



REPORT

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Companion report for the Regulation Impact Statement

Model Work Health and Safety Regulations and Codes of Practice in Western Australia

Report prepared for WorkSafe WA

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Companion report for the Regulation Impact Statement: consultation responses to specific topics

1. Introduction

This is the companion report for the *Work Health and Safety Regulations and Codes of Practice –Regulation Impact Statement (RIS)*. This companion report should be read in association with the RIS which sets out process and findings.

This companion report is written as a reference document supporting the RIS. For this reason, each topic is covered in full, which results in some duplication for related topics (such as changes relating to asbestos).

WorkSafe WA and Marsden Jacob jointly prepared the ‘Consultation Regulation Impact Statement’ (Information and Issues Paper), which provided an overview of harmonisation and the RIS process, and also called for submissions. The Information and Issues paper sought input on:

- 39 specific changes in regulation identified by WorkSafe;¹
- other topics identified by respondents; and
- first stage Codes of Practice.

In addition to these elements of the regulations and Codes of Practice, respondents were invited to provide comment on key definitions used in the Act (workers, workplace; and a Person Conducting an Undertaking or Business), although technically outside the scope of the RIS.

Sections 2 to 8 of this companion report summarise each of the topics and the responses received. Table 1 summarises the number of comments received on each topic and its location within the document.

In addition to the 39 changes, Section 9 summarises responses provided on:

- 9.1 Definitions in the model WHS Act;
- 9.2 First stage Codes of Practice;
- 9.3 Other topics raised by respondents; and
- 9.4 Transitional provisions.

Finally, Section 10 provides a summary table for each of the 39 changes considered.

¹ The information and issues paper sought comment on 38 changes, however, for ease we separated *spray painting* from *Tilt-up construction, welding, abrasive blasting, isocyanates and styrene*.

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2. Examination of proposed regulatory changes: asbestos

This section includes some detail on the history and use of asbestos in Australia, the latest details on its adverse health effects, and an introduction to the proposed health changes.

2.1 Background, history, use and mining

Asbestos is a naturally occurring substance that has been mined and processed for thousands of years. It is made up of six silicate minerals, often contained in surface rock. Even in its natural form, asbestos is a health hazard and may cause lung disease and cancer. Health risks to people are dependent upon a range of factors with the level of exposure to asbestos being a key factor. The longer and more intensely a person is exposed to asbestos, the greater their chances for developing an asbestos-related illness.

Asbestos came into widespread industrial use in Australia after World War II. As one of the highest users of asbestos in the world prior to the mid-1980s, Australian asbestos consumption peaked in about 1975 at approximately 70,000 tonnes per year. Asbestos was valued because of its tensile strength, low heat conduction and its resistance to chemicals and termites. It was widely used for insulation and as the key ingredient in products such as asbestos cement sheeting and roofing, water pipes, fire blankets, fillers and packing, as well as in items like motor vehicle clutches, brake linings, gaskets and brake pads. It is estimated that at least 15% of dwellings built in Australia prior to 1987 contain asbestos. Asbestos, predominantly chrysotile (white) and crocidolite (blue), was mined in Australia until a complete ban came into effect in 1984. Up until this time, approximately 750,000 tonnes of asbestos was mined in Australia.

Australia began to regulate the use of asbestos products in the late 1970s, with gradual bans on different types of asbestos, until a total asbestos ban came into effect at the end of 2003. The use of asbestos in building and construction materials declined in the 1980s and had virtually ceased by the early 1990s. However, the importation of raw chrysotile asbestos and chrysotile asbestos products continued.

Despite the bans, Australia's residents are still exposed to asbestos in many buildings, both residential and commercial, that contain asbestos cement and other asbestos products. Demolition of any structures built prior to the asbestos bans is particularly dangerous, as is any renovation or remodelling project that puts individuals in contact with these locations or products.

2.1.1 Background: health impacts

Use of asbestos-containing materials (ACMs) was banned in Australia on 31 December 2003. Australia has the highest reported per capita incidence of asbestos-related disease in the world. Periods of up to 50 years can elapse between exposure and appearance of symptoms of disease. The incidence of mesothelioma is increasing in Australia due to the long incubation period. Asbestos-related diseases have traditionally been linked to workers who have had direct contact with the material, either through mining or working with asbestos in manufacturing processes, as well ‘do-it-yourself’ home renovators.

Asbestos-related diseases (such as mesothelioma) can be contracted by breathing in tiny airborne particles when asbestos containing material is disturbed. Mesothelioma is fatal and incurable. The mortality rates associated with other asbestos-related diseases, such as lung cancer and asbestosis, are also very high. The World Health Organisation has stated that there is no minimum safe exposure level for any form of asbestos fibres. The National Health and Medical Research Council likewise has noted that asbestos is highly toxic, and environmentally persistent.

In 2008 there were 661 new cases of mesothelioma diagnosed in Australia and 82% of these cases were men. The total number of mesothelioma cases in Australia is expected to reach 18,000 by 2020. Over the period 1999 and 2001 the incidence of mesothelioma has ranged between 2.1 and 2.7 deaths per 100,000 population. In February 2010, Safe Work Australia initiated and funded the establishment of a new Mesothelioma Registry (www.mesothelioma-australia.com).

2.2 The model WHS regulations

The model WHS regulations seek to reduce the risk of exposure and to provide an explicit set of obligations and actions to help reduce the ongoing effects on workers and workplaces of this insidious risk.

We have packaged the eight proposed changes regulating asbestos into three groups as shown in Table 2. The first group relates to the register; the second relates to naturally occurring asbestos; and the third group relates to the removal requirements such as licensing, training and certification. The table also includes details in relation to parties/individuals that would be affected by the model WHS regulations.

As shown, the proposed regulation change to the ‘Asbestos – Register’ topic will likely impact all commercial buildings built between 1990 and 2003, which is the extended timeframe from existing regulation. This also includes residential buildings constructed in the period from 1990 to 2003 that act as workplaces (such as when employees work from home). The ‘Asbestos – Naturally Occurring Asbestos’ group will affect most businesses in certain regions while the ‘Asbestos removal requirements’ group will affect a number of parties, including both Class A and Class B asbestos removal licence holders, construction businesses, tradespeople, home renovators, as well as local government and the community as a whole. The following sections provide more detail around those impacted by the proposed eight changes.

Table 2: Proposed changes to asbestos

Asbestos – register	1	1. Asbestos – register	<ul style="list-style-type: none"> ▪ Workplaces built between 1990 and 2003 (Commercial buildings as well as residential buildings that act as a workplace)
Asbestos – Naturally Occurring Asbestos	1	2. Asbestos – Naturally Occurring Asbestos	<ul style="list-style-type: none"> ▪ Businesses in certain regions (that have been identified as containing Naturally Occurring Asbestos) – predominantly the Pilbara
Asbestos removal requirements	6	3. Asbestos – air monitoring and clearance 4. Asbestos – analysis of samples 5. Asbestos – certified safety management systems 6. Asbestos – removal licences 7. Asbestos – removal – notifications 8. Asbestos – training	<ul style="list-style-type: none"> ▪ Class A asbestos removal licence holders ▪ Class B asbestos removal licence holders ▪ Construction businesses, tradespeople, home renovators ▪ Local governments/councils and the community in general may be affected due to expected illegal dumping due to more stringent requirements for asbestos removal
Total number of Asbestos topics	8		

The eight model changes seek to make work places safer and more harmonised with the new Model Code of Practice, “How to Manage and Control Asbestos in the Workplace”, which is available as an electronic publication on the Safe Work Australia web site. This Code of Practice provides practical guidance for persons conducting a business or undertaking on how to manage risks associated with asbestos and asbestos containing material at the workplace and thereby minimise the incidence of asbestos-related diseases such as mesothelioma, asbestosis and lung cancer. In addition, the Australian Government recently established the Asbestos Management Review “... to make recommendations for the development of a national strategic plan to improve asbestos awareness and management”.

Industries involved

The proposed eight changes will have related effects on a range of industries, as well as the nature and size of businesses. These requirements are directly relevant to licensed asbestos removal companies and are indirectly relevant to all PCBUs that commission asbestos removal work requiring a Class A licence. In addition, industries of all types could potentially be impacted by this change. Current lists of licensed companies are available on the WorkSafe webpage and WorkSafe indicate that there are current licensee numbers as follows:

- 14 Class A (friable – Unrestricted Asbestos Removal) licences; and
- 880 Class B (non-friable – Restricted Asbestos Removal) licences.

Industry respondents indicate that not all of these licensees are ‘active’ and an analysis of the licensee lists indicate a broad range of companies that are licensed including:

- specialist asbestos removal companies (generally with Class A licence);
- demolition companies (both domestic and commercial demolition);
- fencing contractors;
- builders and electricians; and
- local government authorities.

The total size of the industry is currently unknown and estimates of the number of ‘notifiable’ asbestos removal jobs range from 5,000 to 9,000 per annum.

Nature and size of businesses

A large number of the businesses affected are small in size. During consultations, a number of industry participants indicated that the average firm would have one supervisor and three employees working with asbestos. It should be noted that the industry also includes some larger firms with over one hundred employees. However, due to the wide use of asbestos, businesses of all sizes and lines of work could potentially be affected by this change. This change will potentially impact on a broad range of PCBUs with management or control of a workplace which may include asbestos. However it is likely that larger organisations with multiple buildings may be more affected. This change will mostly affect larger enterprises, or possibly smaller sub-contracting enterprises that may be involved in road construction or dredging or quarrying. Industry associations and unions will be involved.

2.3 Asbestos – register

2.3.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 3.

Table 3: Current and changed requirements for asbestos – register

<p>Although there is no regulation covering age of buildings that require an asbestos register, the WA public sector Asbestos Steering Committee (which included WorkSafeWA) <i>advised government agencies to maintain a register for buildings constructed before 1990</i>. This is based on the history of asbestos building product manufacture and use in WA.</p>	<p>A person with management or control of a workplace must prepare and keep <i>an asbestos register at the workplace for buildings built before 2003</i>. [Reg. 425]</p> <p>The details to be in the register are specified in the regulations and include the location, type and condition of the asbestos or ACM.</p> <p>If asbestos is not present, the register must state that no asbestos or ACM is identified or likely to be present from time to time.</p>
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2.3.2 Background

The use of all forms of asbestos was banned in Australia on December 31, 2003. This includes its import, use or sale in any product. Asbestos was banned because it is a known carcinogen, with the potential to cause asbestosis, lung cancer and mesothelioma. Asbestos was a popular building material used in Australia up until the mid-1980s, due to its strength, durability and resistance to fire and water.

The ban does not apply to asbestos installed prior to the end of 2003 (e.g. in residential or commercial buildings). For this reason, the model WHS laws are proposing that the requirement for an asbestos register be extended to capture workplaces constructed prior to the end of 2003 (whereas currently there is a requirement for buildings constructed before 1990 to be registered). Some concerns were raised by respondents that they were not compliant with the existing requirements and that the level of compliance for workplaces that are residential houses would be low.

It is unclear what portion of residential house would also be considered workplaces and so would fall within the remit of this proposed change.

It is not out of the realm of possibility that a reasonable proportion of residential houses will technically fall within the ambit of an asbestos register.

Industries involved

Industries of all types will be impacted by this change.

Nature and size of businesses

If operating in buildings constructed prior to 2003, businesses of all sizes and lines of work could potentially be affected by this change. However it is likely that larger organisations with multiple buildings may be more affected.

2.3.3 Summary of benefits and costs from change

Whereas currently WorkSafe requires a register for buildings constructed before the end of 1990, the proposed change would require PCBUs to keep an asbestos register at the workplace for buildings built before the end of 2003.

Input from industry

The Australian Industry Group (AiG) noted that if asbestos is not detected in buildings, then there would be little administrative burden and it should be relatively simple to establish the register. It was suggested that an appropriate transition period is put in place. The Shire of Donnybrook Balingup indicated that this change will have little effect on them as they record the asbestos status of all of their buildings. They did however question whether ‘buildings’ would include sites such as refuse / landfill sites which are known to contain asbestos.

It was noted by National Disability Services that a register and general increased organisational and worker awareness of where asbestos is located and how it can become dangerous can only be beneficial to all occupants’ health.

A respondent from the health industry [South Metropolitan Health Service] can see the benefit of systematic identification of asbestos in building structures; however note the increase in administrative costs and how this may potentially increase rental costs if building managers are to bear the cost of maintaining the register.

The Chamber of Commerce and Industry (CCI), the Safety Institute of Australia, the National Electrical and Communications Industry WA and another respondent [Ausdrill] commented that it is unclear who would bear the responsibility of maintaining the register if there is more than one person with management or control of the workplace. It was suggested that in buildings that have multiple tenants, this shall be the owner of the building.

The CCI noted that the time period (built prior to the end of 2003) is also significantly more onerous than current laws and will impose costs on businesses with newer buildings that they know were not constructed using asbestos products but which will now require assessment.

National Disability Services raised the issue of the home of an individual being a workplace and how this would apply to that particular industry. It was noted that verbal advice from WorkSafe WA suggests that if the individual with disability is deemed the PCBU (this is subject to an assessment), then their home (if built before 2003) will be required to be assessed to determine if it should be on an asbestos register. It was estimated that asbestos assessment costs are in the vicinity of \$1,000 to \$2,000. Due to the requirement of an assessment to determine if the individuals with a disability are deemed PCBUs under the model laws, it is not known how many individuals will be regarded as a PCBU. It is noted that with the growing trend for more control and choice to be made by the person with disability, the number of individuals with disability in the potential role of PCBU will increase. It is anticipated that most building stock operated by the not for profit disability sector do not have asbestos registers covering buildings constructed before 1990, let alone 2003.

In terms of the age of buildings the provision refers to, it was commented that the 2003 date should be 2004 as asbestos was banned on 31 December 2003.

Although a comment was made by a respondent (Unions WA) that the proposed regulation does not specify what a PCBU must include in the Asbestos Register, the *Model WHS Information and Issues Paper* states that “*the details to in the register are specified in the regulations and include the location, type and condition of the asbestos or ACM*”.

Input from WorkSafe

WorkSafe WA estimates that there were approximately 20,000 workplaces built in Western Australia between 1990 and 2003. In the scenario that a five year transition period is implemented, this would require on average of 4,000 workplaces to be inspected by a competent person per year. However, an issue that WorkSafe identified is that since a register of workplaces built during this time does not exist, there is no means of ensuring an even spread of inspections over the transition period.

WorkSafe acknowledge that PCBU's will incur the costs of inspections by competent persons; however they do not expect that a large number of workplaces will have asbestos. A risk they have identified is that the rate of voluntary compliance may be low. Another consideration is the number of residences that have workplaces attached and were also built during this time.

Summary of benefits

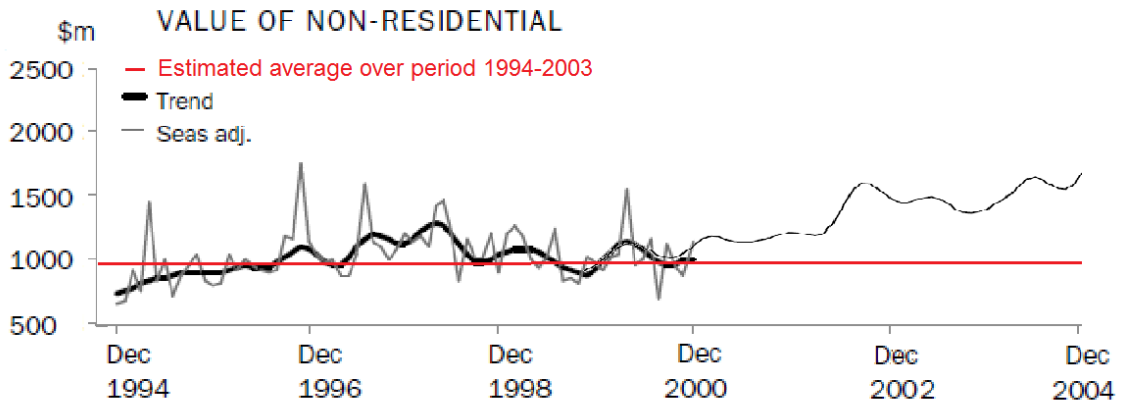
- Extending the asbestos register from those built before 1990 to those built before 2003 has been recognised as an improvement in work health and safety as the use of asbestos in buildings was not banned until the end of 2003.
- Some respondents do not anticipate the proposed change to be overly administratively onerous.

Summary of costs

- Extra assessments of buildings will lead to a rise in business compliance costs (estimated at \$2,000 per workplace).
- Some were unclear as to whether the responsibility of maintaining the asbestos register falls upon the owner of the building or the PCBU/lessee.
- For those in health/disability/community industries that have employees that conduct work in people's homes, assessments would need to be made to determine if the home would be regarded as a workplace and the need for an asbestos register is required. This has the potential to be associated with significant costs if all individuals who receive care are regarded as PCBU's.

Utilising data from the Australian Bureau of Statistics (ABS) (Number of Non-residential Building Jobs Approved, Western Australia), estimates by WorkSafe WA and stakeholders, Marsden Jacob estimates that changing the building age threshold from 1990 to 2003 will result in a net present value changeover cost to industry of \$36,800,000 (based on a 4 per cent discount rate). Ongoing costs are expected to be minimal in comparison to the initial costs. As ABS data for this category are only available for three years between 2001 and 2003 inclusive, Marsden Jacob have extrapolated this out to the 10 years prior to include the full 13 years. As depicted in the diagram below, the value of non-residential construction in Australia has been relatively flat in the ten years from 1995 to 2004, as shown in Figure 1 – indicating that the sample from 2001 to 2003 should provide a reasonable estimate.

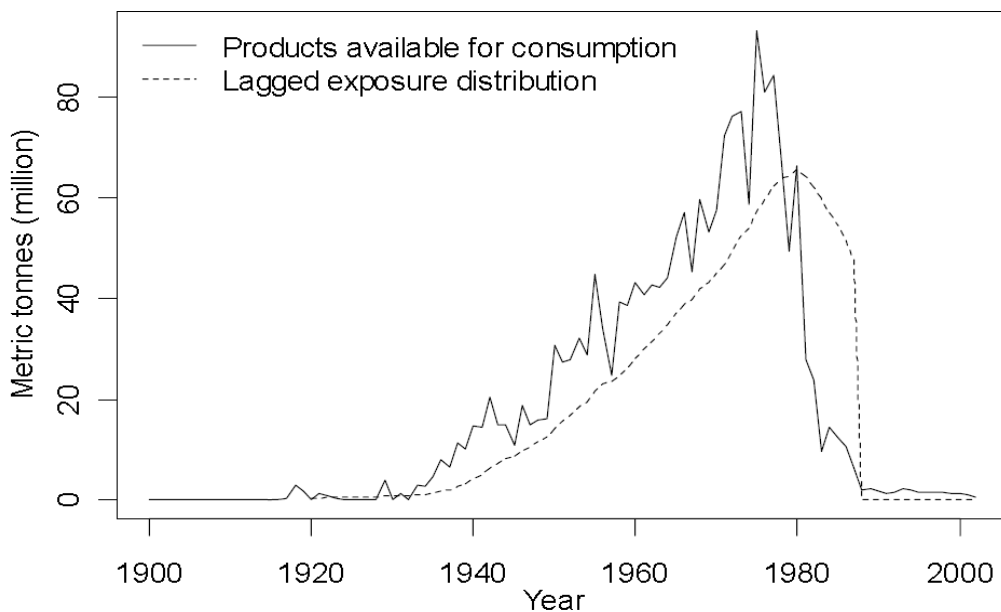
Figure 1: Value of non-residential construction in Australia 1995-2004



Source: ABS Building Approvals 8731.0 December 2000 & December 2005.

The diagram below displays the level of asbestos products available for consumption in Australia from the earlier part of the twentieth century to the early 2000s. As shown, asbestos products peaked in the late 1970s and have dramatically declined since then with a large drop off around 1990. Since 1990, asbestos levels have been relatively stagnant, suggesting that if businesses were to update their asbestos registers to include those after 1990, it is not expected that many buildings would contain asbestos.

Figure 2: Asbestos products available for consumption and a hypothesised lagged distribution for exposure, Australia



Source: Clements, M, Berry, G, Shi, J, 'Actuarial projections for mesothelioma: an epidemiological perspective'. Presented to the Actuaries of Australia XIth Accident Compensation Seminar, 2007, www.actuaries.asn.au/Library/5.cACS07_paper_Clements_Actuarial%20Projections%20for%20Mesothelioma.pdf

2.3.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS this proposed change fails the *Cost Efficiency Test* as it results in a net cost of \$41 million (at 4% discount rate over 20 years).

As set out in section 4.6 of the RIS the proposed changes cannot be categorically assessed against the *Threshold Benefit Cost Test* as the current number of people being exposed to asbestos that will later contract an asbestos related illness cannot be readily estimated. However, the change would need to save at least 3.46 lives per year to pass this test.

The *As Low As Reasonably Practicable (ALARP)* test appears relevant to all of the asbestos related changes as an exposure incident there is a risk of death, in addition asbestos raises “societal impacts” through the potential for exposure of neighbouring people. If a *disproportion factor* of 3 were used then the change would need to save at least 1.15 lives per year to pass this test.

As set out in section 4.6.3 of the RIS it is not possible to accurately estimate the number of workers who would directly benefit from changes in the requirements for asbestos work, i.e., the number who would become exposed to asbestos under current work practices and would later become sick, but would not be exposed under the proposed work practices.

While it is not possible to readily estimate the number of people that are currently being exposed to asbestos and will later develop asbestos related diseases the threshold figures can be compared to the current number of claims relating to asbestos that have been paid in recent years, which were 60 in 2009/10 and 73 in 2010/11. Given a latency period of 20 to 50 years these claims relate to exposure that occurred between 1960 and 1990 – and during this period asbestos was mined and used heavily with minimal protection for workers.

Unintended consequences

Some respondents expressed concern over this requirement being applied broadly – given the broad definition of a workplace. This potentially imposes costs on businesses where residences could be defined as a workplace. This would include volunteer organisations providing in-home care such as Meals on Wheels as well as work that is ‘taken home’ by people from their usual workplace. No information was provided on the current level of compliance under the existing requirements.

Equity

Community service providers who offer in-home care (e.g. meals on wheels, silverchain nursing, some aged care services) risk being impacted significantly as they will have a constant turnover in workplaces (their client’s residences).

Competition

Compliance with this requirement will impose costs on businesses. As such some businesses may choose to not comply and save on costs. However, given the scale of the costs (estimated at \$2,000 per workplace) it appears unlikely that a substantial advantage will be gained.

Transitional

It would appear that a lengthy transitional period would be necessary (e.g., 3-5 years).

2.3.1 Direction

Proposed changes relating to register of buildings containing asbestos should be delayed pending clarification of:

- of proposed coverage or exclusion of residences classifiable as workplaces including those constructed before 1990;
- numbers of buildings to be captured by the extension of the coverage date from 1990 to 2003; and
- the sensitivity of benefits and costs to possible intermediate dates between 1990 and 2003. Based on the usage of asbestos beyond 1990, there appears to be diminishing returns in extending the requirement for registers the full 13 years.

