevalence of mental ill health in the community generally has created the need for a broad community focussed approach to providing adequate support, service, and information to increase personal resilience and build better treatment pathways. Employers should not become responsible for solving societal health issues which have causes, and are heavily influenced by, matters not related to work or the efforts of employers to provide and maintain a safe workplace.

Recommendation

CCI recommends that the duties and responsibilities in relation to psychological health should be limited to those matters which are related to work activities and work hazards and risks.

DMP's position

DMP stated that it agrees that the area of personal wellbeing is broad and complex. Furthermore, it agrees that a PCBU's responsibility to worker health is limited to the elements that an employer is able to control (such as work activities and the workplace).

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

M. Welfare

Stakeholders' comments

The submission from CCI stated:

The Draft Bill incorporates some of the terminology from the Model Act which has not previously been a feature of the WA legislation and is likely to result in some practical complications and uncertainty if adopted.

One of these is the reference to 'welfare'. The term is not defined, which is likely to create confusion about the scope of an employer's duties.

In particular we note that the Oxford Dictionary defines welfare as: the health, happiness, and fortunes of a person or group. The definition is subjective and carries connotations of social welfare.

DMP's position

DMP agrees with the proposed amendment, and this change has been made.⁶³

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required. The suggested change has been made.

⁶³ The version of the Mock Bill issued for consultation already had the term 'welfare' removed. CCI saw an earlier version of the Mock Bill through its membership of the MAP.

N. Health and safety representatives

Stakeholders' comments

UnionsWA stated:

Elected HSRs [health and safety representatives] are integral to any modern OSH framework and should be the cornerstone of the Work Health and Safety (Resources) Bill 2014.

We are disappointed by the reduction in the number of rights afforded to HSRs in the WA WHS Bill. UnionsWA is concerned about the potentially wide ranging definitions of 'improper purpose' in section 65. Section 59 of the Mine Safety and Inspection Act 1994 uses the definition 'with the intention of only causing harm to the representative's employer'.

We recommend that 'Improper purpose' be replaced with the definition used in section 56 of the Victorian Occupational Safety and Health Act 2004, which allows for a HSR to be disqualified if they undertake actions 'intending to cause harm to the employer or undertaking of the employer'.

This will provide clarity to this definition and will give both HSRs and PCBU's greater certainty when navigating the laws.

Provisions relating to a HSR's right to request union assistance should not have the provision of that assistance tied to right of entry. If the HSR has declared that they need immediate assistance in order to act on a safety issue, requiring 24 hours' notice is unreasonable and puts the safety of workers at risk.

The removal of the right for HSRs to appeal a range of decisions under section 223 of the proposed legislation is a direct attack on the rights of workers and HSRs. WorkSafe has not offered any explanation for this removal and we believe that appeal rights to an independent body are critical for a healthy occupational safety and health system.

Right of Health and Safety Representative to Direct that Unsafe Work Cease

UnionsWA strongly believes that HSRs must have the right to direct that unsafe work cease. UnionsWA has surveyed affiliates and has found no evidence which supports any allegation that these powers have been abused or misused.

There is evidence stretching back decades to indicate that, where OSH representatives have the power to cease work or to issue an improvement notice, the exercise of such powers has been reasonable. Additionally, since the introduction of the model WHS laws elsewhere in Australia, no evidence to the contrary has been brought to light, and in the absence of any such evidence, we can confidently claim that the OSH representative system has worked well for decades, and continues to do so.

With no evidence of misuse and with no reason to revoke this power, we believe that the removal of this right is an ideological decision by the state government which will put the health and safety of workers at risk.

UnionsWA recommends some minor amendments to section 84 to make it clear that a worker has the right to cease work if [that work] may harm others.

Training of Health and Safety Representatives

It is critically important that HSRs are given comprehensive training to undertake this vital role.

There are several improvements that could be made in relation to HSRs' powers and functions. For example, under the current laws, HSRs only have the power to issue a Provisional Improvement Notice (PIN) and issue a cease work after completing their training. In practical terms, if the HSR's training is delayed unnecessarily, then she/he may be left in a legal limbo whereby they are powerless to stop dangerous workplace practices.

This will be a disincentive for employers to enrol a HSR into training as soon as possible. As HSRs are directly elected by their peers, the system would be more democratic if representatives were legally entitled to carry out their duties immediately upon election.

Training for HSRs should not be limited to introductory and refresher training every few years or upon election. Given the increasing complexity of occupational safety and health issues we believe that the training options for HSRs should be expanded.

The WA Bill should allow a HSR to seek additional training on specific hazards or issues confronting a workplace or industry; the condition of this training should be captured by the same consultation and other requirements contained in section 72.