Note: there may be some interaction and overlap between these requirements and the recommendations of the Fary review of asbestos management and the subsequent national strategic plan.²

Further consideration is required to estimate the number of workers who would directly benefit from changes in the requirements for asbestos work. This unknown can be thought of as the number who would become exposed to asbestos under current work practices and would later become sick, but would not be exposed under the proposed work practices. In addition further consideration is required as to whether it is appropriate to use the ALARP threshold and a “disproportion factor” in considering changes relating to asbestos.

If a “disproportion factor” is not used then the proposed change will deliver a net benefit if it is likely to save 3.46 lives per year.

² <http://deewr.gov.au/asbestos-management-review>

2.4 Asbestos – naturally occurring asbestos

Naturally occurring asbestos has been known to be present for thousands of years. It is made up of six silicate minerals, often contained in surface rock. Even in its natural form, asbestos is a health hazard and may cause lung disease and cancer. Health risks to people are dependent upon their exposure to asbestos. The longer a person is exposed to asbestos and the greater the intensity of the exposure, the greater the chances for a health problem. Asbestos-related disease, such as lung cancer, may not occur for decades after breathing asbestos fibres. Cigarette smoking increases the risk of lung cancer from asbestos exposure. This proposed change better recognises the health risks inherent in naturally occurring asbestos and impose responsibility on managers to control those risks where they are present.

2.4.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 4.

Table 4: Current and changed requirements for asbestos – naturally occurring asbestos

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

The Chamber of Commerce and Industry suggested that the regulation needs to be more prescriptive to ensure relevant parties are clear about their responsibilities. A respondent from the mining industry [Rio Tinto] expressed similar concerns and queried what tests on competency may be required. This, in turn, will have an effect on the content of an asbestos management plan and the sort of training and management protocols that may be required. The mining industry respondent [Rio Tinto] suggested that the current WA DMP guidance note “*Fibrous minerals in Western Australian mining operations*” might be adopted to support this regulatory change.

A respondent from the construction industry [Thunderstruck] commented that they agree to the proposed changes. An online survey respondent also from the construction industry listed this change as a benefit but did not provide any further information.

The Australian Industry Group assessed that this change would have only a small impact as any enterprise which might be likely to disturb naturally occurring asbestos would already have an appropriate asbestos management system in place.

Industries involved

The main industries would include anything extractive, such as construction, mining and quarrying.

Nature and size of businesses

This change will mostly affect larger enterprises, or possibly smaller sub-contracting enterprises that may be involved in road construction, dredging or quarrying. Industry associations and unions will be involved.

2.4.3 Summary of benefits and costs from change

Input from industry

This change imposes greater responsibility for enterprises to be aware of naturally occurring asbestos and, if detected, for the risks to be managed. While larger firms in the extractive industries may be readily able to develop a management plan to deal with this risk, smaller firms may find this considerably more burdensome.

Input from WorkSafe

There may be costs to WorkSafe in both promulgating advice on this regulatory change, as well as enforcing it and ensuring management plans are adequate.

Potential further impacts

This regulatory change may benefit from industry being sensitised to the level of risk and the areas in the state where naturally occurring asbestos is most prevalent. The scale of the likely impact of this regulatory change needs to be made clearer to industry bodies to ensure an effective response.

Summary of benefits

- Efficiently implemented, this proposed change can mitigate health risks to workers of naturally occurring asbestos.

Summary of costs

- The cost of compliance with and enforcement of this changed regulation will be managed if its imposition is coupled with a sense of the level of risk. WorkSafe data and compensation claims data will assist in calculating these costs.

2.4.4 Assessment against criteria

Benefit Cost Analysis

This change was not assessed quantitatively and so was excluded from the Benefit Cost Analysis.

Transitional

It would appear that a transitional period would be necessary; however, the default transitional period of 12 months may be sufficient.

2.4.5 Direction

The proposed change raised few concerns and so should be accepted. However, further guidance on the requirements of an Asbestos Management Plan may be necessary.

2.5 Asbestos – air monitoring and clearance

This topic groups three related changes regarding asbestos removal. The three topics relate to:

- air monitoring when material requiring a Class A removal licence (friable asbestos) occurs;
- clearance inspections³ of sites involving friable asbestos; and
- clearance inspections of sites involving bonded asbestos.

2.5.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 5.

Table 5: Current and changed requirements for asbestos – air monitoring and clearance

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

Unfortunately there was an error in the Information and Issues paper that indicated that air monitoring would be required for the removal of bonded asbestos. As this was incorrect, comments that were specific to that element of the change were excluded from the analysis.

As summarised by the Australian Industry Group:⁴

the key issues here appear to relate to:

- *the move from “competent person” to “licensed asbestos assessor” for air monitoring and clearance certificates associated with the removal of friable asbestos;*
- *a requirement for the person doing the clearance inspection to be “independent”;* and

³ Regulation 373 defines that a clearance inspection is an inspection of an asbestos removal area after asbestos removal work has been completed to verify that the area is safe for normal use, that: (a) includes a visual inspection; and (b) may include air monitoring.

⁴ Australian Industry Group Submission, p. 12.

- *the requirement that the person who commissions the asbestos removal work “must” (rather than should) obtain a clearance certificate.*

2.5.2 Background

Industries involved

These requirements are directly relevant to licensed asbestos removal companies and are indirectly relevant to all PCBUs that commission asbestos removal work.

Current lists of licensed companies are available on the WorkSafe webpage⁵ and WorkSafe indicate that current licensee numbers are as follows:

- 14 Class A (friable – Unrestricted Asbestos Removal) licences; and
- 880 Class B (non-friable – Restricted Asbestos Removal) licences.

Industry respondents indicate that not all of these licensees are “active” and analysis of the licensee lists indicate a broad range of companies that are licensed including:

- specialist asbestos removal companies (generally with Class A licence);
- demolition companies (both domestic and commercial demolition);
- fencing contractors;
- builders and electricians; and
- local government authorities.

The total size of the industry is currently unknown and estimates of the number of “notifiable” asbestos removal jobs (see Section 2.2) range from 5,000 to 9,000 per annum.

Nature and size of businesses

A large number of the businesses are small in size and a workshop with a range of industry participants indicated that the average firm would have one supervisor and three employees working with asbestos.

It is noted that the industry also includes some larger firms with over one hundred employees.

2.5.3 Summary of benefits and costs

Input from industry

Air monitoring

Air monitoring is currently required (under the Code of Practice) at sites removing friable asbestos, however, the WHS regulations appear to be more prescriptive in nature and specify that the PCBU commissioning the work must ensure that the air monitoring is undertaken by an independent licensed asbestos assessor.

A range of respondents estimated that air monitoring costs are around \$1,200 per day.

⁵ http://www.commerce.wa.gov.au/worksafe/PDF/Directories/unrestricted_asbestos_licence.pdf and http://www.commerce.wa.gov.au/worksafe/PDF/Directories/Restricted_asbestos_licence_holders.pdf

Clearance Certificates

Clearance certificates are currently required (under the Code of Practice) at sites removing friable asbestos, however the WHS regulations specify that this must be done by an independent licensed assessor.

Industry experts indicated that a clearance certificate would cost around \$1,200 to obtain for both class A and Class B asbestos removal. Potential concerns raised are summarised in Table 6.

Table 6: Potential concerns raised through forums and submissions

Regional and remote areas	Respondents in regional areas expressed concern at obtaining air monitoring in remote locations. In addition a number of respondents, including WorkSafe, expressed concern at the availability of “independent” expertise in remote locations.
Background air quality	A number of respondents commented that in some parts of WA the ambient levels of asbestos fibres are close to the levels prescribed in the regulations as requiring attention (0.01 fibres/ml)
Timings for obtaining results of air monitoring	Some respondents believe that that results of air monitoring can take up to four days to obtain. They note that under these circumstances the work will often be completed before the results are obtained.

Input from WorkSafe

WorkSafe indicated there could also be difficulties in relation to the requirements for independent competent persons to undertake assessments. In the non-metropolitan area, these concerns are amplified. Of the 880 restricted asbestos removal licences, 430 are in non-metropolitan locations from Esperance to Kununurra with 50 locations having one or two restricted asbestos removal licences.

If these difficulties occur, it is anticipated that WorkSafe WA and the State Government will receive complaints and requests for exemptions with accompanying administrative workloads. In August 2012, Work Health and Safety Queensland issued an exemption which eased the clearance certificate requirements for domestic premises where asbestos work has been carried out.

Summary of benefits

- Potential safety benefits both from independent air monitoring of the removal of friable asbestos as well as the independent confirmation of asbestos clearance.

Summary of costs

- Increased costs for asbestos removal from the requirement to obtain independent clearance. Costs were estimated at around \$1,200 per day, both for clearance certificates and air monitoring.
- Possible increased pressure to remove asbestos illegally or under an exemption.

2.5.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS, this proposed change fails the *Cost Efficiency Test* as they result in a net cost of \$86 million (at 4% discount rate over 20 years).

As set out in section 4.6 of the RIS the proposed changes cannot be categorically assessed against the *Threshold Benefit Cost Test* as the current number of people being exposed to asbestos that will later contract an asbestos related illness cannot be readily estimated. However, the change would need to save at least 7.14 lives per year to pass this test.

The *As Low As Reasonably Practicable* (ALARP) test appears relevant to all of the asbestos related changes as an exposure incident there is a risk of death, in addition asbestos raises “societal impacts” through the potential for exposure of neighbouring people. If a *disproportion factor* of 3 were used then the change would need to save at least 2.38 lives per year to pass this test.

As set out in section 4.6.3 of the RIS it is not possible to accurately estimate the number of workers who would directly benefit from changes in the requirements for asbestos work – i.e., the number who would become exposed to asbestos under current work practices and would later become sick, but would not be exposed under the proposed work practices.

While it is not possible to readily estimate the number of people that are currently being exposed to asbestos and will later develop asbestos related diseases the threshold figures can be compared to the current number of claims relating to asbestos that have been paid in recent years (60 in 2009/10 and 73 in 2010/11). Given a latency period of 20 to 50 years these claims relate to exposure that occurred between 1960 and 1990 – and during this period asbestos was mined and used heavily with minimal protection for workers.

Equity

Respondents in regional locations expressed concerns with being able to obtain air monitoring.

WorkSafe expressed concern with the availability of independent professionals in regional locations. They noted that in regional locations with two companies the level of independence will diminish rapidly as they companies will repeatedly inspect each other’s work.

In Queensland a class exemption was issued removing the need for independence in regional locations as this requirement was found to impose untenable delays.

Unintended consequences

Increased asbestos removal costs may create increased pressure to either remove asbestos under exemption (such as the 10 square metre rule⁶) or remove asbestos illegally. Either of these options are unlikely to be undertaken by professionals and so may increase the risk of exposure. This may also encourage illegal dumping of asbestos, which imposes costs on the local government or landholder and further increases the risk of exposure by third parties.

⁶ Under both the existing OSH regulations and the WHS regulations an asbestos removal licence is not required for the removal of 10 square metres or less of non-friable asbestos.

Transitional

It would appear that a lengthy transitional period would be necessary (e.g., 3-5 years).

2.5.5 Direction

Proposed changes in regulations relating to asbestos air monitoring and clearance should be delayed pending clarification of the likely health and safety benefit. This benefit arises from the reduction in the number of workers who expect to be exposed to asbestos under current work practices and would later become sick, but would not be exposed under the proposed regime. In addition, further consideration is required as to whether it is appropriate to use the ALARP threshold and a “disproportion factor” in considering changes relating to asbestos.

Consideration should be given to the use of a class exemption – as has been implemented in Queensland - removing the need for independence in regional locations.

Note: there may be some interaction and overlap between these requirements and the recommendations of the Fary review of asbestos management and the subsequent national strategic plan.⁷

⁷ <http://deewr.gov.au/asbestos-management-review>

2.6 Asbestos – analysis of samples

The analysis of asbestos samples applies when a building is assessed as to whether it contains asbestos – such as during the preparation of an asbestos register (discussed in section 2.3).

Under the WHS regulations (Reg. 422) a person with management or control of a workplace must ensure, so far as is reasonably practicable, that all asbestos containing material at the workplace is identified by a competent person. If material at the workplace cannot be identified but a competent person reasonably believes that the material is asbestos, or, if part of the workplace is inaccessible to workers and likely to contain asbestos containing material then it is assumed that asbestos is present.

Asbestos – analysis of samples applies where materials that may contain asbestos are analysed.

2.6.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 7.

Table 7: Current and changed requirements for asbestos – analysis of samples

<p>A person who is an employer, main contractor, self-employed or person in control of a workplace must ensure that the presence and location of asbestos at the workplace is identified and the process for doing this is in accordance with a national code.</p> <p>The code specifies that <i>laboratory testing must be</i> carried out if is uncertain whether something is asbestos.</p>	<p>A person with management or control of a workplace may identify asbestos or asbestos containing material by arranging for a sample to be analysed. They <i>must ensure the sample is analysed by:</i></p> <ul style="list-style-type: none"> (a) a NATA accredited laboratory accredited for the relevant test method; (b) a laboratory <i>approved by the regulator</i> according to guidelines published by Safe Work Australia; or (c) <i>a laboratory operated by the regulator.</i> [Reg. 423]
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2.6.2 Background

Industries involved

These requirements are directly relevant to licensed asbestos removal companies as well as all PCBUs with management or control of workplaces which may include asbestos.

Nature and size of businesses

This change will potentially impact on a broad range of PCBUs with management or control of a workplace which may contain asbestos.

2.6.3 Summary of benefits and costs

Input from industry

Some respondents indicated that the impact of this change was minimal as they currently use NATA accredited laboratories.

Some respondents supported a further tightening of the requirements to restrict it to NATA accredited laboratories.

Two respondents indicated that they believed this change would result in an:

increase in cost that will have to be passed onto the client⁸

This change could potentially impact on businesses with existing laboratories which are not NATA accredited (such as asbestos removal specialists who may have in-house facilities). However, no such businesses were identified through the consultation process.

Input from WorkSafe

WorkSafe did not comment on this topic in its written submission. WorkSafe did comment informally that it does not currently operate a laboratory and nor does it currently approve laboratories.

If the change is implemented, WorkSafe would need to consider whether it needed to commission a laboratory or establish a process to approve laboratories. It appears likely that both of these options would impose a cost on WorkSafe and would only be done if it provided a net benefit to the economy.

Summary of benefits

- Improved quality of analysis.

Summary of costs

- Potential small price increase, however, no estimates were made of the scale of an increase in price. In addition, it appears the increase in costs would not impact all providers of asbestos removal services uniformly. Any providers already using NATA accredited laboratories would not be impacted by this change.

2.6.4 Assessment against criteria

Benefit Cost Analysis

This change was not assessed quantitatively and so was excluded from the Benefit Cost Analysis.

Transitional

A respondent indicated that an appropriate transitional provision would be delaying implementation by 1-2 years.

2.6.5 Direction

The proposed change raised few concerns and so should be accepted.

⁸ Submission from Asbestos Industry [Geographe Civil].

2.7 Asbestos – certified safety management systems

2.7.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 8.

Table 8: Current and changed requirements for asbestos – certified safety management systems

No requirements.	Applications for a Class A asbestos removalist licence must include, amongst other things, evidence that an applicant has a ‘certified safety management system’. [Reg 493] This is defined as a system complying with Australian Standard AS 4801: 2001. <i>The regulator may make a determination for the purposes of the definition of a ‘certified safety management system’.</i> [Reg. 6]
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2.7.2 Background

Industries involved

These requirements are directly relevant to licensed asbestos removal companies and are indirectly relevant to all PCBUs that commission asbestos removal work requiring a Class A licence.

Nature and size of businesses

WorkSafe’s submission indicates there are currently 14 Class A (friable - Unrestricted Asbestos Removal) licences in WA.

A large number of the businesses are small in size and a workshop with a range of industry participants indicated that the average firm would have one supervisor and three employees working with asbestos.

2.7.3 Summary of benefits and costs

Input from industry

One respondent indicated that their company had recently obtained a certified safety management system in preparation for the requirements under WHS. They indicated that the total cost of obtaining this accreditation was around \$250,000 in management time and consultancy fees. In addition, they anticipate that their ongoing costs will be around \$35,000 per annum.

Another respondent acknowledged the benefits of having an asbestos certified management system in place; however recognised that this would be a significant burden on small businesses that do not have the professional capacity or budget to enable them to properly manage a safety system.

Input from WorkSafe

The proposed regulations provide WorkSafe with the power to determine what constitutes a certified safety management system. While WorkSafe did not comment on this proposed change in their submission, they indicated informally that they do not currently approve safety management systems and would need to consider whether this was appropriate if the regulation is adopted.

Summary of benefits

- Potential safety benefits through improved work practices.

Summary of costs

- Increased costs for Class A asbestos removal as providers increase prices to cover this fixed cost.
- May cause a “shakeout” of the industry prompting some operators to surrender their licence.
- Possible increased pressure to remove asbestos illegally.
- Potential competition issues through increased market concentration and increased barriers to entry (as described in detail in the *Competition* section below).

2.7.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS this proposed change fails the *Cost Efficiency Test* as it results in a net cost of \$10 million (at 4% discount rate over 20 years).

As set out in section 4.6 of the RIS the proposed changes cannot be categorically assessed against the *Threshold Benefit Cost Test* as the current number of people being exposed to asbestos that will later contract an asbestos related illness cannot be readily estimated. However, the change would need to save at least 0.87 lives per year to pass this test.

The *As Low As Reasonably Practicable (ALARP)* test appears relevant to all of the asbestos related changes as an exposure incident there is a risk of death, in addition asbestos raises “societal impacts” through the potential for exposure of neighbouring people. If a *disproportion factor* of 3 were used then the change would need to save at least 0.29 lives per year to pass this test.

As set out in section 4.6.3 of the RIS it is not possible to accurately estimate the number of workers who would directly benefit from changes in the requirements for asbestos work, i.e., the number who would become exposed to asbestos under current work practices and would later become sick, but would not be exposed under the proposed work practices.

While it is not possible to readily estimate the number of people that are currently being exposed to asbestos and will later develop asbestos related diseases the threshold figures can be compared to the current number of claims relating to asbestos that have been paid in recent years (60 in 2009/10 and 73 in 2010/11). Given a latency period of 20 to 50 years these claims relate to exposure that occurred between 1960 and 1990 – and during this period asbestos was mined and used heavily with minimal

protection for workers.

Unintended consequences

Increased asbestos removal costs may create increased pressure to either remove asbestos under exemption (such as the 10 square metre rule⁹) or remove asbestos illegally. Either of these options are unlikely to be undertaken by professionals and so may increase the risk of exposure. This may also encourage illegal dumping of asbestos, which imposes costs on the local government or landholder and further increases the risk of exposure by third parties.

Competition

The proposed change imposes a substantial cost (estimated at \$250,000) for each business. This cost applies to both businesses that propose to stay in the business as well as potential entrants. Given the industry estimates of a typical business having one supervisor and three employees it appears likely that many businesses would have an annual turnover of under \$5 million – making a fixed cost of \$250,000 a substantial imposition, which may prompt market exit. This would increase concentration in an already shrinking market.

Transitional

It would appear that a lengthy transitional period would be necessary (e.g. 3-5 years) to ensure that the certified safety management systems are well defined and are broadly available. In addition a lengthy transitional period may reduce or at least soften the impact of market exit.

2.7.5 Direction

The proposed regulatory change requiring certified safety management systems for asbestos removal, should be delayed pending clarification of the nature and levels of certification required and the costs involved. In setting the certification requirements consideration should be given to improving safety management of asbestos removal without threatening small business viability.

The estimated cost of \$250,000 was provided by one market participant and should be investigated further.

Note: there may be some interaction and overlap between these requirements and the recommendations of the Fary review of asbestos management and the subsequent national strategic plan.¹⁰

⁹ Under both the existing OSH regulations and the WHS regulations an asbestos removal licence is not required for the removal of 10 square metres or less of non-friable asbestos

¹⁰ <http://deewr.gov.au/asbestos-management-review>

2.8 Asbestos – removal licences

2.8.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 9.

Table 9: Current and changed requirements for asbestos – removal licences

<p><i>Restricted (Class B) and Unrestricted (Class A) licences are issued for the removal of asbestos. These licences can be issued to individuals and entities for three years. In order to qualify for the</i></p> <ul style="list-style-type: none"> • Restricted Asbestos Licence applicants must complete a WorkSafe WA approved Restricted Asbestos Removal Licence training course with a Registered Training Organisation. • Unrestricted Asbestos Licence applicants must submit their relevant manuals and curriculum vitae of each person employed as a manager or supervisor of asbestos removal work for WorkSafe WA to consider. 	<p><i>Class A Asbestos Removal Licence is required for the removal of friable asbestos [Reg 485] and Class B Asbestos Removal Licence is required for the removal of 10 sqm or more of non-friable asbestos or ACM [Reg 487]. In order to qualify for the:</i></p> <ul style="list-style-type: none"> • Class A Asbestos Removal Licence, applicants must have: <ul style="list-style-type: none"> o at least one competent person who has completed the prescribed asbestos supervisor training course; o evidence the supervisor is over 18 and has at least 3 years relevant experience; and o a certified safety management system and each supervisor is over 18 [Reg 493]; and • Class B Asbestos Removal Licence, applicants must have: <ul style="list-style-type: none"> o at least one competent person who has completed the prescribed asbestos supervisor training course; and o the supervisor is over 18 with at least 1 year of relevant experience [Reg 494]. <p>VET course records for with the asbestos training details for supervisors will have to be provided to the regulator during the licensing process. [Reg 493] The Licensed asbestos removalist will have to retain the training records of workers for five years. [Reg 461]</p> <p>The Class A and Class B Asbestos Removal Licences require renewal after five years. [Reg 503]</p>
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2.8.2 Background

Industries involved

These requirements are directly relevant to licenced asbestos removal companies and are indirectly relevant to all PCBUs that commission asbestos removal work.

Current lists of licensed companies are available on the WorkSafe webpage¹¹ and WorkSafe indicate that there are current licensee numbers are as follows:

- 14 Class A (friable - Unrestricted Asbestos Removal); and

¹¹ http://www.commerce.wa.gov.au/worksafe/PDF/Directories/unrestricted_asbestos_licence.pdf and http://www.commerce.wa.gov.au/worksafe/PDF/Directories/Restricted_asbestos_licence_holders.pdf
Submission by a small building company [Silvercourt Pty Ltd].

- 880 Class B (non-friable - Restricted Asbestos Removal) licences.

Industry respondents indicate that not all of these licensees are “active” and analysis of the licensee lists indicate a broad range of companies that are licensed including:

- specialist asbestos removal companies (generally with Class A licence);
- demolition companies (both domestic and commercial demolition);
- fencing contractors;
- builders and electricians; and
- local government authorities.

The total size of the industry is currently unknown and estimates of the number of “notifiable” asbestos removal jobs (see Section 2.2) range from 5,000 to 9,000 per annum.

Nature and size of businesses

A large number of the businesses are small in size and a workshop with a range of industry participants indicated that the average firm would have one supervisor and three employees working with asbestos.

It is noted that the industry also includes some larger firms with over one hundred employees.

2.8.3 Summary of benefits and costs from change

The proposed change entails additional training requirements for both Class A and Class B asbestos removalists, with a new course for Class A removalists, which does not currently exist. Whereas currently, licences are issued for a three year period, the new regulation would require licences to be renewed after five years. **Note:** As asbestos training is dealt with separately in section 2.10, it is not discussed in detail here.

In their written submission, Unions WA stated:

The proposed regulation does not cover asbestos which is a dust, as the definition of friable asbestos only refers to asbestos material that can be made into powder by hand pressure. The definition must be consistent with NOHSC Code of Practice for the Management and Control of Asbestos in the Workplace.

Input from industry

The Australian Industry Group (AiG) is supportive of the change, noting that it is an important step towards establishing consistency across Australia when dealing with asbestos.

A respondent from the mining industry [Rio Tinto] could not see any advantage in the proposed change as it increases administrative burden. It was questioned if over time, Class B removalists would reduce in numbers due to the increased training requirements.

It was suggested that a Class C restricted licence be developed:

My proposal is the possibility of a class C restricted licence to accommodate those who do not remove asbestos for commercial purposes, but are in a similar predicament as ourselves. I also believe that this type of license should be wound

back to zero square metres. We have always mused at the 10m² rule given the nature and history of the material.¹²

Also a note of consideration is that the licensed asbestos PCBU/person will be required to establish appropriate training records that can be retained for a 5-year period following the cessation of employment of a worker. Some guidance around the scope of the information contained in the records and in which form this should take was suggested.

Another asbestos removal company [Thunderstruck Asbestos Removal] suggested the removal of the 10sqm threshold in the proposed regulations as they believe that all asbestos should be removed by a licenced removalist. They commented that there are many instances of incorrect removal and disposal of asbestos when it is conducted by unlicensed individuals, thereby risking the health and safety of the community.

Input from WorkSafe

The WHS regulations require that WorkSafe WA is notified of new, and changes to, asbestos supervisors. This is a new requirement for WorkSafe WA and Class B asbestos removalists. A 10 per cent turnover based on 880 restricted asbestos removal licences would mean 88 notifications. If the 10 per cent calculation is done on the basis of an average of two supervisors per restricted asbestos removal licence, the number of notifications is over 160.

Potential future impacts

This change, in combination with the training requirements will create barriers to entry for the market in providing Class A asbestos removal. These barriers to entry are created with good intentions – to ensure that companies operating in the industry have good work practices and their staff are well trained. However, if the barriers to entry become substantial then they may prevent effective competition through the threat of new entry. This is particularly a concern given the small number of companies operating in the industry. Potential impacts that could be seen in this industry from a lack of competition would be increased prices and reduced levels of service.

Summary of benefits

- Some respondents could see the advantage of increasing the training of asbestos removalists to harmonise asbestos laws across Australia.
- Some respondents could see the benefit that increased training requirements would have on health and safety.

Summary of costs

- A number of respondents identified extra costs that would be incurred from additional training requirements, particularly because there are high employee turnover rates for asbestos workers.

¹² Submission by a small building company [Silvercourt Pty Ltd].

2.8.4 Assessment against criteria

Benefit Cost Analysis

It should be noted that we did not conduct an extensive analysis of *Asbestos – removal licences* as a standalone topic as many of the other asbestos topics relate to removal licences. Rather, benefit cost analyses were conducted for separate elements of asbestos removal licensing including *Asbestos – Air monitoring and clearance*, *Asbestos – Certified safety management systems*, *Asbestos – Removal notifications*, and *Asbestos – Training*. Please refer to these sections for further information.

Equity / competition

Equity and competition issues relating to separate elements of Asbestos removal licences are discussed in *Asbestos – Air monitoring and clearance*, *Asbestos – Certified safety management systems*, *Asbestos – Removal notifications*, and *Asbestos – Training*.

Unintended consequences

Increased asbestos removal costs may create increased pressure to either remove asbestos under exemption (such as the 10 square metre rule¹³) or remove asbestos illegally. Either of these options are unlikely to be undertaken by professionals and so may increase the risk of exposure. This may also encourage illegal dumping of asbestos, which imposes costs on the local government or landholder and further increases the risk of exposure by third parties.

Transitional

It would appear that a lengthy transitional period would be necessary (e.g., 3-5 years) to ensure all requisite elements are in place and industry has adequate opportunity to respond.

2.8.5 Direction

The proposed change imposes the requirement of a number of other proposed changes discussed in the RIS (such as asbestos training). This change should be accepted and if necessary individual elements – such as asbestos training – should be amended.

¹³ Under both the existing OSH regulations and the WHS regulations an asbestos removal licence is not required for the removal of 10 square metres or less of non-friable asbestos

2.9 Asbestos – removal: notifications

2.9.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 10.

Table 10: Current and changed requirements for asbestos – removal: notifications

Only Class A (unrestricted) asbestos removalists must notify WorkSafe WA in writing before a removal job. There are only seven businesses in this category in WA.

Class B licence holders do not have to notify WorkSafe WA, except where demolition regulations apply.

[Note: Class B work is restricted to bonded asbestos work e.g. removal of asbestos cement sheets.]

A licensed asbestos removalist must give written notice to the regulator at least five days before the removalist commences licensed asbestos removal work. [Reg. 466]

The regulations provide details about the information that must be included in the notification. This includes business details such as ABN, names of competent persons and workplace location, date of work, type and quantity of asbestos and competency details for each worker involved in the work.

2.9.2 Background

Industries involved

These requirements are directly relevant to licensed Class B asbestos removal companies and are indirectly relevant to all PCBUs that commission Class B asbestos removal work. Class A asbestos removal companies should already be compliant.

Current lists of licensed companies are available on the WorkSafe webpage¹⁴ and WorkSafe indicate that there are 880 Class B (non-friable – Restricted Asbestos Removal) licences.

Nature and size of businesses

A large number of the businesses are small in size and a workshop with a range of industry participants indicated that the average firm would have one supervisor and three employees working with asbestos.

It is noted that the industry also includes some larger firms with over one hundred employees.

2.9.3 Summary of benefits and costs from change

Currently, the OSH laws only require Class A (unrestricted) asbestos removalists to notify WorkSafe WA of asbestos removal work. The model WHS laws require all licenced asbestos removal work (both Class A and Class B) to be notified to WorkSafe WA at least five days before removal work commences.

¹⁴ http://www.commerce.wa.gov.au/worksafe/PDF/Directories/unrestricted_asbestos_licence.pdf and http://www.commerce.wa.gov.au/worksafe/PDF/Directories/Restricted_asbestos_licence_holders.pdf

Input from industry

An asbestos removal company [Thunderstruck] were supportive of the proposed change. The Department of Health were also supportive, however note that WorkSafe WA would need to ensure that they are adequately resourced to ensure the change is implemented appropriately.

A number of respondents identified the proposed change as a cost to their organisation, indicating that it made compliance with work health and safety laws more difficult. The Safety Institute of Australia and a respondent from the construction industry [Ausdrill] were overall supportive of the change, however requested the five day notice period be reviewed (downwards) to make compliance easier.

A respondent from the construction industry [Civil Contractors Federation] indicated that they considered this unnecessary for the removal of bonded asbestos by a licenced removalist.

The Australian Industry Group (AiG) also commented on the requirement, suggesting that WorkSafe WA put in place a streamlined process for notifications (such as an online option) to minimise the administrative burden associated with the proposed change. A respondent from the mining industry [Rio Tinto] suggested flexibility in the requirement:

*In cases of unplanned removal work (common in project work where unexpected asbestos material is encountered), the work can proceed without the 5-day notice period **only if** personnel are not going to be exposed to respirable asbestos fibres or an essential service is going to fail. In these instances work can proceed immediately but the regulator still needs to be notified – immediately by telephone and followed-up in writing not later than 24-hrs of the event.*

Flexibility with the five-day notification period was also supported by a small construction business (Silvercourt Pty Ltd) that are licenced to remove Class B asbestos. It was stated that a five-day notification period would mean that for asbestos encountered during renovation work, work would have to stop for the next five days in order to allow that notification period to be met, which is impractical and large impediment for small businesses. They suggested an exception for non-commercial asbestos removalists.

A respondent from the health industry [South Metropolitan Health Service] anticipated that there may be a delay in removal work due to the proposed requirement. This was reinforced by a construction company [Geographe Civil] that stated the new requirement would impede their ability to respond quickly to asbestos pipe removal, which is a large part of their asbestos removal works.

While a respondent from the mining/environmental industry [QED Environmental Services] acknowledged that the proposed change has the potential to allow for more accurate auditing of asbestos removalists, they were also aware of the risk of increased administrative burden with notification, especially in relation to smaller removal jobs.

The Chamber of Commerce and Industry (CCI) stated that it was unclear as to whether the proposed changes would require current Class B licence holders to provide notification of asbestos removal work. They suggested more clarity around the scope of licence types.

Input from WorkSafe

As the new requirement would capture both Class A and Class B asbestos removal work, WorkSafe WA anticipates that it will lead to increased notifications for processing. WorkSafe anticipate that the requirement for notification will be new to many who were not required to comply previously. WorkSafe believe that it is for this reason that many will be either reluctant

or indifferent to complying. Depending on the level of non-compliance, WorkSafe WA expects a requirement for a significant proactive resource commitment aimed at achieving compliance. WorkSafe have budgeted on attending 40% of notifications. This will apply at least during the transition period and extend over a number of years.

Summary of benefits

- Extending the requirement to provide notification for both Class A and Class B asbestos removal work has the potential to lead to more accurate auditing of asbestos removalists, and thereby improve health and safety.

Summary of costs

- A number of respondents indicated that the new change would increase administrative burden. This is particularly relevant for Class B asbestos removal licence holders who were not required to provide notification of removal work previously.

Some respondents were of the view that the five day notification period was not sufficient to ensure compliance. It was also suggested by several organisations that flexibility be arranged for small businesses and those that are not commercial asbestos removalists but encounter asbestos during construction work.

2.9.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS this proposed change fails the *Cost Efficiency Test* as it results in a net cost of \$12 million (at 4% discount rate over 20 years).

As set out in section 4.6 of the RIS the proposed changes cannot be categorically assessed against the *Threshold Benefit Cost Test* as the current number of people being exposed to asbestos that will later contract an asbestos related illness cannot be readily estimated. However, the change would need to save at least 0.99 lives per year to pass this test.

The *As Low As Reasonably Practicable* (ALARP) test appears relevant to all of the asbestos related changes as an exposure incident there is a risk of death, in addition asbestos raises “societal impacts” through the potential for exposure of neighbouring people. If a *disproportion factor* of 3 were used then the change would need to save at least 0.33 lives per year to pass this test.

As set out in section 4.6.3 of the RIS it is not possible to accurately estimate the number of workers who would directly benefit from changes in the requirements for asbestos work, i.e., the number who would become exposed to asbestos under current work practices and would later become sick, but would not be exposed under the proposed work practices.

While it is not possible to readily estimate the number of people that are currently being exposed to asbestos and will later develop asbestos related diseases the threshold figures can be compared to the current number of claims relating to asbestos that have been paid in recent years (60 in 2009/10 and 73 in 2010/11). Given a latency period of 20 to 50 years these claims relate to exposure that occurred between 1960 and 1990 – and during this period asbestos was mined and used heavily with minimal protection for workers.

Unintended consequences

The proposed change may impose delays for works that need to be undertaken in an urgent situation (such as broken pipes). For renovation and demolition the requirements may prompt builders and demolition groups to notify of possible asbestos even where it is not considered likely—just to avoid delays.

Transitional

It would appear that a short transitional period would be necessary (e.g., 1 year).

2.9.5 Direction

Proposed changes in regulations relating to asbestos removal notifications should be delayed pending clarification of the likely health and safety benefit. This benefit arises from the reduction in the number of workers who expect to be exposed to asbestos under current work practices and would later become sick, but would not be exposed under the proposed regime. In addition, further consideration is required as to whether it is appropriate to use the ALARP threshold and a “disproportion factor” in considering changes relating to asbestos.

Note: there may be some interaction and overlap between these requirements and the recommendations of the Fary review of asbestos management and the subsequent national strategic plan.¹⁵

¹⁵ <http://deewr.gov.au/asbestos-management-review>

2.10 Asbestos – training

2.10.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 11.

Table 11: Current and changed requirements for asbestos – removal licences

<p>There is a WA course to obtain a Class B licence. There is no WA course for Class A licences.</p>	<p>There are <i>increased training requirements</i>. The new regulations establish an extensive training framework for licensed asbestos removalists and assessors. There will be VET training courses for <i>individual asbestos removal workers, asbestos removal supervisors (Class A), asbestos removal supervisor (Class B) and asbestos assessor work</i>. [Regs. 460, 493 and 495]</p> <p>Version 7 of the CPC08 Construction, Plumbing and Services Training Package was endorsed by the National Skills Standards Council (NSSC) on October 26th and is now available on training.gov.au</p> <p>This latest version of CPC08 includes four new units of competency related to the removal of asbestos containing materials, which are detailed below.</p> <ul style="list-style-type: none"> CPCDE3014A Remove non-friable asbestos CPCDE3015A Remove friable asbestos CPCBC4051A Supervise asbestos removal CPCBC5014A Conduct asbestos assessment associated with removal <p>It is intended that these units will be required before the asbestos licences can be issued by regulators.</p>
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2.10.2 Background

Industries involved

These requirements are directly relevant to licensed asbestos removal companies and are indirectly relevant to all PCBUs that commission asbestos removal work.

Current lists of licensed companies are available on the WorkSafe webpage¹⁶ and WorkSafe indicate that there are current licensee numbers as follows:

- 14 Class A (friable – Unrestricted Asbestos Removal); and
- 880 Class B (non-friable – Restricted Asbestos Removal) licences.

Industry respondents indicate that not all of these licensees are “active” and analysis of the licensee lists indicate a broad range of companies that are licenced including:

- specialist asbestos removal companies (generally with Class A licence);
- demolition companies (both domestic and commercial demolition);

¹⁶ http://www.commerce.wa.gov.au/worksafe/PDF/Directories/unrestricted_asbestos_licence.pdf and http://www.commerce.wa.gov.au/worksafe/PDF/Directories/Restricted_asbestos_licence_holders.pdf

- fencing contractors;
- builders and electricians; and
- local government authorities.

The total size of the industry is currently unknown and estimates of the number of “notifiable” asbestos removal jobs (see section 2.2) range from 5,000 to 9,000 per annum.

Nature and size of businesses

A large number of the businesses are small in size and a workshop with a range of industry participants indicated that the average firm would have one supervisor and three employees working with asbestos.

It is noted that the industry also includes some larger firms with over one hundred employees.

2.10.3 Summary of benefits and costs from change

The proposed new requirements entail increased training requirements for licensed asbestos removalists and assessors. While there is currently a course to obtain a Class B licence, there is no course for Class A licences.

Input from industry

Several respondents indicated that the increased training requirement would lead to an improvement in health and safety. One specialist asbestos removal firm [Thunderstruck Asbestos Removal] and one respondent from a broader consulting firm [QED Environmental Services] noted the benefits of harmonised asbestos training across the nation.

It was noted that increased costs associated with additional training requirements may lead to higher costs for asbestos removal services (National Disability Services). A respondent from the construction industry (Geographe Civil) anticipates that increased costs associated with training their staff will lead to lower profits and reduce business competitiveness.

Several respondents (Chamber of Commerce and Industry, Safety Institute of Australia, Shire of Capel, [Ausdrill] and [Rio Tinto]) recognise that a course for Class A licences does not currently exist and that the course would need to be created and implemented within a suitable timeframe to ensure asbestos licences are issued by regulators in time to comply with the requirements. It will also ensure that there is no shortage of Class A licence holders to conduct asbestos work.

The Department of Health suggested clarity around the specific levels of training and competency required for a ‘licensed asbestos assessor’ and ‘competent person’.

Respondents from the health industry [South Metropolitan Health Service and Department of Health Environmental Health] acknowledged that competency based training would assist in ensuring appropriate levels of skills and knowledge for workers. However, it was noted that increased training requirements may translate to increased costs for asbestos removal services, particularly if there is a low supply of licenced removalists.

A recurring theme that emerged from the written submissions was the need to develop the course required for the licences. AiG together with the Safety Institute of Australia and a respondent from the manufacturing industry suggested that to ensure timely compliance by businesses, measures must be put in place to ensure that appropriate training courses are made

available so that asbestos supervisors are provided with the opportunity to be certified in time. This is to ensure that there continues to be sufficient licensed removalists to undertake work within Western Australia.

An asbestos removal company [Kalgoorlie Salvage & Demolition] expressed concern that this change would negatively impact them as the extra training would increase their costs, particularly due to the long distance they would have to travel to receive the training. This would affect their competitiveness with other larger companies. They are concerned that their extensive experience in asbestos removal would be undermined by individuals that just complete the required course.

A respondent from the environmental industry [QED Environmental Services] commented that there may be variability in the quality of courses offered by institutions, and that there should be an individual and specific course for industry professionals.

Input from WorkSafe

It is noted by WorkSafe that transitioning the non-VET sector licence holders and workers to the WHS regulations VET sector competency training requirements is likely to create significant issues. WorkSafe stated that the VET courses have not been finalised and no consideration has been given to the requirements for any transitioning assessments at this time. If an average of two workers per asbestos removal licence is used, approximately 1,660 people will require assessment. Until the details of the VET course are known and processes finalised, costs to the regulator and industry are unable to be determined.

WorkSafe anticipate that requiring experienced asbestos workers to complete the VET course so that they can continue to do the same asbestos work, is likely to attract significant opposition from industry on the basis of costs. If WorkSafe WA was to perform the assessment, costs would still be incurred. However, the assessments would not be conducted consistent with the Australian Qualifications Framework. Regulations could be considered allowing WorkSafe WA to charge a fee to recover the costs of providing this service.

In requiring assessment, it is possible that existing workers may not satisfy the assessment requirements and would no longer be able to do the work they were doing under the OSH regulations. In these circumstances, WorkSafe WA and Government will have to respond to complaints and any requests for review of decisions.

Considerable objection is expected to be received by WorkSafe WA and Government about these requirements once enforcement commences. Costs for complaint management cannot be easily estimated, but it would not be unreasonable to anticipate that there will be an increased workload and consequently some FTE implications.

The Complaints and Licensing System (CALs) database which is used by WorkSafe WA to support licensing functions will require reconfiguration in order to add the licence category for Class A independent asbestos assessors. The cost for the reconfiguration is \$20,000.

WorkSafe WA stated that there are a relatively small number of asbestos workers and supervisors which may lead to courses that are infrequent. If this were the case, it would make it more difficult for asbestos licence holders to complete work in short timeframes, potentially leading to consequences for other regulators involved in the disposal of asbestos. WorkSafe acknowledges that if this occurs, they will receive complaints.

Summary of benefits

- Increasing training requirements for asbestos removalists and assessors has the advantage of harmonising qualifications across Australia and making skills more transferrable.

Summary of costs

- Increased training requirements equate to increased costs that businesses will incur to comply with the new laws. Increased business costs have the potential to translate to higher asbestos removal services if the costs are passed on to the consumer. This may in turn reduce business competitiveness.

It is estimated that if these changes were to occur, there would be a changeover cost to industry in the amount of \$2.6 million and then \$6.2 million per year thereafter. This is based on estimates provided during workshops with members of the asbestos industry as well as further analysis.

2.10.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS this proposed change fails the *Cost Efficiency Test* as they result in a net cost of \$89 million (at 4% discount rate over 20 years).

As set out in section 4.6 of the RIS the proposed changes cannot be categorically assessed against the *Threshold Benefit Cost Test* as the current number of people being exposed to asbestos that will later contract an asbestos related illness cannot be readily estimated. However, the change would need to save at least 7.44 lives per year to pass this test.

The *As Low As Reasonably Practicable (ALARP)* test appears relevant to all of the asbestos related changes as an exposure incident there is a risk of death, in addition asbestos raises “societal impacts” through the potential for exposure of neighbouring people. If a *disproportion factor* of 3 were used then the change would need to save at least 2.48 lives per year to pass this test.

As set out in section 4.6.3 of the RIS it is not possible to accurately estimate the number of workers who would directly benefit from changes in the requirements for asbestos work, i.e., the number who would become exposed to asbestos under current work practices and would later become sick, but would not be exposed under the proposed work practices.

While it is not possible to readily estimate the number of people that are currently being exposed to asbestos and will later develop asbestos related diseases the threshold figures can be compared to the current number of claims relating to asbestos that have been paid in recent years (60 in 2009/10 and 73 in 2010/11). Given a latency period of 20 to 50 years these claims relate to exposure that occurred between 1960 and 1990 – and during this period asbestos was mined and used heavily with minimal protection for workers.

Equity

Some regional respondents noted that the training is often not available in the regions and so increased training requirements will impose greater costs on regional organisations.

Unintended consequences

There are currently 14 Class A (friable – Unrestricted Asbestos Removal) licences and 880 Class B (non-friable – Restricted Asbestos Removal) licences. Given the range of organisations that hold class B licences it appears likely that some would only undertake removal work occasionally in the course of other activities (e.g., demolition, renovations or maintenance of local government buildings). The imposition of additional training may encourage some existing licensees to rescind the licence.

In addition, increased asbestos removal costs (from increased training and possibly higher staff salaries) may create increased pressure to either remove asbestos under exemption (such as the 10 square metre rule¹⁷) or remove asbestos illegally. Either of these options are unlikely to be undertaken by professionals and so may increase the risk of exposure. This may also encourage illegal dumping of asbestos, which imposes costs on the local government or landholder and further increases the risk of exposure by third parties.

Competition

The requirement for increased levels of staff training may create a small barrier to entry for workers. This could result in a small increase in staff salaries.

Transitional

Respondents suggested delaying implementation by 3-5 years or by more than 5 years as well as the preparation of additional guidance or codes of practice prior to implementation.

It would appear that a lengthy transitional period would be necessary (e.g., 3 to 5 years) to allow time for training courses to become established and staff to be trained. Further consideration is required to determine the best approach to training and/or recognition of prior learning of current workers.

2.10.5 Direction

Proposed changes in regulations relating to asbestos training should be delayed pending clarification of the likely health and safety benefit. This benefit arises from the reduction in the number of workers who expect to be exposed to asbestos under current work practices and would later become sick, but would not be exposed under the proposed regime. In addition, further consideration is required as to whether it is appropriate to use the ALARP threshold and a “disproportion factor” in considering changes relating to asbestos.

Note: there may be some interaction and overlap between these requirements and the recommendations of the Fary review of asbestos management and the subsequent national strategic plan.¹⁸

¹⁷ Under both the existing OSH regulations and the WHS regulations an asbestos removal licence is not required for the removal of 10 square metres or less of non-friable asbestos

¹⁸ <http://deewr.gov.au/asbestos-management-review>

3. Examination of proposed regulatory changes – construction, diving and falls

3.1 Construction projects – appointment of principal contractor

Construction projects – appointment of a principal contractor was a topic that a large number of respondents commented on. Although the surveys indicated a relatively even balance of those that listed the proposed change as a benefit and those that listed it as a cost, most comments provided in written submissions highlighted a requirement for further clarification in terms of the duty holder and responsibilities, and those that stated that the \$250,000 threshold was too low.

3.1.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 12.

Table 12: Current and changed requirements for construction projects – appointment of a principal contractor

A ‘main contractor’ for a ‘construction site’ must ensure that, where *five or more persons* are, or are likely to be, working at the same time that *an occupational safety and health management plan is prepared* before work commences and the plan is kept up to date.