UnionsWA recommends retaining the Deputy HSR provisions from the model laws. We believe that these provisions allow a Deputy to step into any short term or casual vacancies without the need for an employer to run new elections, therefore reducing red tape and compliance costs.

DMP's position

The explanatory memorandum issued by Safe Work Australia with the model WHS Bill provides an explanation of what the court needs to take into account when determining the meaning of 'improper purpose'.⁶⁴ The health and safety representative (HSR) is protected if they operate within their powers and functions, as set out in clause 68 of the model WHS Bill.

If any worker has a reasonable concern that carrying out work would expose them or another person to a serious risk to their health or safety, the worker has a right to cease work (this is explained in clause 84 of the explanatory memorandum). Extending this power to HSRs would not improve safety at the workplace and may put extra pressure on HSRs. General issues regarding safety can be raised through health and safety committees.

The person to whom a provisional improvement notice is issued can ask for a review of that notice.

The WA Government does not propose to include s. 65 of the model WHS Act covering the appointment of deputy HSRs. This is consistent with the WHS Green Bill for general industry. DMP considers that the number of HSRs elected should take into consideration likely absences or the unavailability of representatives. Allowance should be made to ensure that there are enough HSRs to deal with such situations.

DMP considers that the training requirements under s. 72 are sufficient.

⁶⁴ Safe Work Australia, *Explanatory memorandum—Model Work Health and Safety Act*, 7 December 2010, <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/explanatorymemorandum>

Marsden Jacob recommendation

Marsden Jacob recommends that DMP consult the MAP on whether it is necessary to clarify the wording of s. 84 of the proposed Bill to make it clear that a worker has the right to cease work if that work may harm others.

O. Plain English

Stakeholders' comments

A confidential submission stated:

While I recognise that the Act is a legal document, I don't believe enough effort has been made to use plain language. I think the tone and syntax of the document should be aimed at the 'common man'. Parts of the draft Act are difficult to comprehend and unnecessarily verbose. E.g. 27(3), 192(2), 292A(3).

I believe this is an ideal opportunity to produce a document that is written in language that is clear, durable and that is a model for future legislation.

DMP's position

DMP commented that the legislation is based on the model WHS Act and that attempting to rewrite the legislation in plain English would risk removing the benefits of aligning the legislation with other jurisdictions.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

P. Union right to prosecute

Stakeholders' comments

UnionsWA stated:

Under the current state and commonwealth laws employers are rarely held to account for safety breaches. In 2011–12, across Australia a mere 362 legal proceedings against employers resulted in a conviction, order or agreement. This indicates that the risk of conviction is quite low, and legal proceedings are therefore unlikely to act as much of a deterrent to employers under the current system.

With so few legal proceedings, it is critical that the entitlement to prosecute should extend beyond the regulatory authorities. Trade union members have a legitimate interest in upholding workplace safety standards and in encouraging deterrence. Moreover, union prosecutions allow for a more efficient distribution of resources as they free up the limited resources of the state regulator or the prosecuting authority. Prosecutions have been used very effectively in the past to create organisational and cultural change, significantly improving health and safety.

Where unions do engage in prosecutions, it is done so sparingly and only in the most egregious of cases—we are unaware of any union-initiated prosecutions that have been found to be vexatious or frivolous in nature. In our experience, where unions have brought

legal proceedings against employers, this has resulted in significant cultural and organisational change resulting in better safety protections for workers

DMP's position

DMP commented that the model WHS Act does not include provisions for prosecutions by third parties. For this reason, it does not consider that the proposed amendment should be made.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

Q. Independent auditors

Stakeholders' comments

A confidential submission stated:

There is also a role for independent assessment / audit.

The oil and gas industry is largely organised and safe—but it's less consistent in mining.

Some examples are: Safety cases on petroleum facilities and sinkholes as a specialist risk and skills in Australia—need to ensure that the right geotechnical experts are involved.

Not sure if provisions for these roles should be built into the law or it is administrative.

The codes assume that experts are used in design—but that is not always the case. And the boom and bust nature of the industry makes it harder to find and use experts always.

DMP's position

DMP commented that it supports industry using independent consultants as necessary, but stated that this is not proposed to be included in either the Bill or the regulations. It noted that an independent incident report can be required by the regulator, but that introducing a broader requirement for independent audit would be a large change for each industry and would substantially reduce the alignment of the WHS (Resources) Bill with other jurisdictions.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

R. Inspectors

Stakeholders' comments

CME suggested that:

if additional persons are to be appointed as inspectors a mechanism be included in the Green Bill to require these persons to have adequate training in WHS matters.