Various regulations place *prescriptions on a ‘principal contractor’* in relation to ensuring the safety and health at a ‘*construction project*’, such as preparation of a ‘WHS management plan’. ‘*Construction project*’ is defined as a project *costing \$250,000 or more*. However, there is no provision for how the construction work costs are calculated. [Reg. 292]. Some guidance is provided in a supporting code of practice.

3.1.2 Background

Industries involved

This regulatory change impacts on a number of industries, with particular relevance to the construction industry. However, since construction projects have the potential to be active in a range of different locations, there are a number of other industries that can be impacted by this proposed change such as local government, mining, utility companies (electricity, gas or water), health care, and manufacturing.

Nature and size of businesses

This topic affects both large and small businesses. Particularly for small construction businesses operating with subcontractors (e.g. residential builders), this regulatory change may have a large impact.

3.1.3 Summary of benefits and costs

The current regulations prescribe that where there are five or more persons working at the same time on a ‘construction site’, there is a requirement that an occupational safety and health management plan be prepared. The new requirements would entail changing the threshold of a minimum of 5 workers to a project costing \$250,000 or more.

Input from industry

There are some respondents who have indicated that this change works in their favour as the number of workers may vary, and the current requirement places a level of unwarranted burden on businesses that is not commensurate with the size of the project. The majority of respondents expressed confusion over the definition of a “principal contractor” and their responsibility to prepare the “WHS management plan”.

Overall, respondents indicated that this change would make compliance with OSH moderately more difficult and have little effect on improving safety in the workplace. However, if clarification were provided around the definition of a “principal contractor”, this would make compliance easier. For smaller businesses that do not have the resources to prepare a WHS management plan, this change may place an undue burden on these businesses.

A number of respondents stated that the \$250,000 threshold is too low, and suggested this threshold value be increased. This is reflected in the submission from the WA Chamber of Commerce and Industry, which noted that this threshold “will prove onerous on many Western Australian PCBUs due to the geographical size and remote and often isolated locations of work sites that currently add significant construction costs to works...” It was suggested that the Government reconsider this threshold so that unintended consequences on home renovators and other small businesses operating in remote or regional locations are avoided.

Other comments related to:

- the potential risk of employers splitting the cost of construction projects to remain under the \$250,000 and not having to comply with the WHS management plan and therefore worsening workplace safety (Shire of Capel); and
- transitional provisions and allowing sufficient time for workers to be appropriately trained to meet their new obligations. [Ausdrill]

Input from WorkSafe

To ascertain if a WHS management plan is required for construction projects, WorkSafe WA inspectors may be required to determine contract values. Although WorkSafe WA do not anticipate this situation will arise frequently, in the instance of a disagreement about the need for a “principal contractor”, this is expected to require expansive investigation, and therefore may be resource-intensive and have cost implications.

Potential further impacts

It was noted that increased costs associated with preparing a WHS management plan may be passed on to consumers, which may affect business competitiveness.

Summary of benefits

- Some respondents indicated that moving away from the headcount threshold would be beneficial for them as the number of workers may vary on construction sites and that the current requirement places a level of unwarranted burden on businesses.

Summary of costs

- Some respondents indicated they expected increased costs, both in the changeover period and ongoing.
- The \$250,000 threshold may be too low, and therefore may prove onerous for those with construction sites in remote or regional areas.
- Some respondents indicated they expected reduced levels of safety due to the potential for some employers to split the value of construction projects to avoid the obligation to prepare a WHS management plan.
- WorkSafe expects a potentially high increase in costs associated with contract value disagreements.

3.1.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS the proposed changes fail the *Cost Efficiency Test* as they result in a net cost of \$35 million (at 4% discount rate over 20 years).

As set out in section 4.6.4 of the RIS, when applying the *Threshold Benefit Cost Test*, the analysis shows that with the cost of injuries relating to construction projects at \$9.5 billion and WHS costs at \$31.5 million (both Net Present Value utilising a 4% discount rate over 20 years), the cost of injuries would need to be reduced by 0.4% to achieve a net benefit. It is unclear whether this would be achievable but it appears possible.

The *As Low As Reasonably Practicable (ALARP)* test was not considered relevant to this change as it is not strongly linked to the potential death of workers. However, when the ALARP test was applied, there appeared to be little change in the required reduction in health costs as the disproportion factor increased. Therefore, the ALARP test also indicated that it is unclear whether this would be achievable but it appears possible.

Equity

The \$250,000 threshold may be too low, and therefore may prove onerous for those with construction sites in remote or regional areas where costs of construction are higher. Commercial architects advise that a 'rule of thumb' regional loading for construction in many WA locations is over 50%. For example the regional loading for Exmouth is estimated to be around 70%. This would mean that a construction project that costs \$150,000 in Perth would cost more than \$250,000 in Exmouth and so would require the appointment of a principal contractor.

Competition

For relatively small construction projects, the requirement to prepare a “WHS management plan” may be administratively burdensome. It would increase the need for resources, thereby increasing project costs that would be required to pass on to the client. This would affect business competitiveness.

Unintended consequences

None identified.

Transitional

It would appear that the default transitional period would be sufficient (e.g., 1 year) as long as additional clarification were provided around the definition of a “principal contractor”.

3.1.5 Direction

The proposed change should be rejected and the current regulation retained.

The proposed change will apply inequitably to businesses in regional areas where construction costs are elevated.

3.2 Diving work

3.2.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 13.

Table 13: Current and changed requirements for diving work

Only 'construction diving work' is regulated under WA's occupational safety and health regulations.	<i>"High risk diving work" (i.e., construction diving) AND "general diving work" are regulated and a range of duties are imposed on the person conducting the business or undertaking. For general diving work, the duties include minimum training and experience for divers, appointment of a competent person to supervise diving work and keeping of dive safety logs. [Part 4.8]</i>
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3.2.2 Background

Industries involved

Industries impacted by this proposed regulation change include all that involve diving work. These include construction divers, abalone divers, pearl divers, and also recreational scuba divers.

Nature and size of businesses

This change affects businesses of all sizes from large pearling companies to smaller abalone diver businesses and recreational divers.

Summary of costs and benefits

The current regulations state that only 'construction diving work' is regulated under Western Australia's occupational safety and health regulations. This is in contrast to the new requirements which prescribe that all diving work (both 'high risk diving work' such as construction diving and 'general diving work') are regulated. For general diving work, the new requirements propose that the PCBU be responsible for ensuring minimum training and experience for divers, as well as appointment of a competent person to supervise diving work and keeping of dive safety logs.

Input from industry

Parents of Jarrod Arthur Hampton, whose son passed away in April 2012 in an incident while pearl diving, are fully supportive of the proposed change. They believe the current classification of pearl diving in 'general diving work' is insufficient and puts the health and safety of all pearl divers at risk. They feel that the pearl diving industry needs guidelines that offer realistic safety

practices and a governing body to oversee the implementation, which will offer a significant improvement to health and safety.

The Australian Industry Group (AiG) and the Chamber of Commerce and Industry (CCI) noted that appropriate transitional arrangements would be required when implementing this change. The CCI advised that the recommendations of the Occupational Diving Working Party should be taken into account.

The University of Western Australia suggested that competency requirements for Scientific Divers for both Supervising Divers and Divers undertaking scientific diving (including students in training) should be better defined and include the recognition of qualifications other than the Australian Diver Accreditation Scheme (ADAS).

Input from WorkSafe

WorkSafe WA have identified that the introduction of prescriptive regulations for general diving requirements (including certificates of medical fitness, minimum competency requirements for divers and dive supervisors, dive plans and dive safety logs) will require additional compliance activity by WorkSafe WA inspectors.

WorkSafe WA are unsure of the level of compliance and support for the regulations from industry until the regulations take effect. Therefore the WorkSafe WA inspector resources required to ensure compliance is not known. Costs for enforcing the additional laws cannot be easily estimated by WorkSafe WA, however they anticipate that there will be an increased workload and consequently some FTE implications.

Summary of benefits

- Some respondents believe that the proposed change will lead to a significant improvement in health and safety for those in the ‘general diving’ category.

Summary of costs

- Some respondents identified that extending the requirement to cover general divers will pose additional costs for divers and WorkSafe WA in complying with the regulations.

3.2.3 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits.

Equity

No equity issues identified.

Competition

No competition issues identified.

Unintended consequences

None identified.

Transitional

The Australian Industry Group (AiG) and the Chamber of Commerce and Industry (CCI) noted that appropriate transitional arrangements would be required when implementing this change.

It would appear that a reasonable transitional period would be necessary (e.g. 1-2 years)

3.2.4 Direction

Based on the consultation responses provided, this regulation may be accepted in its current form.

Note: Marsden Jacob were advised informally that Safe Work Australia is considering amending this regulation. The likely scale and impact of further possible changes are unclear at this point.

3.3 Fall prevention

Of the proposed change in regulations that were consulted on, *Fall Prevention* was the topic that was identified the most times as being in the top three changes for benefits and costs. However respondent opinions varied greatly as to whether the proposed changes would result in an increase or decrease in both costs and safety.

3.3.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 14.

Table 14: Current and changed requirements for fall prevention

<p>Employers and main contractors, self-employed people or a person having control of a workplace must ensure that:</p> <ol style="list-style-type: none"> a. <i>edge protection is provided</i> and kept in place where there is a risk of a fall of <i>two or more meters</i> from the edge of a scaffold, fixed stair, landing, suspended slab, formwork or falsework at the workplace; and b. for any other edges where there is a risk of a fall of <i>three or more metres</i>, <i>edge protection or a fall injury prevention system</i> must be provided. 	<p>Where it is not <i>reasonably practicable</i> to eliminate the risk of falls from one level to another, then the person conducting a business or undertaking must provide adequate protection against the risks by:</p> <ol style="list-style-type: none"> a. providing a fall prevention device <i>if it's reasonably practicable</i> to do so; b. if the above is <i>not reasonably practicable</i>, provide a work positioning system; or c. where the above two measures are <i>not reasonably practicable</i>, provide a fall arrest system. <p>[Reg 78 & 79]</p>
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3.3.2 Background

While the existing regulation specifies where two metres and three metres applies the new regulation does not specify heights. However, there is concern that the codes of practice will specify a height of two metres, based on practices in some eastern states.

Industries involved

Fall Prevention impacts on a large number of industries and job types across these industries. Based on consultation responses, industries that are most heavily impacted include mining, manufacturing, and construction as well as building maintenance more generally.

Several other industries may be impacted to a lesser extent including agriculture and forestry, freight transport, and electricity, gas, water and waste services.

Nature and size of businesses

Because of the broad nature of the hazard, the nature and size of businesses is similarly broad and include large companies (e.g. mining companies) as well as small businesses operating with subcontractors (e.g., residential builders).

3.3.3 Summary of benefits and costs

The current regulations prescribe the requirements for the covering of holes and require edge protection at two metres for scaffolding, formwork and falsework and at three metres for other edges.

In contrast, the proposed regulations remove the prescription and instead use a risk assessment approach. However, guidance to provide certainty in key sectors in the form of specific Codes of Practice has been provided. As noted by a respondent from the housing/building sector [HIA]:

In 2010 the National Code of Practice for the Prevention of Falls in Housing Construction (Housing Falls Code) was finalised, providing for specific guidance on dealing with falls from heights throughout the process of building a house.

Whilst [respondent] did not support this document due to it containing a 2 metre height threshold for physical fall protection, the Housing Falls Code did recognise the fact that housing construction activities are unique, and provided more certainty than the proposed model Regulations.

Input from industry

Respondents note that this change has the benefit of being less prescriptive and allowing greater flexibility in achieving safety. This can potentially result in savings and, if implemented successfully, should not result in a reduction in the level of safety.

Other respondents are concerned that the proposed change removes certainty which is likely to:

- impose costs for “conscientious” employers;
- lead to differing opinions on the most suitable approach; and
- result in reduced levels of safety at some workplaces.

Some respondents have indicated that the provision of additional guidance material may alleviate the level of uncertainty and reduce these costs.

Several respondents raised concerns that standard work practices in Western Australian house construction vary from those used in other states. In particular respondents commented that in Western Australia standard industry practice involves:

- double brick construction rather than a timber frame and stud wall – as is common in some other states; and
- construction of a ‘stick roof’ rather than the use pre-constructed roof trusses – which are craned into position – as occurs in other states.

The implication is that the proposed changes may relate to work practices that are not used in Western Australia. This potentially could mean that both the costs and benefits arising from the change differ from those achieved in other states.

For example, if WA is the only jurisdiction employing the stick roof construction methods, then cost estimates derived from other states may not be indicative. No submissions were received on whether these different local building methods imply different levels (and composition) of costs for meeting the national Code requirements on scaffolding, although it was raised by WorkSafe WA.

This together with the concerns of the construction industry [HIA] over the change in regulation/guidance from a three metre scaffolding requirement to two metres leads to significant concerns over additional costs, housing affordability and possibly a poor benefit cost return.

The Roofing Tilers Association supports the national Code approach because it will be safer.

WA Volunteer Fire and Rescue Services Association commented that in emergency situations, deployment of fall arrest equipment for people working at height is not possible. Risk assessment is undertaken for ladder climbing and working on roofs but establishment of safety lines and anchors is not practical.

Input from WorkSafe

Under the WHS Act, PCBUs, workers and safety and health representatives are able to request a review of an inspector's decision in relation to issuing or not issuing an improvement notice. Given the potential for differing opinions on the most suitable approach to fall prevention, it is anticipated that this will impose a cost on WorkSafe WA.

Potential further impacts

The requirement of regulation 78 is that falls from height should be eliminated “where reasonably practicable” by undertaking the task from ground level or on a solid construction. In the construction sector scaffolding is typically used as a solid construction from which to undertake tasks.

The phrase “reasonably practicable” is defined in section 18 of the model WHS Act. This is a widely understood concept on which Safe Work Australia has provided an Interpretive Guide¹⁹ to ensure clarity on issues such as the assessment of cost.

The guide provides the following information in respect of considering the issue of cost as part of determining what is reasonably practicable:

if the degree of harm is significant (e.g. death or serious injury is at least moderately likely) then it is unlikely that the cost of implementing available and suitable safety measures to eliminate or minimise the risk would ever be so disproportionate to the risk to justify a decision not to do so.

If a particular duty holder cannot afford to implement a control that is not so disproportionate to the risk as to be clearly unreasonable, the duty holder should not engage in the activity that gives rise to that hazard or risk.

In the context of the domestic housing construction industry, these statements would suggest that cost is not a barrier to complying with the requirements of regulation 78(3). In any case, that cost can be passed on to consumers.

In an environment where all providers are obliged to comply with the requirements of the regulations, passing on the cost to consumers is unlikely to create a commercial competitive advantage.

¹⁹ www.safeworkaustralia.gov.au/sites/SWA/AboutSafeWorkAustralia/WhatWeDo/Publications/Pages/interpretive-Guideline-reasonably-practicable.aspx

Therefore it would seem that the requirements of regulation 78(3) would require all entities involved in domestic housing construction to provide scaffolding as a solid construction from which work can be carried out.

Some respondents also raised concerns that existing practices in other states (requiring edge protection above 2 metres) are likely to be adopted in Western Australia over time.

Summary of benefits

- Some respondents indicated they expected reduced costs, both in the changeover period and ongoing.
- Some respondents indicated they expected improved safety.

Summary of costs

- Some respondents indicated they expected increased costs, both in the changeover period and ongoing.

Respondents within the building industry indicate that this would have a substantial cost impact on residential house construction imposing costs of around \$25,000 for a single story home and \$17,000 for a double story home²⁰. Given an average around 20,000 residential house approvals per annum²¹ this would impose substantial additional costs on the WA economy. However, these estimates do not appear to account for any existing safety precautions – such as scaffolding or trestles used on some sites.

- Marsden Jacob is aware that the South Australian Government previously commissioned two reports²² to consider the cost implications of adopting the provisions of the National Construction Standard (which have been largely adopted within the WHS Regulations). These reports estimated the costs at \$1,000 to \$2,000 for a single storey home and \$3,000 to \$6,800 for a double storey home.
- Some respondents indicated they expected reduced levels safety.
- WorkSafe WA expects a small increase in costs for inspections.

3.3.4 Assessment against criteria

Benefit Cost Analysis

As explained previously, two estimates are provided for *Fall Prevention* – one based on figures provided by the housing industry and one based on independent figures provided from a review conducted by the South Australian Government.

As set out in section 4.5 of the RIS the proposed changes fail the *Cost Efficiency Test* as they result in a net cost of \$3.7 billion (using industry figures) or a net cost of \$131 million (using independent figures from South Australia (at 4% discount rate over 20 years).

²⁰ Alcock Brown-Neaves Group Submission, p.6.

²¹ Australian Bureau of Statistics, *Building Approvals* (8731.0), April 2012.

²² Bryan Bottomley and Associates – *Independent Assessment of the costing of the adoption of the National Standard for Construction Work in South Australia* January 2010 SafeWork SA. and Paul Ogden Services Pty Ltd, *Review of a Report for SafeWork SA Independent Assessment of the costing of the adoption of the National Standard for Construction Work in South Australia* February 2011 SafeWork SA.

It is noted that the large size of the domestic housing market means that the Benefit Cost Analysis is highly sensitive to these estimates.

As set out in section 4.6.4 of the RIS, when applying the *Threshold Benefit Cost Test*, the analysis shows that with the cost of injuries relating to falls at \$5.8 billion and WHS costs at \$3.7 billion and \$131 million (industry and independent figures, respectively, with both Net Present Values utilising a 4% discount rate over 20 years), the cost of injuries would need to be reduced by 63.2% and 2.3% respectively to achieve a net benefit. It is unlikely that a net benefit using the industry figures would be achievable, however the benefit is likely to be achieved if using the independent figures.

Results from the *As Low As Reasonably Practicable* (ALARP) test appears to be relevant to *Fall Prevention* as there is a clear linkage with death, and thereby their risk to public health and safety is greater. The fall prevention results in section 4.6.6 of the RIS indicate that if a disproportion factor of 3 is utilised, then health and safety costs in this area (including injuries, deaths, etc.) would need to be reduced by at least 21.1% to make the proposed change to this area of regulation feasible. As set out in Figure 4 and section 4.6.4 of the RIS, this threshold appears reasonable, and therefore it may be worthwhile proceeding with this change.

Equity

No Regional or Small business equity issues identified.

Competition

The additional costs associated with implementing further fall prevention measures may translate to significant increases in project costs. This cost will be passed onto consumers, which may affect business competitiveness.

Unintended consequences

None identified.

Transitional

Proposed changes relating to fall prevention should be delayed pending clarification and better understanding of likely costs to construction and building industry and their final customers. The construction and building industry should be consciously involved in this work.

During the consultation process, it was suggested that additional guidance or Codes of Practice be prepared and provided prior to implementation of the change. Furthermore, it was requested that recognition and accreditation of prior experience and training be considered. As this change would have a more significant impact upon small businesses, having a 'staggered start' may be necessary to accommodate for businesses smaller in size.

3.3.5 Direction

Proposed changes relating to fall prevention should be delayed pending clarification and better understanding of likely costs to construction and building industry and their final customers. The construction and building industry should be consciously involved in this work.

4. Examination of proposed regulatory changes – hazardous chemicals

This section focuses on hazardous chemicals and examines responses collected through the consultation process on the following topics:

- classification, labels, MSDS and controls;
- import;
- “restricted hazardous chemicals” – crystalline silica silicon dioxide;
- risk assessment and record keeping; and
- therapeutic goods and agricultural veterinary (agvet) chemicals.

Proposed changes that are likely to affect manufacturers and importers of hazardous chemicals include ‘classification, labels, MSDS and controls’, ‘import’, and ‘therapeutic goods and agricultural veterinary (agvet) chemicals’.

General businesses that deal with hazardous chemicals as part of their work activities may be affected by “restricted hazardous chemicals” – crystalline silica silicon dioxide and ‘risk assessment and record keeping’.

The following sections provide further detail of each of these topics.

4.1 Classification, labels, MSDS and controls

The proposed regulation changes to the topic *Hazardous chemicals – classification, labels, MSDS and controls* was met with largely positive responses, with most respondents endorsing the change.

4.1.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 15.

Table 15: Current and changed requirements for hazardous chemicals – classification, labels, MSDS and controls

Manufacturers and importers of ‘hazardous substances’ must classify the substances and prepare their labels and safety data sheets according to the ‘AC Classification System’ or, more recently, the *GHS Classification System*, an international globally harmonised system.

Manufacturers and importers of ‘hazardous chemicals’ must classify the substances and prepare their labels and safety data sheets according to the *GHS Classification System*. [Reg 335]

4.1.2 Background

Industries involved

Industries impacted by this proposed regulation change include all manufacturers and importers of “hazardous chemicals”. It can affect a number of industries including the health and pharmaceutical industries, agricultural and farming industry, veterinary industry, mining and construction.

Nature and size of businesses

This change affects companies of all sizes; however it will be more likely to have a greater impact on larger manufacturers and suppliers of these “hazardous chemicals” as it will affect the manufacturing process.

Summary of costs and benefits

The current regulations dictate that manufacturers and importers of ‘hazardous substances’ must adhere to either the ‘AC Classification System’ or the ‘GHS Classification System’. The new requirements prescribe that ‘hazardous chemicals’ must adhere to only the ‘GHS Classification System’, an international globally harmonised system.

Input from industry

Industry is supportive of the change as global harmonisation in this area will lead to significant cost reductions being achieved, benefiting Australian businesses. The Plastics and Chemicals Industries Association stated that for Australia’s exported products to remain competitive globally, aligning to international norms is critical in reducing transaction costs and that the proposed change would have the following benefits:

- it will lead to improved speed of imported products to market, due to alignment of classification, labels and SDSs and provide a transparent read-across platform to measure compliance requirements of jurisdictional controls; and
- it would ensure that the integrity of safety hazard communication to end-users of products would not deviate, which is more susceptible to errors when variable classifications scheme exists.

A respondent from the mining industry [Rio Tinto] stated that they currently have plans to adhere to the GHS Classification System.

Haztech Environmental, a hazardous chemicals regulations consultancy, raised concerns for small businesses in Western Australia if the change were not implemented in a timely manner. They expressed concern that if Western Australia were not reasonably consistent with other States, Territories and Authorities, this would compromise small businesses’ ability to trade both interstate and internationally.

Summary of benefits

- Most respondents were supportive of the proposed change, stating that alignment with other jurisdictions globally would be beneficial for businesses.

Summary of costs

- Concerns raised were around costs associated with **not** implementing the change and ensuring an appropriate transitional period is implemented – one that is not too delayed as to create business competitiveness issues, and one that is not too soon as to not prepare businesses for the change.

4.1.3 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits.

Equity

Small businesses would be disadvantaged if this proposed change in regulation were delayed.

Competition

Competition will be promoted by the adoption of the proposed change.

Unintended consequences

None identified.

Transitional

The Australian Industry Group (AiG), the Safety Institute of Australia and a respondent from the construction industry [Ausdrill] acknowledge that the chemical manufacturing industry has until 2017 to comply with the provisions for GHS Classification and Labelling. While the mining/manufacturing respondent suggested a review over the transitional timeframe, AiG suggest amending the cut-off date to 31 December 2016. This date is five years after the adoption of the laws by five jurisdictions and will ensure a consistent implementation date across Australia.

The Chamber of Commerce and Industry (CCI) are unclear whether West Australian manufacturers and importers will have this transitional period for compliance from the date of enactment of the legislation in the State; or from the date that the transitional period commenced in those jurisdictions that introduced the laws on 01 January 2012. They suggest this be clarified through a transitional clause.

4.1.4 Direction

The proposed change raised few concerns and so should be accepted.

4.2 Hazardous chemicals – import

4.2.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 16.

Table 16: Current and changed requirements for hazardous chemicals – import

A range of duties are placed on importers to ensure the safety of ‘hazardous substances’.
‘Import’ is defined under the Occupational Safety and Health Act 1984 as ‘means to bring *into the State*, whether from outside Australia or otherwise’.

A range of duties are placed on importers to ensure the safety of ‘hazardous chemicals’. However, importer is defined as per the Model WHS Act and, under this, import is defined as ‘means to bring into the jurisdiction *from outside Australia*’.

An importer of a hazardous chemical may be located in another jurisdiction. This may mean that if an error on a label or SDS is identified, having the improvement implemented would require the cooperation of the WHS regulator in the other jurisdiction, with the potential for delays. Errors on labels or SDS may mean that the proper controls for using the chemical are not known or not used, with increased risk of harm to workers or property [Reg 329]

4.2.2 Background

Industries involved

Industries impacted by this proposed regulation change include all importers of “hazardous chemicals”. It can affect a number of industries including the health and pharmaceutical industries, agricultural and farming industry, veterinary industry, and mining and construction industries.

Nature and size of businesses

This change affects businesses of all sizes from large pharmaceutical companies to smaller businesses.

Summary of costs and benefits

The current provisions impose duties on importers of hazardous substances into the State, regardless of whether it is from outside Australia or otherwise. The new provisions state that the safety duties of the importer are only applicable when it is imported from outside of Australia. The new requirements rely on the cooperation between Australian jurisdictions to pursue a matter.

Input from industry

The Australian Industry Group (AiG) and the Plastics and Chemicals Industries Association are supportive of the change. AiG anticipate that this change will lead to better information sharing between jurisdictional regulators. The Plastics and Chemicals Industries Association believe that the change is an improvement on the current requirements, which create cost and burdens to

WA businesses to manage and can duplicate responsibilities where there are multiple importers for the same product.

A respondent from the construction industry [Ausdrill] recommended that should the PCBU also be a supplier then they must comply, however if the PCBU is the end user only, then the onus should be on the importer. The Chamber of Commerce and Industry (CCI) concur with this view, stating that in the event of incorrect labelling from importers outside the Western Australian jurisdiction, PCBUs should not be held to account. They suggest the provision of guidance materials and campaigns to address this possibility and the actions that a PCBU can take to mitigate unintended outcomes or potential non-compliance with their statutory obligations.

A respondent from the health industry [South Metropolitan Health Service] agreed with the concerns raised in the Information and Issues Paper in relation to the potential for delays and difficulties in managing errors on labels or safety data sheets if cooperation of the WHS regulator in another jurisdiction were required. This may risk harm to workers or property.

Summary of benefits

- The Plastics and Chemicals Industries Association believe that the proposed change will reduce costs incurred by businesses in meeting the current requirements, which may include the duplication of responsibilities where there are multiple importers for the same product. It was noted by AiG that this change may lead to improved information sharing across jurisdictional regulators.

Summary of costs

- It was noted by a respondent from the health industry [South Metropolitan Health Service] that there may be delays and difficulties in managing errors on labels or safety data sheets, which may risk harm to workers or property.

4.2.3 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits. Forum and survey participants suggest that the proposed change has net benefits.

Equity

No equity issues identified.

Competition

Adoption of the proposed change will promote interstate trade and reduce protective barriers to West Australian suppliers and reduce costs to their customers. Thus, competition will be promoted by the adoption of the proposed change.

Unintended consequences

The only unintended consequence is the requirement for cooperation between regulators where chemical are imported into one state prior to distribution to other states. However, this will only arise in instances of mis-labelling.

Transitional

No major transitional issues were identified.

4.2.4 Direction

The proposed change raised few concerns and so should be accepted.

4.3 Hazardous chemicals – “restricted hazardous chemicals” – crystalline silica silicon dioxide

4.3.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 17.

Table 17: Current and changed requirements for hazardous chemicals – “restricted hazardous chemicals” – crystalline silica silicon dioxide

Crystalline silica is prescribed as a “hazardous substance prohibited for specified uses or methods of handling”. In particular, a substance that contains crystalline silicon dioxide is prohibited for use as an abrasive material in abrasive blasting except where *less than 2%* dry weight of crystalline silicon dioxide is present as a contaminant.

Silica is classified as a “restricted hazardous chemical”. Its use, in relation to abrasive blasting, is restricted to a concentration of *less than 0.1%*. [Reg 382 and Schedule 10, Table 10.3]

4.3.2 Background

Silica occurs commonly in nature as sandstone, silica sand or quartzite. It is used to make ceramics and glass. It can exist in an amorphous form (vitreous silica) or in a variety of crystalline forms. Inhaling finely divided crystalline silica dust in very small quantities over time can lead to a variety of major illnesses as the dust becomes lodged in the lungs and continuously irritates them, reducing lung capacity. Crystalline silica particles do not dissolve in the body over clinically relevant periods of time.

Silica crystals can create an occupational hazard for people working with sandblasting equipment, for example. Children, asthmatics of any age, allergy sufferers, and the elderly (all of whom have reduced lung capacity) can be affected in much less time. Laws restricting silica exposure *with respect to the silicosis hazard* typically specify that they are concerned only with silica that is both crystalline and dust-forming.

Industries involved

This change will affect many types of business including sandblasting businesses, glass-making, quarrying, road construction, ceramics and stone manufacturing, mining and foundries.

Nature and size of businesses

Businesses of all sizes, small to large, will be affected.

4.3.3 Summary of benefits and costs from change

Input from industry

Among the four responses that were obtained in relation to this proposed area of change (three written submissions and one online survey response), there was an absence of quantitative data that was received around the monetary costs and benefits of changing the restriction of crystalline silica silicon dioxide from 2% to 0.1% dry weight. As per input from the Australian Industry Group (AiG), the key issue is that the abrasiveness of various products is not excessively lessened by the reduction to 0.1% dry weight. That will vary among applications and technologies. But overall this change is not anticipated to have a significant impact on industry.

AiG suggested that analysis be undertaken to determine if changing the restriction of crystalline silica silicon dioxide from 2.0% to 0.1% will have an impact on industry within Western Australia. AiG suggested that this be achieved through identifying the percentage of crystalline silica that is present in current materials used for abrasive blasting.

The Chamber of Commerce and Industry (CCI) stated that the change proposed is a significant drop in permissible concentration of crystalline silica silicon dioxide. It was indicated that this may have implications for abrasive blasting operations, especially in relation to the cost to industry in seeking alternative products that can achieve the same result. It is suggested that a transitional period is required to enable users, importers and suppliers to be able to source alternative products.

A respondent from the mining industry [Rio Tinto] indicated that they are already compliant with the 0.1% restriction, which aligns with the GHS concentration threshold for managing the cancer risk posed by this type of material.

Input from WorkSafe

There will be an initial impact on WorkSafe WA as it makes adjustments to cater for the implementation of the change and then no ongoing additional impacts.

Summary of benefits

- There are undoubted health benefits from reduced amounts of crystalline silica silicon dioxide used in economic activity. For the purposes of this review we do not have a quantification of the extent of health benefits expected from this decline to 0.1% dry weight.

Summary of costs

- There may be some costs involved in the necessary changes to the manufacture of products containing crystalline silica silicon dioxide. If abrasiveness of product is lessened, there may be some requirement to increase the volume of production of material containing crystalline silica silicon dioxide.

4.3.4 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits. Forum and survey participants suggest that the proposed change has net benefits.

Equity

No issues identified.

Competition

No major impacts on competition were identified.

Unintended consequences

No unintended consequences were identified.

Transitional

No major transitional issues were identified.

4.3.5 Direction

The proposed change raised few concerns and so should be accepted.

4.4 Hazardous chemicals – risk assessment and record keeping

Among the six areas of WHS regulation changes relating to hazardous chemicals, *Risk assessment and record keeping* had the highest number of responses.

The majority of respondents listed this change as a benefit stating that it would make compliance with OSH easier.

4.4.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 18.

Table 18: Current and changed requirements for Hazardous chemicals – risk assessment and record keeping

The employer, main contractor and self-employment *must conduct a risk assessment* and assess the risk of injury or harm to a person as a result of a person being exposed to “hazardous substances”. This must involve identifying each “hazardous substance”, a review of the relevant Material Safety Data Sheets and identification of the likelihood of injury or harm from exposure. If this identifies a significant risk, then *a report must be prepared on the assessment* and the action to be taken to comply with relevant regulations. This report must be kept in a register at the workplace.

While the general duty of care for safety and health is relevant, there is *no specific requirement for a risk assessment for “hazardous chemicals” or preparation of a risk assessment report.*

4.4.2 Background

Industries involved

Industries impacted by this reduction in compliance burden are wide and varied, and include all types that deal with hazardous chemicals. This includes industries such as mining, building, manufacturing, health care, motoring, local government, and science.

Nature and size of businesses

Because of the broad nature of the hazard, the nature and size of businesses is similarly broad and include large companies (e.g. mining companies) as well as small businesses operating with subcontractors (e.g. residential builders).

4.4.3 Summary of benefits and costs

The key benefit is the reduction in compliance burden for WA businesses. Some additional costs may be incurred to the extent that the previous risk assessments were successful in reducing risk of injury or harm.

The current regulations prescribe the requirements for a risk assessment to be conducted and preparation of an assessment report if a significant risk of exposure to “hazardous substances” is identified.

The proposed regulations remove all specific requirements for a risk assessment for “hazardous chemicals” or preparation of a risk assessment report. Rather, it relies on the general duty of care for safety and health.

Input from industry

The majority of respondents for this proposed change indicated that this change would be beneficial for their organisation and/or industry. It was noted that removing the requirement to conduct a risk assessment and prepare a risk assessment report allows easier compliance with OSH.

Others (such as respondents from the mining industry) supported the requirement to retain a risk assessment approach. It was questioned how removing this requirement would lead to an improvement in health and safety.

Other respondents indicated that the proposed change provides them with more flexibility to judge for themselves if a risk assessment is required to be conducted.

Summary of benefits

- Some respondents indicated that making the regulations less prescriptive will reduce administrative burden, and therefore reduced ongoing costs going forward.

Summary of costs

- Some respondents indicated that this change may lead to a reduction in health and safety.

4.4.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS, the proposed changes to *Hazardous chemicals – risk assessment and record keeping* were one of only two changes to pass the *Cost Efficiency Test*, resulting in a net benefit of \$49 million (at 4% discount rate over 20 years). Results indicate that this change will involve a changeover cost which is then offset by reduced ongoing costs in the future.

This is reflected in the results for the *Threshold Benefit Cost Test* (section 4.6 of the RIS), which indicate that the economic benefits calculated are outweighed by the costs associated with it. The reduction in costs would be offset if there were an increase in health and safety costs associated with hazardous chemicals of more than 8.6%. In comparison respondents were evenly spread about whether the change would *Slightly improves things* (22% of responses), have *Little effect* (56%) or would *Slightly makes things worse* (22% of responses). This

suggests that this proposed change would be beneficial to the State of Western Australia if it were to proceed.

The *As Low As Reasonably Practicable* (ALARP) test does not appear relevant to this proposed change as there chance of death is not high. However, when the ALARP test was applied, there appeared to be little change in the required reduction in health costs as the disproportion factor increased. This may be due to the relatively weak causation between injuries and illness in relation to *Hazardous chemicals – risk assessment and record keeping* and the chances leading to death.

Equity

The proposed change removes the mandatory obligation to prepare risk assessment plans. The cost of producing these would have been relatively higher for small businesses.

Competition

A slight strengthening of competition due to the reduction in compliance burden, particularly for smaller businesses, is anticipated.

Unintended consequences

No unintended consequences were identified.

Transitional

No major transitional issues were identified.

4.4.5 Direction

The proposed change raised few concerns and so should be accepted.

4.5 Hazardous chemicals – therapeutic goods and agricultural veterinary (agvet) chemicals

There were several responses to the proposed regulation change to *Hazardous chemicals – therapeutic goods and agricultural veterinary (agvet) chemicals*.

4.5.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 19.

Table 19: Current and changed requirements for hazardous chemicals – therapeutic goods and agricultural veterinary (agvet) chemicals

Through reference to a national code, manufacturers and suppliers of therapeutic goods and agvet chemicals that are packed for end use in a workplace are *exempt from the requirements for labels*.

For agvet chemicals, labels approved by the Australian Pesticides and Veterinary Medicines Authority (APVMA) are considered acceptable.

Manufacturers and importers of “hazardous chemicals” will need to ensure that the selection and use of label elements is in accordance with the above-mentioned international standard/system, the GHS Classification System.

The changes mean that labels will need to include additional information, such as hazard statements and hazard pictograms.

Therapeutic goods will continue to be exempt except where there is a risk to workers e.g. bulk containers of powders to be turned into tablets. In addition, therapeutic goods not intended for human consumption, e.g. disinfectants, will no longer be exempt.

For agvet chemicals, including herbicides, fungicides and veterinary chemicals, the labels will need to include the information required by the APVMA plus the relevant hazard and precautionary statements. [Reg 335].

4.5.2 Background

Industries involved

Industries impacted by the more stringent labelling requirements required by this proposed regulation change include all manufacturers and importers of “hazardous chemicals”. In particular, this change relates to therapeutic goods and agricultural and veterinary chemicals. Therefore it can affect the health and pharmaceutical industries, agricultural and farming industry, veterinary industry and other industries such as mining and construction.

Nature and size of businesses

It is considered that the manufacture of therapeutic goods is very small in WA. Therefore, although technically this change affects companies of all sizes, it would be more likely to have a greater impact on larger manufacturers and suppliers of these “hazardous chemicals”, rather

than end users. In relation to agvet chemicals, the industry is small-medium sized, with one large and several smaller companies.

4.5.3 Summary of costs and benefits

The current regulations dictate that manufacturers and suppliers of therapeutic goods and agvet chemicals that are packed for end use in a workplace are exempt from the requirement for labels. It also deems agvet chemicals with labels approved by the Veterinary Medicines Authority (APVMA) as acceptable.

The proposed regulations are more prescriptive with less exemptions, and requirements for more detailed labelling.

Input from industry

The Australian Industry Group agree with the proposed change.

A Government organisation [Department of Health] is supportive of the requirement to have additional hazard information on labels; however has deemed the proposed regulations confusing.

The Chamber of Commerce and Industry also consider the proposed changes confusing to end users, and therefore believe that the existing laws should be retained. This is due to lack of clarity about the new regulation's application to products that are not captured under the hazardous substances legislation (such as consumer products, household aerosols, home garden projects, etc.).

A mining company [Rio Tinto] noted that the new requirement falls upon the supplier/manufacturer to supply the relevant information for preparation of labels.

Two of the four online survey respondents indicated that the proposed change would be a benefit to their organisation. The other two listed this change as a cost to their organisation. None of the survey respondents provided any further information.

Summary of benefits

- Some respondents indicated that more stringent labelling would lead to an improvement in safety.

Summary of costs

- Several respondents stated that the proposed regulation is confusing to end users.

4.5.4 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits.

Equity

No issues identified.

Competition

No major impacts on competition were identified.

Unintended consequences

None identified.

Transitional

No major transitional issues were identified.

4.5.5 Direction

The proposed change should be accepted.

WorkSafe should consider providing additional clarification and guidance to remove potential sources of confusion which some respondents associated with the proposed regulation.

4.6 Health monitoring – reports to the regulator

4.6.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 20.

Table 20: Current and changed requirements for health monitoring – reports to the regulator

Medical practitioners must give health surveillance reports to the person who was subject to the surveillance and the regulator.

A person in control of a business or undertaking must give copies of health monitoring reports to the regulator where problems are identified. [Reg. 376]

4.6.2 Background

Industries involved

Industries impacted by this change are those that require health monitoring to ensure health levels by workers are at a safe level.

Industries impacted include those in the mining, construction, manufacturing, health, and local government industries.

Nature and size of businesses

This change would affect businesses of all sizes; however it would more likely affect larger organisations.

4.6.3 Summary of benefits and costs from change

Rather than the current requirement of medical practitioners providing health surveillance reports to the person subject to the surveillance and the regulator, the new requirements are different. The new requirement passes this duty onto the PCBU to provide the report to the regulator. The differences are that in the new requirements, it does not specify that the report needs to be provided to the person subjected to the surveillance and the new requirements only require the regulator to be notified when there is a problem.

Input from industry

The Australian Industry Group (AiG) is supportive of the change. This is because only providing reports to the regulator when problems are identified has the potential to significantly reduce reporting requirements for some employers who currently provide the regulator with all health monitoring reports. AiG believe this will not compromise the health and safety of workers, nor the usefulness of information being provided to the regulator.

Other respondents identified negative implications associated with the change. The Chamber of Commerce and Industry (CCI) stated that the proposed change poses a serious risk of medical information confidentiality and that PCBUs do not have the medical expertise to determine

which medical information to report to the regulator. The Motor Trade Association also raised concerns with the PCBU forwarding the health report to the regulator as they believe it should be responsibility of the medical practitioner.

The CCI also stated that it is unclear whether workers have the right to not allow the PCBU to access their medical information without their written consent. The CCI has identified that industry feedback consider this issue as a matter of importance, and should be addressed by the WA Government as a matter of priority to retain the existing arrangement.

The Shire of Capel also raised concerns that the new regulation does not mention the person subjected to the surveillance having the right to access their results.

A respondent from the health industry [South Metropolitan Health Service] indicated that the new requirements would translate to a review of their reporting processes and would impose a cost on their organisation's PCBU in providing direct reports to the regulator. The Shire of Donnybrook Balingup also identified a cost in staff resources in complying with the new change.

Respondents from the construction and mining industries [Ausdrill and Rio Tinto] stated that the new regulations are more onerous than the current Mines Health surveillance requirements. They anticipate that the new requirement will result in an unnecessary delay in health monitoring data reaching the regulator as the medical practitioner must pass the information along to the PCBU rather than directly to the regulator. This respondent suggested a dual reporting approach from the medical practitioner (copy to PCBU and copy provided to regulator) rather than being a specific PCBU responsibility.

Input from WorkSafe

WorkSafe WA do not expect the new changes will significantly alter the number of health reports that they receive. They acknowledge that PCBUs may object to the change due to increased responsibility, but also note that some doctors may support the change due to the removal of their duty in the process. WorkSafe WA stated that there is no centralised database available of workplaces or PCBUs likely to have workers requiring health monitoring. Due to this reason, WorkSafe WA anticipate significant WorkSafe WA inspector and promotional support will be required to achieve compliance with the requirement.

Although costs for enforcing the additional laws cannot be easily estimated by WorkSafe WA, they believe there may be an increased workload and consequently some FTE implications.

Summary of benefits

- A respondent anticipated that the change will reduce reporting requirements and compliance burden for some employers without reducing the health and safety of workers.

Summary of costs

- A number of respondents disagreed with transferring the reporting responsibility from a medical practitioner to the PCBU. This is because the change relies on the PCBU to make a judgment as to whether there is a problem deemed serious enough to notify the regulator.
- It also imposes costs on the organisation due to extra reporting responsibilities of the PCBU.

- There were also concerns in relation to workers' confidentiality as a result of the new PCBU responsibility.

4.6.4 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits.

Equity

The proposed change will add another reporting burden, particularly for small business.

Competition

No major impacts on competition were identified.

Unintended consequences

No unintended consequences were identified.

Transitional

No major transitional issues were identified.

4.6.5 Direction

The regulation change should be delayed pending clarification:

- a) of the issues raised surrounding worker confidentiality; and
- b) the costs of the compliance burden and efficiency of administrative processes compared to the potential benefits of the change.

5. High risk work licences

WorkSafe WA identified five topics within the model WHS regulations that will be likely to affect existing and prospective high risk work licence (HRWL) holders.

The topics were:

- High risk work licences (HRWL) – boilers (pressure equipment);
- High risk work licences (HRWL) – concrete placing boom;
- High risk work licences (HRWL) – dogging and “slinging techniques”;
- High risk work licences (HRWL) – exemptions; and
- High risk work licences (HRWL) – reach stacker.

We address each of these proposed changes in turn in the following sections.

5.1 High risk work licences (HRWL) – boilers (pressure equipment)

5.1.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 21.

Table 21: Current and changed requirements for high risk work licences (HRWL) – boilers (pressure equipment)

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

The proposed changes have two key impacts:

- the conversion of existing HRWLs to the new classes. In WA there are currently three HRWL classes for boilers (Basic, Intermediate and Advanced). It is proposed to move to two HRWL classes titled Standard and Advanced; and
- the inclusion of a large number of existing boilers and boiler operators within the HRWL system due to lowering the threshold for HRWLs from boilers above 500 kilowatts to boilers above 150 kilowatts.

Industries involved

For the operation of boilers greater than 500 kilowatts, WorkSafe WA has issued 991 boiler HRWLs.²³ These license holders and the associated businesses would be impacted by the proposed change.

Identification of industries that use boilers between 150 and 500 kilowatts is problematic as these boilers and their operators are not currently regulated. Boiler experts²⁴ have indicated that the boilers in this range are popular in WA and estimates that there are around 200 in total.

Industries using these boilers include:

- dry cleaning;
- hospitals;
- food processing manufacturers;
- stockfeed manufacturers; and
- microbreweries.

Operating times and arrangements vary from around the clock operation, seven days a week to others operating within normal working hours, i.e., 9-5 on weekdays.

Nature and size of businesses

WorkSafe have identified that many of the workplaces affected are likely to be small businesses, however this change has the potential to affect companies of all sizes; from large hospitals and food processing manufacturers to dry cleaning businesses.

Feedback from boiler experts indicates that some of these boilers are utilised during normal business hours – around 40 hour week. In contrast other boilers are utilised 24 hours a day across a 7 day week (particularly food manufacturing).

5.1.3 Summary of benefits and costs

Current regulation does not require a HRWL for boilers with an output of 500 kilowatts or less. The proposed change reduces this threshold significantly, requiring all operators of boilers with an output of 150 watts or more to obtain a HRWL. This means that the regulation will apply to those with boilers between 150 and 500 watts who were not captured in the laws previously.

Input from industry

Existing licence holders

²³ WorkSafe Submission, p. 16.

²⁴ *Pers Comms* [John Gilbody, Jag Boilers], 31 October 2012.

WorkSafe WA notes that transitioning current licence holders to the new classes appears to create a substantial transitional issue and is likely to require either an extended transition period or substantial reassessment and classification of existing licence holders. This is likely to be unpalatable to industry (see below the discussion of WorkSafe submission).

New licenses for person operating boilers of between 150 and 500 kilowatts

The relevant course MSABLIC001 *Licence to Operate a Standard Boiler* is not yet available as the accreditation is not finalised.

A Registered Training Organisation operating in this industry in Queensland²⁵ estimated that the course is likely to be a five day course (including assessment) and is likely to cost upwards of \$1,750 (including assessment).

Based on information gathered on the operation of boilers in this range, it appears likely that most boilers will require more than one licensed operator. Given the estimated 200 boilers in this size range it appears likely that around 500 operators would require a HRWL under this proposed change.