DMP's position

DMP stated that inspectors are appointed by the regulator under Part 9 of the proposed WHS (Resources) Bill (see s. 156 to s. 159). It indicated that inspectors would not be appointed unless they were appropriately qualified and knowledgeable, but does not consider that this needs to be stated in the Act. DMP noted that such an inclusion would reduce the alignment of the WHS (Resources) Bill with other jurisdictions.

Marsden Jacob conclusion

No change to the WHS (Resources) Bill proposal is required.

Glossary

Disclaimer: This glossary has been compiled to support this D-RIS and to aid stakeholders' understanding of the document's content. For legislative or technical terms, the definition given here is a simplified one. Stakeholders should use legislated definitions and information provided by the relevant government departments when making decisions or seeking further clarification.

Term	Definition
Consultation RIS (C-RIS)	Consultation Regulation Impact Statement. A document released for consultation under a regulatory impact assessment. Outlines the policy issue to be addressed, 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.
DMP	Department of Mines and Petroleum, Western Australia.
Decision RIS (D-RIS)	Decision Regulation Impact Statement. A 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.
Lost time injury	A 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.
Mining Industry Advisory Committee	A statutory committee currently under s. 14A of the <i>Occupational Safety and Health Act 1984</i> .
Model WHS Act	Model Work Health and Safety Act.
NMSF	National Mine Safety Framework. First endorsed in March 2002. Included 'nationally consistent legislation' as the first of seven strategies focused on key areas in which consistency across jurisdictions would be most beneficial. ⁶⁵ This first strategy was subsequently subsumed into the Council of Australian Governments' Work Health and Safety (WHS) Harmonisation initiative following a national commitment in July 2008 that sought to cover all OHS legislation regardless of sector.
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority. A Commonwealth statutory agency regulating health and safety, structural integrity and environmental management for all offshore petroleum facilities in Commonwealth waters, and in coastal waters where state powers have been conferred.
OPGGSA	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (Cth). Regulated by NOPSEMA.
PAGERA	<i>Petroleum and Geothermal Energy Resources Act 1967</i> .

⁶⁵ <http://industry.gov.au/resource/Mining/NationalMineSafetyFramework/Pages/default.aspx>

Term	Definition
PCBU	<p>Person conducting a business or undertaking.</p> <p>New defined term in the proposed WHS (Resources) Bill to cover businesses, employers and volunteer groups.</p>
Petroleum operations	Unless otherwise specified, in this document includes geothermal energy operations and greenhouse gas storage operations.
Project management plan	Used in mining. Requires management of identified risks at the time of commencement of mining operations. No requirement to update the plan as the mining operations expand or change. Not an enforceable document.
PPA	<i>Petroleum Pipelines Act 1969</i>
PSLA	<i>Petroleum (Submerged Lands) Act 1982</i>
Regulatory Gatekeeping Unit	<p>Within the WA Department of Finance.</p> <p>Established to advise on, administer and support the regulatory impact assessment process in Western Australia.</p>
RIA	<p>Regulatory impact assessment.</p> <p>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.</p> <p>The Regulatory Impact Assessment Guidelines for Western Australia are available on the Department of Finance's website at www.finance.wa.gov.au/cms/uploadedFiles/Economic_Reform/RIA_Program/ria_guidelines.pdf.</p>
Remote operations centre	A building or place located remotely from a resources operation to manage, monitor and control the day-to-day operation of resources sites, including people and equipment (vehicles, plant, trains and ports).
Safety case	<p>A detailed document comprising a facility description, a safety management system and a formal safety assessment (risk assessment). Outlines the types of safety studies undertaken, the results of those studies and the safety management arrangements to address the findings of the studies. 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 that measures have been taken to ensure that the risks to people are eliminated or minimised to a level that is as low as is 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 primary document submitted by the operator of a facility classified as an MHF to demonstrate that systems at the facility are appropriate to eliminate the risk of a major incident or reduce it to a level that is as low as is reasonably practicable.</p> <p>Requirements are outlined in regulations under the <i>Dangerous Goods Safety Act 2004</i>.</p>

Term	Definition
SMS	Safety management system A comprehensive and integrated process for managing health and safety risks. Includes policies, operating procedures, risk management, emergency planning, change management, worker training, consultation, contractor selection, performance monitoring, auditing, incident investigation and continuous improvement.
SSE	Site senior executive. New defined term in the proposed WHS (Resources) Bill.
RIS	Regulatory impact statement.
WHS (Resources) Act or WHSR Act	Work Health and Safety (Resources) Act. The proposed Act being considered through this RIS process.