Written submission responses

A respondent from the health industry [South Metropolitan Health Service] recognised that safety benefits would result from the change, while National Disability Services is unsure what effect the proposed change will have on health and safety. However, both anticipate increased training costs associated with new licences for workers. National Disability Services noted that the change would make compliance with the new laws slightly more difficult.

A respondent from the mining industry [Rio Tinto] was unsure of the number of boilers within their organisation, but do not expect there to be many, and hence the costs associated with new licences would not be significant.

The Chamber of Commerce and Industry (CCI), the Australian Industry Group (AiG), the Safety Institute of Australia and a respondent from the construction industry [Ausdrill] suggested that an appropriate transitional period be implemented. This is to ensure that operators have sufficient time to familiarise themselves with the licence changes to adjust their workers' training requirements if necessary. It was suggested that "bridging" courses become available for recognition of current skills of workers who have been operating this type of plant under previous licensing (or non-licensed arrangements).

A potential lack of available training courses in Western Australia to enable operators to attend required training in time to meet their HRWL amended requirements was also noted. A suitable transition period would assist in combating these issues.

Input from WorkSafe

To convert the three classes of HRWLs to two classes, assessments of operator competency will be required by either a registered training organisation (RTO) under the Australian Qualifications Framework (AQF) or by WorkSafe WA. WorkSafe WA note that competency assessments are likely to be more comprehensive for operators of boilers between the output threshold of 150 kilowatts and 500 kilowatts than for those operators already with an HRWL.

WorkSafe anticipate that the reduction from 500 kilowatts to 150 is likely to mean several hundred boilers in WA will now require operators to obtain an HRWL. Furthermore, they note

²⁵ *Pers Comms* [Owen Brischke, DTW Designs], 31 October 2012.

that many of the boilers will require more than one operator to be licensed in order to allow for leave (such as annual and sick) and extended hours of operation. As licences for these boilers were not required previously, the locations and the actual number of operators for boilers of this size are not known.

WorkSafe WA note that they will need to configure their Complaints and Licensing System (CALs) to create another two boiler HRWL classes. The three existing classes will be required until all of the operators have either been transitioned to the WHS classes or their licences cancelled or expired. As noted above, WorkSafe WA is concerned that the transitional process for existing licence holders may be lengthy (to minimise the impact on the licence holders). This may result in five classes of boiler operators being in use for a number of years.

Summary of benefits

- **Existing licence holders**

Standardised licences for boiler operation across Australia.

- **Operators using boilers of between 150 and 500 kilowatts**

Increased levels of safety for the operation of boilers above 150 kilowatts.

Summary of costs

- The proposed changes would entail increased training and licensing costs.
- The potential of a lack of training courses may delay some businesses in complying with the requirements by the implementation date.

5.1.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS this proposed change fails the *Cost Efficiency Test* as it results in a net cost of \$10 million (at 4% discount rate over 20 years).

As set out in section 4.6.4 of the RIS, when applying the *Threshold Benefit Cost Test*, the analysis shows that with the cost of injuries relating to boilers at \$81.9 million and WHS costs at \$10 million (both Net Present Value utilising a 4% discount rate over 20 years), the cost of injuries would need to be reduced by 12.2% to achieve a net benefit. It is unclear whether this would be achievable.

The *As Low As Reasonably Practicable* (ALARP) test does not appear applicable to this change as there is a low chance of worker death.

Equity

The immediate lack of suitable training arrangements will affect all West Australian businesses but their likely location in the Perth metropolitan area will disadvantage regional businesses. As with other mandatory training, the burden will be higher on small business.

Competition

Some adverse impacts on the competitiveness of small and regional businesses noted.

Unintended consequences

No unintended consequences were identified. Expected growth in demand and popularity for smaller sized boilers in order to avoid need to licensed operators

Transitional

The change poses significant transitional issues both in setting up training courses that allow sufficient time for workers to qualify and transitioning from five to four categories.

5.1.5 Direction

The proposed change should be accepted, conditional on dealing with the transitional issues.

5.2 High risk work licences (HRWL) – concrete placing boom

5.2.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 22.

Table 22: Current and changed requirements for high risk work licences (HRWL) – concrete placing boom

<p>An HRWL is required to operate a vehicle mounted concrete placing boom.</p>	<p>The HRWL requirements have been expanded by definition (Schedule 3) to include the use of all Concrete placing booms, not just those that are vehicle mounted.</p> <p>Apart from deleting the reference to vehicle mounted, the definition of concrete placing boom also has other slight differences to the definition in the OSH regulations [Reg 5 & Schedule 3].</p> <p>A process for existing operators of concrete placing booms other than vehicle mounted concrete placing booms to obtain a licence remains to be determined [Schedule 3]</p>
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5.2.2 Background

Concrete placing booms can be used when a boom truck is unavailable, or in situations where the boom truck may not be able to conveniently access the pour site. Combined with the right concrete pump, these placing booms provide a systematic method of concrete distribution. A truck-mounted pump with placing boom can be used in its conventional mode for slab pours and then remounted on a pedestal, which can be located hundreds of feet from the pump and connected with a pipeline, for other jobs. Placing booms can be used, for example, on a cross frame, a crane tower mount, or a ballasted cross frame.

Industries involved

This proposed new requirement for licensing of operation of a concrete placing boom affects, in a modest way, a large number of industries, via the construction industry channel. Directly, any industry pouring concrete will be affected i.e., the construction and mining industries and, indirectly, any industry relying on these industries for building or construction.

Nature and size of businesses

Small and large construction enterprises will be affected, in particular sole operators who may need to reapply for licences. Engineering, design and equipment leasing firms will be affected. Industry associations and unions will need to be aware of any changes.

5.2.3 Summary of benefits and costs from change

Input from industry

If the change is not applied retrospectively, the impacts on industry of registering a design will be modest. Any change to licensing for the operation of mobile or fixed concrete placing booms will require a period of time to be promulgated to allow new or expanded licenses to be obtained.

A respondent from the construction industry [Ausdrill] suggested that a prompt transitional timeframe from the regulator is considered for this change. In contrast, the Australian Industry Group stated that an appropriate transitional period should be in place to enable additional licences to be obtained, including ‘bridging’ courses and/or recognition of current skills. The Chamber of Commerce and Industry and the Safety Institute of Australia went further, stating that plenty of time was required to allow affected operators to obtain the required certification and licensing.

Input from WorkSafe

Worksafe WA will need to ensure it puts into place appropriate licensing requirements.

Summary of benefits

- This change removes any doubt or confusion about whether a concrete placing boom is vehicle mounted or mounted on a fixed platform, and ensures a consistent level of licensing is required irrespective of the mounting form. This is important to ensure that someone not licensed to use a concrete placing boom on a vehicle uses the equipment when mounted on a fixed platform. This will ensure a move complete and more consistent licensing regime for the use of concrete placing booms and result in enhanced operational safety.

Summary of costs

- Costs will be limited to new and retrospective licensing.

5.2.4 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits.

Equity

No equity issues identified.

Competition

No issues identified.

Unintended consequences

No unintended consequences were identified.

Transitional

Some transitional issues identified.

5.2.5 Direction

The proposed change raised few concerns and so should be accepted.

5.3 High risk work licences (HRWL) – dogging and “slinging techniques”

5.3.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 23.

Table 23: Current and changed requirements for high risk work licences – dogging and “slinging techniques”

The definition of “dogging work” includes reference to “applying slinging techniques”. As a result, a HRWL is required in all situations where slinging techniques are applied. A person may apply to the Commissioner for a person or a workplace to *be exempted* from complying with a requirement of the regulations.

The definition of “dogging work” includes reference to the “application of slinging techniques”.

“Slinging techniques” is also defined and includes in its meaning the “exercising of judgement”. As a result, a HRWL for dogging work will be required in the more limited circumstances where judgement is exercised in relation to the suitability and condition of lifting gear [Schedule 3 and Reg 5 – Definitions]

5.3.2 Background

Industries involved

Industries impacted by this proposed regulation change include all that require “slinging techniques” when conducting “dogging work”. This includes a range of industries such as mining and construction, automotive, and aged care and disability services.

Nature and size of businesses

This change affects companies of all sizes; from large mining and construction companies to small independent mechanical workshops.

Summary of costs and benefits

Whereas previously, a high risk work licence (HRWL) was required in all situations where slinging techniques are applied, the proposed change is to make this requirement less prescriptive. The proposed changes includes the “exercising of judgment” to determine if a HRWL is required.

Input from industry

The Australian Industry Group (AiG), is fully supportive of the proposed change as it removes the requirement for a HRWL for more straightforward tasks. A consultant from the mining industry indicated that the proposed change would lead to a significant improvement in workplace safety and would make compliance with OSH significantly easier.

The Chamber of Commerce and Industry (CCI) and a work safety consultant suggested some guidance around the “exercising of judgement” clause, particularly for industries not currently subject to the requirement such as aged care and community health industries where there is the use of hoists.

A respondent from the construction industry [Civil Contractors Federation WA] and the mining industry [Rio Tinto] also indicated that the new requirements were confusing and require clarity. In particular, it was questioned how “exercising of judgement” would be defined, assessed and monitored.

The Shire of Capel and the Shire of Donnybrook Balingup have indicated that the “exercising of judgement” will lead to increased costs due to administration, training and licensing fees. However, the Shire of Capel does not expect the financial costs to be significant and that any safety education and training, and further skill development, will help to improve health and safety in the workplace.

The mining industry respondent stated that the proposed change would not impact their HRWL process as it is covered by the new C6 Work practice which has determined that the inspection and use/suitability of all lifting gear shall be completed by (as a minimum) a Dogman.

Summary of benefits

- Some respondents stated that allowing “exercising of judgement” will reduce the burden on businesses to obtain HRWLs as it will remove the need for HRWLs for more straight forward tasks, and therefore make compliance with OSH easier.

Summary of costs

- It was noted by some respondents that there may be increased costs associated with training to properly exercise judgement in relation to deciding which tasks require a HRWL.
- Some respondents believe the new requirements are confusing and require further clarity.

5.3.3 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits. The benefits of flexibility gained through the ability to exercise judgement are, in part, offset by the reduction in certainty regarding the exact requirements.

Equity

No equity issues identified.

Competition

No issues identified.

Unintended consequences

None identified.

Transitional

No major transitional issues identified.

5.3.4 Direction

The proposed change raised few concerns and so should be accepted.

5.4 High risk work licences (HRWL) – exemptions

A HRWL is normally required to operate equipment such as: scaffolding; rigging work; crane and hoist operation; self-erecting tower; bridge and gantry; vehicle mounted concrete placing boom; forklifts; or, pressure equipment operation. The proposed change to the regulation for HRWL exemptions is essentially to emphasise the discretion of the regulator to grant exemptions. It also allows for a “class of person” to apply for an exemption, not just an individual. There was only a limited response to surveys on this topic.

5.4.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 24.

Table 24: Current and changed requirements for high risk work licences – exemptions

A person may apply to the Commissioner for a person or a workplace to *be exempted* from complying with *a requirement of the regulations*.

The regulator *may exempt a person or class of persons* from compliance with a provision of the regulations requiring *the holding of a HRWL*.
[Reg. 686]

5.4.2 Background

There are not many cases that warrant exemption. But this slightly adjusted provision helps to cater for such a need should it arise. Although the Australian Industry Group advised they do not expect there to be a need for many exemptions, they acknowledge that exemptions may be required occasionally. The Chamber of Commerce and Industry (CCI) indicated that the health and community services industry (including aged care, disability services and hospitals) have requested the consideration of industry exemption to any requirement to impose HRWL to the sector on the basis that slinging is currently subject to stringent controls, protocols and worker training regimes. By way of example, a mining company [Rio Tinto] confirmed they would be unlikely to seek any high risk work licence exemptions, providing further confirmation of the low impact of this change.

Industries involved

This change will mostly affect the construction industry, and the industries it serves such as the resources sector.

Nature and size of businesses

This change will affect mostly SMEs. Larger enterprises may have fewer reasons to seek exemptions.

5.4.3 Summary of benefits and costs from change

Input from industry

- Negligible.

Input from WorkSafe

- Negligible.

Summary of benefits

- The change provides harmonisation, and gives slightly greater authority to the regulator.

Summary of costs

- Negligible.

5.4.4 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits.

Equity

No equity issues identified.

Competition

No issues identified.

Unintended consequences

None identified.

Transitional

No major transitional issues identified.

5.4.5 Direction

The proposed change raised few concerns and so should be accepted.

5.5 High risk work licences (HRWL) – reach stacker

A reach stacker is used to lift shipping containers. It covers the operation of greater than three tonnes in capacity and incorporates an attachment for lifting, moving and travelling of a shipping container.

5.5.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 25.

Table 25: Current and changed requirements for high risk work licences (HRWL) – reach stacker

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

Various respondents – the Australian Industry Group, the Chamber of Commerce and Industry, the Safety Institute of Australia and a construction company [Ausdrill], were accepting of the benefits of the proposed change. They suggested that an appropriate transitional period be implemented in order to enable migration of existing operators to the newly established HRWL class. One online survey respondent from the construction industry indicated that this change would impose a cost to their organisation, but they did not provide any further information.

Industries involved

This change would most directly affect ports and shipping and cargo handling companies, and indirectly all businesses that rely on shipments via shipping containers.

Nature and size of businesses

This change will most directly affect larger enterprises in the shipping, port and cargo handling industries.

5.5.3 Summary of benefits and costs from change

Input from industry

A new, specific license is required under the proposed change for reach stackers. This will require an extra licensing process and associated costs.

Input from WorkSafe

WorkSafe will be required to ensure that licensing requirements are fulfilled and enforced. The approximate number of reach stackers in operation will give an indication of the number of new licenses to be applied for and issued.

Summary of benefits

- This change will ensure a higher level of specific expertise is held by individuals operating reach stackers.

Summary of costs

- The principal cost will be the cost of individuals acquiring and maintaining a license and the migration of HRWL licensees for licensing to operate reach stackers. WorkSafe will need to ensure a system for licensing and renewal.

5.5.4 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits.

Equity

No equity issues identified.

Competition

No issues identified.

Unintended consequences

None identified.

Transitional

A transitional period will be required to allow implementation by WorkSafe and workplaces.

5.5.5 Direction

The proposed change raised few concerns and so should be accepted.

6. Examination of proposed regulatory changes: incident notification, lead, noise and protective clothing

6.1 Incident notification – prescribed serious illnesses

Incident notification – prescribed serious illnesses was a topic that had one of the highest levels of agreement among respondents in terms of increased health and safety.

6.1.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 26.

Table 26: Current and changed requirements for incident notification – prescribed serious illnesses

<p><i>Certain prescribed diseases</i> contracted in the course of work must be reported to the WorkSafe Western Australia Commissioner. These are tuberculosis, viral hepatitis, Legionnaires' disease, HIV, Q fever, Anthrax, Leptospirosis and Brucellosis.</p>	<p>Persons in control of a business or undertaking are required to notify of any infection to which the carrying out of work is a significant contributing factor, including <i>any infection that is reliably attributable</i> to:</p> <ul style="list-style-type: none"> – carrying out work with micro-organisms; – providing treatment or care to a person; – contact with human blood/body substances; or – involves handling or contact with animals and certain aspects of animals. <p>[Reg. 699(a)]</p>
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6.1.2 Background

Industries involved

This topic impacts on a range of different industries, but is more relevant to those that work in industries that require physical contact with humans, animals, or micro-organisms. In particular, this includes the health and childcare industries and local government.

Nature and size of businesses

Because of the broad nature of the hazard, the nature and size of businesses is similarly broad and include large companies as well as small businesses.

6.1.3 Summary of benefits and costs

The current regulations prescribe the requirement for certain prescribed diseases contracted in the course of work to be reported to the WorkSafe WA Commissioner.

The proposed regulations change the wording slightly so that notification of an infection is required when “the carrying out of work is a significant contributing factor” and if the infection is “reliably attributable” to contact with micro-organisms, humans or animals. The WHS regulations do not list the types of illnesses as the current regulations do.

Input from industry

There was a high level of agreement among respondents that this proposed change would lead to an improvement in health and safety, with a respondent from local government stating that this is due to a wider range of illnesses being captured (compared to previously where only specific illnesses were required to be reported).

However in terms of practicality and compliance with OSH, a common theme from responses relating to the topic was the lack of clarity around the definition of a “serious illness” and which illnesses should be reported on. Respondents stated that the ambiguity of the new regulations may lead to inconsistent interpretation and standards of compliance.

It was also noted that to assist with interpretation and reporting on a potentially wider range of illnesses, there may be an increased cost in compliance due to additional staff time and resources. It was noted that changeover costs would be incurred to audit current practices, and to develop new procedures and training to comply with the new regulations. It was identified by National Disability Services that there may be a need to acquire additional personal protective equipment.

Furthermore, it was noted that the proposed change may impose burdens on PCBU, especially when there is confusion around who is responsible for making the report.

Potential further impacts

It was noted by a respondent from the health industry that in WA, there is already a requirement to report blood and body substances to HISWA, so this may potentially result in double reporting.

Furthermore, it was noted that there should be provisions for anonymity for workers when disclosing their illness to employers.

Summary of benefits

- Most respondents indicated they expected improved health and safety from this change.

Summary of costs

- Some respondents indicated that the removal of a specific list of illnesses that would require reporting may result in a large range of illnesses being reported due to a lack of clarity around what is categorised as a “serious illness”. This would increase staff resources in compliance.
- The extra compliance requirements may also equate to changeover and increased ongoing costs.

6.1.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS this proposed change fails the *Cost Efficiency Test* as they result in a net cost of \$643 million (at 4% discount rate over 20 years).

Equity

Large companies will have well established rules for dealing with notifications, but the lack of clarity will be a particular issue for small businesses which will typically prefer to be informed of the precise requirements.

Competition

No competition issues were identified.

Unintended consequences

Respondents raised concerns over lack of clarity and the possibility of inconsistent interpretation and inconsistent compliance.

Transitional

No major transitional issues identified.

6.1.5 Direction

The proposed change should be delayed until the issues of excessive breadth, lack of clarity and uncertainty are resolved.

Specifically the majority of respondent concerns appear to relate to regulation 699 (a)(ii) which defines a serious illness requiring notification as including *any infection that is reliably attributable to carrying out work that involves providing treatment or care to a person*. Consideration should be given to amending or removing this element of the regulation.

6.2 Lead risk work

6.2.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 27.

Table 27: Current and changed requirements for lead risk work

There is a new requirement for a person in control of a business or undertaking to *notify the regulator within seven days*, where they have determined that work is “lead risk work”. [Reg. 403]

6.2.2 Background

The wide use of lead has been discontinued in Australia but there are some processes that continue to use lead compounds such as the manufacture of lead acid batteries. Lead can be also found in many older materials including pipes and plumbing, pigments and paints, construction materials and lead–acid batteries. Lead can be absorbed through inhalation, ingestion and skin exposure. Lead compounds have been found to be toxic to the kidneys, the nervous system and other body systems. Lead can affect the ability to make haemoglobin, which is used by the red blood cells to carry oxygen to tissues. Lead that is absorbed is retained within the body, particularly in the bones.

The Australian Industry Group stated that the Information and Issues paper does not identify how the definition of lead risk work will change when the WHS are implemented. They again suggest that there be transitional arrangements put in place to allow employers who have lead processes which are not currently considered “lead risk work”, to determine whether they will continue to have lead risk work under the WHS laws and, if they are, to comply with the requirements associated with lead risk work. They suggested that transitional arrangements be made to allow time for implementation of this new regulation.

An organisation in the mining industry (Rio Tinto) also stated that lead risk work needs to be better defined in order to understand what is required to be notified and what will happen to the information. They stated that this new requirement will be onerous as it would require biological monitoring, health surveillance and maintaining the employee’s baseline and on-going medical records in relation to low risk lead work.

The Shire of Donnybrook-Balingup stated that this requirement currently forms a part of the assessment of tenders for work and will, therefore, have little effect on their operations.

UnionsWA and CPSU/CSA stated that lead has been listed as a Category 2A carcinogen and should be reflected in the regulations.

Industries involved

Potential industries impacted include construction, manufacturing, recycling, automotive, shipping, retail, and warehousing.

Nature and size of businesses

This new regulation has the potential to affect a broad spectrum of businesses, large and small, especially due to the risk of contingent liabilities as a result of the long standing presence of lead in a work place.

6.2.3 Summary of benefits and costs from change

Input from industry

There were a total of five written submissions relating to this topic. This is a new requirement rather than a change. Lead risk work involves potential exposure to lead due to the long-term harm that can occur at relatively low exposures to lead compounds.

Impacts of this change can be expected to be widespread. Even though national businesses mostly have established systems and procedures, smaller businesses will need to adopt enhanced safety and reporting procedures.

Input from WorkSafe

The implementation of this new regulation will likely impose significant new process management requirements on WorkSafe. Reports of Lead Risk Work will need to be sorted, assessed and overseen.

Potential further impacts

The effectiveness of this regulation will likely require review over time.

Summary of benefits

- This regulation imposes a higher duty of care on employers or managers to identify and manage the risk of Lead Risk Work. This will help obviate the risk of lead exposure to workers and produce health benefits for individuals and long term savings to the national health system.

Summary of costs

- There will be short run costs (in the form of changeover costs) on employers and business managers to ensure Lead Risk Work is minimised and managed.

6.2.4 Assessment against criteria

Benefit Cost Analysis

There is insufficient information to allow quantification of the costs and benefits.

Equity

No equity issues identified.

Competition

No issues identified.

Unintended consequences

None identified.

Transitional

No major transitional issues identified.

6.2.5 Direction

The proposed change raised few concerns and so should be accepted.

6.3 Noise: audiometric testing

The proposed changes to *Noise: audiometric testing* received the second highest volume of responses during the consultation period.

Among the industries that identified that the change would be applicable to them, several were able to estimate the financial and resource cost of complying with this proposed area of regulation.

6.3.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 28.

Table 28: Current and changed requirements for noise: audiometric testing

Audiometric testing is recommended in a code of practice.	Audiometric testing <i>applies</i> in relation to a worker who is <i>frequently required</i> by the person conducting the business or undertaking to use personal protective equipment to protect from the risk of hearing loss associated with noise that exceeds the exposure standard for noise. Testing required at commencement of employment and two yearly thereafter. [Reg. 58]
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6.3.2 Background

Industries involved

Industries impacted by this change are varied, however it is of notable relevance to industries involved in work that is exposed to high levels of noise, such as construction, mining, manufacturing, and motoring. Other industries affected are local government, health and community services, utilities, and others that utilise heavy machinery.

A 2006 report by the Australian Safety and Compensation Council²⁶ identified the proportion of workers requiring hearing testing under a previous set of requirements, as summarised in Table 29.

²⁶ Australian Safety and Compensation Council, *Work-Related Noise Induced Hearing Loss In Australia*, April 2006.

Table 29: Industry groupings and the proportion of workers likely to be exposed to occupational noise

Mining	90%
Electricity, gas & water	47%
Manufacturing	35%
Construction	24%
Public Admin	19%
Agriculture, Farming & Fishing	18%
Transport, Postal and Warehousing	14%

Nature and size of businesses

Due to the broad nature of the requirement, any business that requires their workers to use personal protective equipment to protect hearing loss would be affected. The size of businesses impacted would include those of all sizes, from large mining companies to small motor vehicle workshops.

6.3.3 Summary of benefits and costs

Whereas previously audiometric testing was only recommended in the Code of Practice, the new regulations would require that testing be required at commencement of employment and every two years thereafter.

Input from industry

A number of respondents identified that the proposed change would lead to a slight improvement in health, as there would be long term benefits to regular monitoring of employees' hearing. However a large number of respondents stated that the new regulations would have moderate to significant costs in terms of compliance. Although a number of organisations are already engaged in regular hearing tests for their employees, this new requirement will be more frequent for most businesses.

Due to the dual "gateways" which trigger this requirement – workers with an average 8 hour exposure over 85 dB and those that use hearing protection regularly in their work environment, it is currently unknown how many workers would be captured under this regulation. WorkSafe estimates that slightly over 100,000 existing workers will require the initial audiometric testing. Using the same references but different assumptions, Marsden Jacob produced an alternative estimate of 165,000.

It was noted that "frequently required" to use personal protective equipment for hearing protection is not clearly defined in the proposed regulations, making it unclear who would require the audiometric testing and how often this is required. The audiometric testing requirement of the PCBU is towards a "worker"; which could be interpreted to mean any worker (not necessarily only the worker of that PCBU) that could be captured under this requirement such as a contractor or sub-contractor. This could potentially pose a significant burden on a PCBU. This lack of clarity poses the risk that it will be interpreted inconsistently within workplaces. There is a need for clear definition of this term to be contained within

guidance and educative materials to ensure a more consistent approach to the regulatory application.

Respondents also mentioned the time it would take for workers to go off-site and have the testing conducted, which would have the potential to reduce productivity.

It was also stated that there is the potential for a rise in the number of workers' compensation claims in the scenario where employees received poor audiometric results.

Potential further impacts

Discussions with the Queensland regulator for Occupational Health and Safety highlighted that they are reviewing this regulation. Currently there appears to be a lack of available services, which leaves some industry sectors unable to comply. Anecdotes from the regulator indicate that while there are mobile audiometric testing facilities which visit remote locations these are booked by the large businesses (particularly mines) in these locations. As a result, the small businesses in regional areas are unable to comply with the requirements.

Summary of benefits

- Some respondents indicated that the change would lead to an increase in the level of health due to regular hearing monitoring and testing.

Summary of costs

- Many respondents stated that they would incur significantly increased resource and cost implications (both in the changeover period and ongoing) if the proposed were implemented, and thereby risking business productivity.
- WorkSafe WA anticipates that this change would lead to increased workload and consequently some FTE implications. The transition period is likely to require additional compliance activity by WorkSafe WA.
- Current hearing tests performed under the Workcover Act require a quiet period of 16 hours prior to the initial test. Depending on the hours worked (e.g. a 12 hour shift) this requirement may impact on available working hours. Marsden Jacob were advised²⁷ that while the requirement for a quiet period is not necessary for subsequent tests, employers may wish to replicate these conditions, to maximise workers' hearing performance.
- A key unknown cost is the travel time to and from testing facilities. Following from the experience noted in Queensland it is likely that these costs will be higher (per worker) for small businesses, particularly in regional and remote locations.
- WorkSafe WA anticipates that the WorkCover and WHS requirements can be combined to be accommodated in one test. As there are approximately 70,000 initial and retests per year, incorporating the new WHS requirements would entail an estimated 22,000 initial tests and retests per year. This would substantially reduce the cost impacts of this change, while maintaining the benefits.

²⁷ *Pers Comms* WorkSafe, 31 October 2012.

- WorkSafe WA has been advised that costs for air conduction tests carried out by approved WorkCover providers can range between \$40 and \$62 + GST per person. In addition to these test costs there are potentially costs for:
 - lost staff work time for testing to be conducted;
 - staff down time to achieve 16 hours of quiet;
 - staff travel time to and from tests; and
 - management time to organise tests.
- The cost estimates used in the Benefit Cost Analysis are generated from survey responses but were manipulated²⁸ so that the estimated number of workers approached the range estimated by WorkSafe (100,000) and by Marsden Jacob (165,000).

6.3.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS the proposed changes fail the *Cost Efficiency Test* as they result in a net cost of \$188 million (at 4% discount rate over 20 years).

As set out in section 4.6.4 of the RIS the two proposed changes relating to noise were combined and compared to against deafness arising from single and long-term exposure to sound using the *Threshold Benefit Cost Test*. Based on the estimated costs these two changes would need to result in at least a 440% reduction in health and safety costs (340% more than the full cost of hearing impacts, as reported in previous years) in order to deliver a net benefit.

The *As Low As Reasonably Practicable (ALARP)* test does not appear relevant to noise changes as an incident is highly unlikely to result in the death of the worker.

Equity

Workplace Health and Safety Queensland advises that they are reviewing this requirement in Queensland. The Queensland regulator indicates that they have found that the requirement imposes substantially larger costs for small business in regional locations. They found that mobile audiometric testing facilities would visit regional locations, but would be fully booked by larger businesses. At the completion of testing staff from the larger businesses, the facilities would move on to the next location before they could be accessed by smaller businesses.

This resulted in higher costs for smaller businesses in these locations as they were required to transport workers to the regional centre for testing.

Unintended consequences

No unintended consequences were identified.

Competition

No competition issues were identified.

²⁸ The figures were halved as the estimated number of workers this applied to was 393,500. This produced an estimate of 196,800.

Transitional

Respondents suggested three transitional provisions:

- delaying implementation 3-5 years;
- preparation of additional guidance or codes of practice prior to implementation; and
- having a 'staggered start' (such as short-term exemptions for some industries).

A point that arose during the consultation process was the need for appropriate transitional provisions when implementing this change. As demand for audiometric testing would be expected to escalate when this regulation is implemented, it was suggested that provisions be made to ensure that sufficient qualified audiometric testing facilities are available and accessible, particularly for organisations located in regional and rural areas of Western Australia. If there is currently a shortage of qualified audiometric testers, transitional provisions would also need to be considered to enable a suitable timeframe for more audiometric testers to become qualified, and the appropriate testing facilities are set up. WorkSafe WA are not certain that there will be sufficient service providers to do the audiology tests during a two year transition.

In informal discussions the Queensland regulator for Occupational Health and Safety indicated that an extended transitional period (e.g. 2 or 3 years) may be insufficient if it is not accompanied by a coherent strategy to assess and then address demand across the state.

Informally WorkSafe commented that a transitional period of at least 3 years would appear necessary to allow the development of training courses and for the industry to prepare for implementation.

6.3.5 Direction

The proposed change relating to Noise: audiometric testing should be rejected or amended from its current format.

The responses indicate that the change will not deliver a net benefit to the WA economy and appears likely to deliver higher costs to small businesses in regional locations.

6.4 Noise: managing risks

Responses for the *Noise: managing risks* topic varied in terms of respondents listing the change as a benefit or a cost.

6.4.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 30.

Table 30: Current and changed requirements for noise: managing risks

Employers must, <i>as far as practicable</i> , ensure that persons at workplaces are not exposed to noise above the exposure standard.	<p>A person conducting a business or undertaking at a workplace <i>must ensure</i> that the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise. [Reg. 57(b)]</p> <p>The <i>practicability element</i> is not included as in the current WA regulation.</p>
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6.4.2 Background

Industries involved

Industries impacted by this change are varied, however it is of notable relevance to industries that involved in work that is exposed to high levels of noise, such as construction, mining, manufacturing, and motoring. Other industries affected are local government, health and community services, utilities, and others that utilise heavy machinery.

Nature and size of businesses

Due to the broad nature of the requirement, any business that requires their workers to use personal protective equipment to protect hearing loss would be affected. The size of businesses impacted would include those of all sizes, from large mining companies to small motor vehicle workshops.

6.4.3 Summary of benefits and costs

The current regulations are less prescriptive than the proposed changes, with the new requirements prescribing that a PCBU **must ensure** that workers are not exposed to noise above the exposure standard.

Input from industry

Similarly to the impact that *Noise: audiometric testing* has on industry, responses received for this topic indicated large increases in compliance costs with only little or slight health and safety benefits.

The Australian Industry Group (AiG) noted that the WHS laws allow for the noise level to be controlled by utilising personal protective equipment to lessen exposure to noise. They do not believe that it was intended that noise levels must be below the exposure standard. Therefore AiG believe that with the appropriate selection and enforcement of personal protective equipment, combined with job rotation if necessary, this should always allow a reduction in the exposure of noise for an individual to below the exposure standard.

Changeover costs that may be incurred are additional personal protective equipment if more are required. It was also stated by the Shire of Donnybrook Balingup that to properly comply with this regulation, sampling of noise at worksites on a regular basis is required to ensure that the standards are met. This will incur a cost for organisations for both testing and recording of information.

The Department of Corrective Services highlighted that due to the unpredictable nature of work in prison industries and community work, compliance may require workers to wear personal protective equipment at all times, which may be difficult.

Input from WorkSafe

n/a

Summary of benefits

- Some respondents indicated they expected improved health and safety.

Summary of costs

- Some respondents indicated they expected increased costs in the changeover period, in terms of acquiring additional personal protective equipment and noise testing of work sites.
- Some respondents indicated this requirement may have practicality implications.

6.4.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS the proposed changes fail the *Cost Efficiency Test* as they result in a net cost of \$916 million (at 4% discount rate over 20 years).

As set out in section 4.6.4 of the RIS the two proposed changes relating to noise were combined and compared to against deafness arising from single and long-term exposure to sound using the *Threshold Benefit Cost Test*. Based on the estimated costs these two changes would need to result in at least a 440% reduction in health and safety costs (340% more than the full cost of hearing impacts, as reported in previous years) in order to deliver a net benefit.

The *As Low As Reasonably Practicable* (ALARP) test does not appear relevant to noise changes as an incident is highly unlikely to result in the death of the worker.

Equity

No equity consequences were identified.

Unintended consequences

No unintended consequences were identified.

Competition

No competition issues were identified.

Transitional

Respondents suggested two transitional provisions:

- delaying implementation 1-2 years; and
- preparation of additional guidance or codes of practice prior to implementation.

6.4.5 Direction

The proposed change relating to Noise: managing risk should be rejected or amended from its current format.

The responses indicate that the change will not deliver a net benefit to the WA economy.

6.5 Personal protective clothing and equipment (PPE)

Responses for the *Personal protective clothing and equipment* topic were varied and largely depended on the industry that respondents were from.

6.5.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 31.

Table 31: Current and changed requirements for personal protective clothing and equipment (PPE)

<p>Where, after a risk assessment, it is concluded that a risk may be reduced by PPE, then employers and main contractors must ensure that the <i>PPE is in compliance with certain prescribed Australian or Australian New Zealand standards.</i></p>	<p>The provision of PPE is prescribed where a risk cannot be eliminated or minimised by other means. [Reg. 36] There are various prescriptions for the selection of PPE to minimise risk but <i>no reference to ensuring it is in compliance with Australian or Australian New Zealand standards.</i> [Reg. 44]</p>
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6.5.2 Background

Industries involved

Industries impacted by this change are any that require the use of occupational protective clothing and/or equipment in their work. This ranges from mining and construction companies, to emergency services, manufacturing, health and community industries, local government and others.

Nature and size of businesses

Due to the broad nature of the requirement, any business that requires their workers to use personal protective clothing and equipment would be affected. The size of businesses impacted would include those of all sizes, from large mining companies and disability service centres to small motor vehicle workshops.

6.5.3 Summary of benefits and costs

The proposed changes are less prescriptive than the current regulations, with the new changes removing the requirement to comply with Australian or Australian New Zealand standards.

Input from industry

A large number of respondents stated that the removal of the requirement to comply with Australian or Australian New Zealand standards would have a detrimental impact on the health and safety of workers.

The Chamber of Commerce and Industry noted that the industry viewpoint is that the market is currently being flooded with poor quality personal protective equipment readily available at

retail outlets, and that removing a set standard would increase the risk of sub-standard equipment being provided to workers.

A respondent to the online survey also noted that from a usability point of view that:

It will also be harder, as a safety professional, to determine if specific items being worn are in fact suitable PPE - such as sunglasses vs. impact rated safety glasses, or non-safety boots vs. steel cap, chemical resistant boots.

It was noted by the Shire of Capel that the risk is that it may be years before any health problems from using sub-standard PPE can become apparent.

Some respondents noted that the change would make compliance easier.

The Australian Industry Group (AiG) noted that the non-referencing of Australian Standards in the regulations was a carefully considered decision that applies across most of the regulations, and that it is referenced in the Code of Practice for managing noise and preventing hearing loss. Therefore AiG do not believe that the relocation of this reference to the Australian Standard (from Regulations to the Code) would in any way reduce the level of protection required.

The Shire of Capel noted that they would not be affected by this change as they will continue to supply their workers with PPE that meets Australian or Australian New Zealand standards.

Unions WA put forward the view that workers should have the right to refuse to use PPE if they believe the PPE provided is damaged, unclean, or incorrect for the work to be carried out. They also note that there is no assurance that workers do not have to pay for their PPE and that there is no mention that PPE must not create other risks for the wearer.

Potential further impacts

A respondent within the mining industry [Rio Tinto] stated that if reference to Australian standards were removed, then they would be required to explicitly include in their contracts or deliverables that all PPE must meet Australian Standards.

Summary of benefits

- Some respondents indicated that this change would allow greater flexibility and improve ease of compliance (with potential cost savings in purchasing less expensive PPE).

Summary of costs

- A high volume of respondents disagreed with this proposed change, as they anticipated that the removal of reference to Australian or Australian New Zealand standards would compromise health and safety for workers.

6.5.4 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS, the proposed changes to PPE were one of only two changes to pass the *Cost Efficiency Test*, resulting in a net benefit of \$33 million (at 4% discount rate over 20 years). This suggests that the proposed change would be beneficial to the State of Western Australia if it were to proceed.

The *threshold benefit cost test* was not applied for this change as suitable WorkCover data was not identified that covers all of PPE.

Equity

No Regional or Small business equity issues identified.

Unintended consequences

No unintended consequences were identified

Competition

No competition issues were identified

Transitional

During consultations, it was suggested that additional guidance or Codes of Practice be prepared for transitional provisions prior to implementation.

6.5.5 Direction

The proposed change should be delayed pending clarification and issue of additional guidance and transitional arrangements. The benefit cost analysis for PPE indicates a net benefit, and together with comments received through the consultation process, WA should accept the change. However, further consideration around additional guidance may be necessary, especially for small business.

In addition, the change should be implemented with the objective of not reducing the level of safety for workers.

7. Examination of proposed regulatory changes – plant

This section relates to the overarching topic of *Plant* and explores comments provided by respondents in the relation to the following nine sub-topics:

- amusement devices;
- design registration – concrete placement units with delivery booms;
- design verification: cranes;
- design verification: pressure vessels;
- import;
- item of plant registration;
- item of plant registration – renewals;
- mobile and tower cranes; and
- registration: prefabricated formwork and boom type concrete placement units.

7.1 Plant – amusement devices

7.1.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out below in Table 32.

Table 32: Current and changed requirements for plant – amusement devices

Employers, self-employed people, persons having control of the workplace or its access must ensure that amusement structures are:

operated, maintained and inspected and maintained:

- i) in accordance with Australian Standard AS 3533 or a steamers code of practice; or
- ii) in accordance with the instructions of the person who manufactured the structure or *any competent person* who develops instructions for the operation.

A competent person is defined as “a person who has acquired through training, qualification or experience, or a combination of those things, the knowledge and skills required to do that thing”.

The person with management or control of an amusement device at a workplace must ensure that a detailed inspection of it is carried out at least *once every 12 months* by a *competent person*.

The definition of a competent person is prescribed as somebody who has:

- a) either the skills, qualifications, competence and experience to inspect the plant *and is registered under a law that provides for the registration of professional engineers*; or
- b) is determined by the regulator to be a competent person.

The requirements for the annual inspection are detailed in the regulation. [Reg. 241].

7.1.2 Background

WorkSafe WA commented informally that in implementing this regulation they currently propose to rely on the professional qualifications, per part (a) of the proposed new requirement rather than determine that a person is competent under part (b).

Industries involved

Businesses working in the amusement sector, and organisations, community groups and councils hosting events that include amusement devices will be affected by this change. A cohort of competent persons will need to be identified or certified.

Nature and size of businesses

It will mostly be small businesses affected by this change, such as circuses and amusement centre operators. It will also apply to theme parks. Sole traders who rent out slides, inflatable jumping castles, mechanical bucking bulls and similar will be likewise affected.

7.1.3 Summary of benefits and costs from change

Input from industry

Industry will need to bear the cost of the annual inspection by a competent person.

The Australian Industry Group indicated that the WHS Strategic Issues Group agreed to a proposal to amend the definition of a competent person for amusement devices.

Carnival Amusements suggested that there is currently only one individual who is deemed to be competent under the existing legislation – but he does not have an engineering qualification – so he may, in fact, not be deemed competent under the proposed regulations. However, WorkSafe WA later separately clarified that this person does have appropriate engineering qualifications.

The Shire of Donnybrook-Balingup queried whether school playground equipment would fall under the definition of amusement devices. However, WorkSafe WA later clarified that this proposed change does not relate to school playground equipment. During consultations it was noted that this change may have an effect on local governments hosting festivals of one form or another.

Input from WorkSafe

WorkSafe WA will need to ensure capacity to define whether current and future amusement equipment will fall under the scope of this revised requirement. Although WorkSafe WA proposed to rely on a general definition of ‘competent person’, there may be a need in the future for WorkSafe WA to certify someone as a competent person to conduct an annual inspection. WorkSafe WA will need to ensure a registration process to confirm that annual inspections have been carried out as required.

Summary of benefits

- An annual inspection will help ensure that amusement equipment remains safe for use and is adequately maintained.

Summary of costs

- Costs will be limited to the cost of annual inspections for each relevant piece of equipment in the state, as well as any necessary expenditure to reach deemed safety and performance requirements.

7.1.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Plant – amusement devices* was unable to be conducted.

Equity / Competition

For local governments located in regional or rural parts of Western Australia, having access to an appropriately trained engineer to inspect the equipment for local community carnivals and events may prove difficult if there is a shortage in any particular geographical area.

For small businesses within the amusement device industry, particularly sole traders who rent out equipment for private parties and events, there will be significant costs associated with compliance. Small businesses would most likely pass on these extra costs to consumers, reducing their business competitiveness in the market and potentially making business operation unfeasible.

Unintended consequences

No unintended consequences were identified.

Transitional

It would appear that delaying implementation by 3 to 5 years would be necessary to allow an appropriate window to notify businesses and to ensure appropriately qualified individuals are available for this task. A consideration is whether the change would apply retrospectively and if there will be recognition of prior training so that those that were deemed “competent” previously would still be able to continue this task and every year going forth.

7.1.5 Direction

The proposed change should be rejected.

The few qualitative responses collected during the consultation process were strongly adverse to the change. Further consideration around the requirements of the regulation and the transitional provisions may be necessary.

7.2 Plant – design registration: concrete placement units with delivery booms

7.2.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 33.

Table 33: Current and changed requirements for plant – design registration: concrete placement units with delivery booms

Concrete placement units with delivery booms do not require design registration.	Concrete placement units with delivery booms are required to obtain design registration. [Reg 243 & Schedule 5, Part 1]
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7.2.2 Background

Concrete placement units with delivery booms come in many different sizes and designs to cope with a wide variety of concrete pumping requirements. Often a concrete placing boom is a mobile truck mounted plant incorporating a knuckle boom, capable of power operated slewing and luffing to place concrete by way of pumping through a pipeline attached to, or forming part of, the boom of the plant. The concrete pour involves the pouring of concrete through the delivery hose connected to the concrete pump to the concrete pump area. In doing this there are a number of risks including: concrete lines bursting; lines becoming unrestrained; and pipe clamps being dislodged.

Damage to the delivery hose may cause discharge of concrete under pressure. Some concrete placement units use a long robotic arm (the boom), and a long pump attached to a truck or trailer, to lay concrete. Boom pumps can be used for a variety of projects, because the boom usually has a very large reaching span. The robotic arm is controlled remotely and is very accurate when laying concrete in hard-to-reach areas such as high rise buildings. Boom pumps are the pump of choice in large projects because of their capacity and pumping strength.

Industries involved

The proposed new requirement for design registration affects, in a modest way, a large number of industries, via the construction industry channel. Directly, any industry pouring concrete will be affected i.e., the construction and mining industries and, indirectly, any industry relying on the building or construction industry.

Nature and size of businesses

Small and large construction enterprises will be affected. Import businesses buying foreign designed and built equipment will be affected, as well as engineering, design and equipment leasing firms. Industry associations and unions will need to be aware of any changes.

7.2.3 Summary of benefits and costs from change

Input from industry

There were just two responses to this proposed change, both by way of written submission. This suggests that there was not widespread interest in the proposed change.

The Australian Industry Group did not oppose the change and commented that appropriate transitional provisions were necessary and that these new proposed new design registration requirements should not apply retrospectively. The other respondent, a mining company [Rio Tinto], indicated that they agreed with the proposed change and that it would result in a safety benefit.

If the change is not applied retrospectively, the impacts on industry of registering a design will be modest. There is a wide variety of demands for different types of designs of concrete placement units with delivery booms to help meet a large variety of needs. Any change to requiring the registration of design should seek not to cause any reduction in innovation of newer and upgraded designs.

Input from WorkSafe

WorkSafe WA will need to ensure it can access appropriate expertise to verify the safety of any registered design of a concrete placement unit with delivery boom.

Summary of benefits

- Potential to ensure greater safety in the marketplace for this sort of equipment, and thus greater safety for workers using and in the vicinity of concrete placement units with delivery booms.

Summary of costs

- Any effort to retrospectively apply the proposed change would possibly impose significant costs to industry in the event that their existing equipment does not meet any new design registration requirements.
- WorkSafe WA will need to establish a registration process and the technical capacity to register the designs of concrete placement units with delivery booms, as well as determine agreed design standards.
- Industry will need to ensure newly built or imported equipment meets minimum design standards.

7.2.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data, a benefit cost analysis for *Plant – design registration: concrete placement units with delivery booms* was unable to be conducted.

Equity

No regional or small business equity issues were identified.

Competition

No competition issues were identified.

Unintended consequences

No unintended consequences were identified.

Transitional

It would appear that the default transitional period (1 year) would be sufficient.

7.2.5 Direction

The proposed change raised few concerns and so should be accepted.

7.3 Plant – design verification: cranes

7.3.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 34.

Table 34: Current and changed requirements for plant – design verification: cranes

To obtain design registration of a crane, the design needs to be verified by a *competent person* as part of the requirements.

A competent person is defined as “a person who has acquired through training, qualification or experience, or a combination of those things, the knowledge and skills required to do that thing”.

A person is eligible to be a design verifier for the design of an item of plant if the person is a *competent person*. However, for cranes, a competent person is defined as “a person who has the skills, *qualifications*, competence and experience to design the plant or verify the design.” [Regs 5 and 252].

7.3.2 Background

The objective of this proposed change is to introduce the requirement for a competent person to have greater expertise and qualifications specifically related to crane design.

Industries involved

A change to this requirement would principally affect the construction industry, as well as industries requiring a heavy lift capacity such as the marine industry and ports.

Nature and size of businesses

The direct effect of the proposed change would be borne mostly by medium and large enterprises.

7.3.3 Summary of benefits and costs from change

Input from industry

The proposed requirement imposes an onus on industry to ensure that appropriately qualified engineers conduct crane design verification. Industry will need to ensure they can access such expertise, which may be in short supply.

The Chamber of Commerce and Industry, the Safety Institute of Australia, and a construction company [Ausdrill] argued that this change would entail significant implications for those individuals currently deemed competent under existing OSH legislation, but who may not be deemed competent under the WHS laws (i.e. they must have the appropriate qualifications).

The Australian Industry Group had a similar view, and suggested that transitional arrangements be implemented. The Shire of Donnybrook-Balingup stated that they have one gantry crane that is inspected annually by an external consultant. They expected an additional cost will be incurred if the crane inspection requires a structural engineer.

Input from WorkSafe

WorkSafe may be called upon to clarify the precise nature of the qualifications of a competent person that are considered for this task.

Summary of benefits

- The benefits of this proposed change will be more pronounced in the event that previously used competent persons were not specifically qualified in crane design verification. The change may ensure that highly specialised engineering skills, rather than more generalised engineering skills, are applied.

Summary of costs

- After a period of adjustment, the net additional cost of this change will be minimal.

7.3.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Plant – design verification: cranes* was unable to be conducted.

Equity

Sourcing an appropriate qualified person to verify the design of a crane may be difficult for work sites in regional and/or rural areas, and may be linked to high costs.

Competition

Ensuring that an appropriately qualified person verifies the crane may entail further training costs for employees, or costs associated with hiring a professional to complete the task. Depending on the number of cranes used by the business and/or the number of staff available who are already appropriately qualified, this added cost may affect business profitability and therefore competition in the market.

Unintended consequences

No unintended consequences were identified.

Transitional

Providing a reasonable period of advance warning before imposing this new requirement may better allow the industry and the required service providers to respond efficiently. Consideration of prior training and retraining requirements implies that delaying implementation (e.g. by 3 to 5 years) may be beneficial for businesses.

7.3.5 Direction

The proposed change raised few concerns and so should be accepted.

7.4 Plant – design verification: pressure vessels

7.4.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in the table below.

Table 35: Current and changed requirements for plant – design verification: pressure vessels

To obtain design registration of a pressure vessel, the design needs to be verified against an Australian standard. <i>Design verifier must be accredited to Australian Standard AS 3920.1</i>	A person is eligible to be a design verifier for the design of an item of plant if the person is <i>a competent person</i> . [Reg. 252]
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7.4.2 Background

The objective of the proposed change is to place greater emphasis on the competence of the design verifier, beyond the simple accreditation in accordance with AS3920.1. There was some resistance to this proposed change based on both the prospect of increased costs and looser standards.

There is a large array of pressure vessels that come under this classification. They include, for example, heat exchanges, storage vessels, transport containers and cryogenic vessels.

Industries involved

The proposed change cuts across many industries – oil and gas, construction, transport, and others.

Nature and size of businesses

The proposed change will have a relatively greater direct effect on larger enterprises. It will also have an effect on engineering service providers who provide these types of design verification services.

7.4.3 Summary of benefits and costs from change

Input from industry

While unquantified through the consultation responses, the financial implications for industry do not appear to be significant.

There was a mixed response to this proposed change. The Australian Industry Group supported the change but suggested that transitional arrangements be implemented. Similarly, a respondent in the oil and gas industry [Woodside Energy] supported the proposed change. However, they suggested that there be just one registration process that incorporates design and vessel registration in order to improve administrative efficiency.

The Chamber of Commerce and Industry expressed uncertainty regarding this change. They argued that it was unclear whether the definition of a “design verifier” under AS3920.1 was consistent with that of a “competent person”, and whether a person who continues to gain a

design verifier certification will be deemed by the regulator as a competent person for the purposes of this regulation.

An online survey respondent from an engineering consultancy listed this change as a cost to their organisation. They estimated that this change would make the likelihood of injury, death or illness in their workplace greater by between 5 to 20%. They further estimated that it would make compliance more difficult by a margin of around 20%. They believe that the current definition of a ‘competent person’ is inadequate as it provides no minimum requirements in terms of formal engineering training, design experience and general industry experience. They suggested that all design verifiers (regardless of type of design verification) be required to be registered on the Engineers Australia National Professional Engineers Register (NPER) for the specific areas of competency. They suggested a transition period of 12 to 24 months from the enactment of the regulations. Similarly, a respondent from the mining industry [Rio Tinto] did not agree with the proposed change. They felt the proposed change may result in a lowering of the existing standard.

Summary of benefits

- This proposed change should result in a higher level of design verification.

Summary of costs

- Apart from the costs of managing the administrative change and associated transition, minimal additional costs are forecast.

7.4.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Plant – design verification: pressure vessels* was unable to be conducted.

Equity

No equity issues were identified.

Competition

No competition issues were identified.

Unintended consequences

No unintended consequences were identified.

Transitional

The Australian Industry Group supported the change but suggested that transitional arrangements be implemented. It would appear that a transitional period of 1 to 2 years would be necessary.

7.4.1 Direction

The proposed change should be delayed pending clarification of the definition of “a competent person” and the provision of further guidance on this matter.

Given the concerns raised by some respondents WorkSafe should review whether the definition of “a competent person” is appropriate and/or may wish to provide further guidance on this matter.

7.5 Plant – import

The proposed change to this regulation is intended to harmonise the import of plant across the states and into Western Australia. It also aims to place additional onus on importers of plant into the State to ensure plant is fit for the purpose for which it is intended – in particular, that the importer must consult with the designer and manufacturer regarding any risks associated with the use of the plant.

7.5.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 36.

Table 36: Current and changed requirements for plant – import

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

Industries involved

This change is modest but will affect every industry importing plant into WA.

Nature and size of businesses

This change will be relevant to all businesses, small and large, across the State, which may import plant.

7.5.3 Summary of benefits and costs from change

This change promotes greater harmonisation across Australia in relation to the importation of plant, whether from overseas or from other states. Importers of plant into WA need to be conscious of the requirement for reasonable steps to be taken to ensure plant is fit for purpose, safe, and that risks are controlled.

Input from industry

Most respondents were supportive of this change. The Australian Industry Group (AiG) is supportive of the change, arguing that it allows for greater sharing of information between the various state regulators and greater harmonisation. AiG argued that this increases the prospects of cooperation between the jurisdictions to deal with any significant issues associated with plant imported from or manufactured in other Australian jurisdictions.

The University of Western Australia is also supportive of this change, noting that it will apply to the import of plant for research purposes. A respondent from the energy industry [Woodside Energy] was supportive of the proposed change, saying it provides greater clarification regarding their responsibilities as an importer of pressure vessels.

A mining company [Rio Tinto] reported that other Australian states should follow Australian standards, so there would not be a significant change to this regulation. An online survey respondent confirmed the view that WorkSafe WA should have the ability to hold the importer of the plant accountable. They were concerned that if other states have less stringent requirements than WA then WA may risk receiving poorer quality of plant from other Australian jurisdictions.

Input from WorkSafe

WorkSafe WA will need to manage implementation of the change.

Summary of benefits

- Greater harmonisation across the states, and easier movement by businesses of their plant across the country.

Summary of costs

- Negligible.

7.5.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Plant – import* was unable to be conducted.

Equity

No equity issues were identified.

Competition

No competition issues were identified.

Unintended consequences

No unintended consequences were identified.

Transitional

It would appear that a transitional period of 1 to 2 years would be necessary.

7.5.5 Direction

The proposed change raised few concerns and so should be accepted.

7.6 Plant – item of plant registration

Plant – item of plant registration attracted several comments from respondents, with the majority from written submissions.

7.6.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 37.

Table 37: Current and changed requirements for plant – item of plant registration

<p>As part of the requirements to obtain individual item of plant registration for prescribed items of plant, an applicant must provide a signed statement <i>by a competent person</i> that the item of plant has been inspected by that competent person is safe to operate.</p> <p>A competent person is defined as “a person who has acquired through training, qualification or experience, or a combination of those things, the knowledge and skills required to do that thing”.</p>	<p>As part of the requirements to obtain registration of prescribed items of plant, the applicant must obtain a statement that the plant has been inspected by <i>a competent person</i> and assessed as being operable. A person is competent to carry out the inspection if they have:</p> <p>(a) <i>educational or vocational qualifications in an engineering discipline</i> relevant to the plant to be inspected; <i>or</i></p> <p>(b) <i>knowledge of the technical standards</i> relevant to the plant to be inspected.</p> <p>[Regs. 266 and 267]</p>
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7.6.2 Background

Industries involved

Industries impacted by this change are those that require the use of plant equipment in their workplace. Plant equipment includes amusement structures, boilers, building maintenance units, lifts, mobile cranes, pressure vessels, tower cranes, and truck-mounted concrete placing units with booms. Therefore the range of industries affected by this area of regulation is diverse, ranging from mining and construction companies to manufacturing firms, dry cleaning businesses, amusement parks, local governments, and health and disability services. It also affects any workplace that has lifts or escalators.

Nature and size of businesses

Due to the broad nature of the requirement, any businesses that require plant machinery and equipment would be affected. The size of businesses impacted would include those of all sizes, from large mining companies to small independent dry cleaning businesses.

7.6.3 Summary of benefits and costs from change

The proposed new requirements for *Plant – item of plant registration* entail a slightly different definition of “a competent person”. Some argue that the proposed change is more prescriptive; however others feel the new definition is more lenient and open to interpretation.

Input from industry

A respondent within the construction industry [Ausdrill] stated that the new requirements are significantly more prescriptive. A respondent from the oil and gas industry [Woodside Energy] was supportive of the proposed change, due to the reason that there is greater clarification around the definition of “a competent person”.

A mining industry respondent [Rio Tinto] suggested that the new regulations should be more prescriptive, with the engineering discipline to be defined further as it currently covers a range of qualifications. It was stated that the new regulations are a significant lowering of safety standards as the new regulation removes the requirement to ensure the item of plant is safe to operate. The new regulations only require the plant to be inspected and assessed as being operable.

National Disability Services indicated that the cost implications for their organisation would be dependent upon the definition they were guided by. Applying the definition “educational or vocational qualifications in an engineering discipline relevant to the plant to be inspected” would likely lead to increased inspection costs. However, the alternate provision of “knowledge of the technical standards relevant to the plant to be inspected” may mean that costs are neutral.

The Australian Industry Group, and the Shire of Donnybrook Balingup however, feel that the new regulations would be applied in the same way, and will not have any practical implications for their organisation.

Input from WorkSafe

WorkSafe WA identified that there are concerns, particularly in relation to amusement devices, that there is an insufficient number of engineers to participate in the required activities.

WorkSafe WA also indicated in their submission that the WHS regulations also allow, where there are exceptional circumstances, for the regulator to determine a person who is not an engineer, to do the work. WorkSafe WA continues to argue that the regulations are not practical and there is discussion nationally about amendments. Until there is agreement in relation to how the regulators will make decisions, WorkSafe WA is unable to estimate the number of persons who might make an application for a determination.

Overall, WorkSafe WA anticipates that they will incur costs in considering applications from service providers who wish to be determined as a competent person. WorkSafe WA expect an increased workload and subsequently some FTE implications due to this process.

Summary of benefits

- Several respondents believe that there will be no significant cost implications with the proposed change as they have the option of utilising the second definition of a competent person which only requires “*knowledge of the technical standards relevant to the plant to be inspected*”. It does not explicitly require the inspector to be formally trained, qualified or experienced, as per the current regulation.
- One respondent preferred the new definition of a competent person as they felt it provided a better definition of a competent person.
- If businesses refer to the engineering definition of a competent person, then there is the potential to improve safety among workers.

Summary of costs

- If the requirement for the inspector to have an engineering qualification is utilised, this would likely lead to higher inspection costs as the qualifications of the inspector in this category is likely to be higher than current requirements.
- There is a view from a respondent in the mining industry that the new regulations are a lowering of safety standards.
- WorkSafe WA are concerned that there will be a shortage of qualified engineers as inspectors, which may lead to inspectors increasing their prices to coincide with demand.

7.6.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Plant – item of plant registration* was unable to be conducted.

Equity

No equity issues were identified.

Competition

No competition issues were identified.

Unintended consequences

No unintended consequences were identified.

Transitional

An important consideration is whether the change would apply retrospectively and if prior training would be considered. Therefore, it would appear that a transitional period of between 1 to 2 years would be necessary.

7.6.5 Direction

The proposed change raised few concerns and so should be accepted.

7.7 Plant – item of plant registration: renewals

This topic received a moderate volume of responses; with all stating that the proposed change would impose costs on their organisation, with little improvement to health and safety.

7.7.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 38.

Table 38: Current and changed requirements for plant – item of plant registration: renewals

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

Industries involved

Industries impacted by this change are those that require the use of plant equipment in their workplace. Plant equipment includes amusement structures, boilers, building maintenance units, lifts, mobile cranes, pressure vessels, tower cranes, and truck-mounted concrete placing units with booms. Therefore the range of industries affected by this area of regulation is diverse, ranging from mining and construction companies to manufacturing firms, dry cleaning businesses, amusement parks, local governments, and health and disability services. It also affects any workplace that has lifts or escalators. However it is important to note that this regulation only applies to “certain prescribed plant”, and therefore it will only affect businesses with specific items of plant.

Nature and size of businesses

Due to the broad nature of the requirement, any businesses that require plant machinery and equipment would be affected. The size of businesses impacted would include those of all sizes, from large mining companies to small independent dry cleaning businesses.

Summary of costs and benefits

Currently, registration of certain items of plant is only required to be renewed when there is a change of ownership, or if the item of plant is relocated or altered. The new requirements prescribe that these items of plant be renewed every five years.

Input from industry

The Australian Industry Group (AiG), National Disability Services, a large mining company [BHP Billiton WA], a respondent from the oil and gas industry [Woodside Energy], several local governments (Shire of Capel and Shire of Donnybrook Balingup), the Motor Trade Association, and a health industry respondent [South Metropolitan Health Service] do not feel that there are any practical benefits from the renewal of plant registrations, as it would not translate to a significant improvement in safety. Costs would be associated with directing resources to identify the items of plant that require registration renewal, as well as the actual renewal process. Two mining companies [BHP Billiton WA and Rio Tinto] anticipate a significant increase in costs to comply with the proposed changes as they have hundreds of items of plant.

AiG along with the Safety Institute of Australia and a respondent in the construction industry [Ausdrill] suggested that an appropriate transitional process is taken into consideration. This is to ensure that existing registered items of plant are not all required to be renewed simultaneously, as this would impose large costs on businesses that have multiple items of plant.

An amusement equipment business, Carnival Amusements, suggested that renewal of amusement devices be extended to 10 years due to the infrequency of their use (during weekends and over warmer months). They stated that a five year renewal period is “superfluous and unnecessary”.

A local government (Shire of Capel) and a mining company [Rio Tinto] questioned the five yearly renewal period and the reasoning behind proposed renewal frequency.

Input from WorkSafe

WorkSafe WA identified significant costs associated with implementing a five yearly renewal requirement for plant. Associated with these costs are the initial set-up costs for creating a more sophisticated computer database that will provide a centralised location for registration data and support the large increase in plant registration renewal. WorkSafe WA estimates that it will cost \$1.75 million for the required computer programming to support the new requirements.

Another important consideration for WorkSafe WA is that starting all renewals for existing registered items of plant on the same date will create a very significant peak processing time for WorkSafe WA every five years. This includes sending notices, processing payments, responding to enquiries and enforcing non-compliance for 30,000 items of registered plant. WorkSafe WA stated that over time as new registrations are issued with renewals, this peak demand may decline. However, small numbers of renewals spread over an extended period of time with a significant five yearly peak will create operational issues for the regulator rather than reduce costs. WorkSafe WA acknowledge that evenly spreading the registrations will mean some workplaces incur costs earlier than others, which is likely to raise fairness issues. The difference in time could be up to five years. It was also estimated that an additional 29 WorkSafe WA additional officers would be required to undertake the renewal process which equates to a cost of \$5.3 million.

Summary of benefits

- There were no benefits identified with the proposed change.

Summary of costs

- Most respondents noted that the new requirements would impose significant costs on their businesses with little or no improvement in health and safety.
- If existing registered items of plant are required to be renewed simultaneously, this would impose large costs on businesses that have multiple items of plant.
- WorkSafe WA would need to implement drastic upgrades to their computer systems and employ extra staff to accommodate the influx of registration renewals that will be need to be processed.

7.7.3 Assessment against criteria

Benefit Cost Analysis

As set out in section 4.5 of the RIS the proposed changes fail the *Cost Efficiency Test* as they result in a net cost of \$17 million (at 4% discount rate over 20 years).

As set out in section 4.6.4 of the RIS, when applying the *Threshold Benefit Cost Test*, the analysis shows that with the cost of injuries relating to plant at \$10.8 billion and WHS costs at \$17.5 million (both Net Present Value utilising a 4% discount rate over 20 years), the cost of injuries would need to be reduced by 0.2% to achieve a net benefit. It is unclear whether this would be achievable but it may be possible.

The As Low As Reasonably Practicable (ALARP) test was not considered relevant to this change as it is not strongly linked to the potential death of workers. However, due to the low initial threshold, there was little material change in the required reduction in health costs as the disproportion factor increased. Therefore, the ALARP test also indicated that it is unclear whether this would be achievable but it appears possible.

Equity / Competition

For small businesses, such as an amusement equipment business that hires out their devices on an irregular basis, a five year renewal period may be too frequent and may be associated with costs that may not be feasible for business operation.

Unintended consequences

No unintended consequences were identified.

Transitional

An important consideration for the transitional period is whether renewals for all existing registered items of plant will begin on the same date, as this will create heavy administrative work for WorkSafe WA every five years. For this reason, it might be better to stagger the implementation of the change to regulation. It would appear that a lengthy transitional period would be necessary (e.g., 3-5 years).

7.7.4 Direction

The proposed change should be accepted.

While a number of respondents disagreed with the proposed change the costs quoted are not substantial and have the potential to be offset by safety benefits.

7.8 Plant – mobile and tower cranes

7.8.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 39.

Table 39: Current and changed requirements for plant – mobile and tower cranes

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

The most basic type of mobile crane consists of telescopic boom mounted on a mobile platform - be it on road, rail or water, commonly called conventional or hydraulic cranes. Tower cranes are a modern form of balance crane that consist of the same basic parts. Fixed to the ground on a concrete slab (and sometimes attached to the sides of structures as well), tower cranes often give the best combination of height and lifting capacity and are used in the construction of tall buildings. The base is then attached to the mast which gives the crane its height. The proposed change introduces a significant strengthening of maintenance requirements of mobile and tower cranes.

Industries involved

This change will affect, to the largest extent, the construction industry. It will also require engineering service providers to develop appropriate capacity and skill to meet the increased demand for these inspections.

Nature and size of businesses

The nature and size of businesses affected by this proposed change will vary. It will include smaller operators, leasing businesses, insurers and engineering firms.

7.8.3 Summary of benefits and costs from change

Input from industry

While the current regulation requires maintenance to be performed, this new regulation will strengthen that requirement significantly. This appears likely to impose costs and potential safety benefits.

There is general agreement of the safety risk associated with the use of mobile and tower cranes, and it is noted that ten yearly inspections are required by regulation in other jurisdictions.

A respondent from the mining industry [Rio Tinto] made clear that it is important for equipment to be maintained appropriately. However they indicated that the new requirements will incur costs. They indicated that this proposed change takes the onus off registered managers to appoint a “competent person”.

Likewise, the Australian Industry Group is of the view that this proposed change will be workable. Two online survey responses were received (one from the mining industry and one from the construction industry) in relation to this change, both indicating that it will pose a cost to their organisation. However, no further information was provided.

Input from WorkSafe

WorkSafe WA will need to monitor the process and enforce the new regulation. Experience from Queensland suggests this will mean a large number of physical reviews by WorkSafe WA officers will be required.

Summary of benefits

- A robust ten-yearly inspection, above and beyond the current requirement to maintain the equipment in good order, will likely ensure a significant strengthening of safety standards²⁹.

Summary of costs

- Respondents did not estimate the scale of the cost increase but the Australian Industry Group commented that further work should be undertaken with the crane industry to ascertain these costs.

²⁹ For example, a 2008 Queensland study found that 19% of mobile or tower cranes received an unsatisfactory inspection report.

7.8.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Plant – mobile and tower cranes* was unable to be conducted.

Equity

Sourcing an appropriately qualified person to maintain, inspect and test the cranes may be difficult for work sites in regional and/or rural areas, and may be linked to high costs.

Competition

Ensuring that an appropriately qualified person is available may entail further training costs for employees, or costs associated with hiring a professional to complete the tasks. Depending on the number of cranes used by the business and/or the number of staff available who are already appropriately qualified, this added cost may affect business profitability and therefore competition in the market.

Unintended consequences

No unintended consequences were identified.

Transitional

Providing a reasonable period of advance warning before imposing this new requirement may better allow the industry and the required service providers to respond efficiently. It is also important to consider if this proposed change would apply retrospectively if implemented. Therefore it would appear that delaying implementation by 1 to 2 years would be beneficial for businesses.

7.8.5 Direction

The proposed change raised few concerns and so should be accepted.

7.9 Plant – registration: prefabricated formwork and boom type concrete placement units

7.9.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 40.

Table 40: Current and changed requirements for plant: registration – prefabricated formwork and boom type concrete placement units

<p>Boom type concrete placement units that are truck mounted require design registration.</p>	<p>Persons in control of businesses or undertakings will be required to obtain or ensure design registration for prefabricated formwork and boom type concrete placement units that are <i>stationary</i>, as well as truck mounted (mobile). Persons in control of businesses or undertakings will be required to also obtain “individual item of plant” registration for all boom type concrete placement units (i.e., it is not limited to Truck-Mounted (mobile) concrete placing units with booms). [Schedule 5, Part 2.3]</p>
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7.9.2 Background

Prefabricated formwork is used for pouring of concrete for various forms of constructions and booms are used to deliver the concrete into the formwork. The proposed new regulation requires registration of design of the formwork and boom type concrete placement units.

Industries involved

This change will affect, to the largest extent, the construction industry. It will also require engineering service providers to develop appropriate capacity and skill to meet the increased demand for these inspections.

Nature and size of businesses

The nature and size of businesses affected by this proposed change will vary. It will include smaller operators, leasing businesses, insurers and engineering firms.

7.9.3 Summary of benefits and costs from change

Input from industry

There was not a large response for a change with seemingly broad implications. The Australian Industry Group argued for a transitional arrangement to be put in place and not apply the requirement retrospectively.

A respondent from the mining industry [Rio Tinto] agreed with this proposed change.

Online respondents for this change variously thought this change could either impose a cost or produce a benefit.

Input from WorkSafe

WorkSafe WA will need to monitor the process and enforce the new regulation for design registration. Resources will need to be made available to enforce the new regulation.

Summary of benefits

- The change should induce higher design requirements and therefore higher safety standards, thus producing welfare benefits for workers and society.
- The change will likely bring about greater consistency in boom type concrete placement units, irrespective of whether they are truck mounted or not. This will prevent boom type concrete placement units from slipping through the design registration process.

Summary of costs

- Owners or users of prefabricated formwork and boom type concrete placement units will be required to ensure design registration and to cover this cost. If the new regulation is not imposed retrospectively then the cost will be low.

7.9.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Plant – registration: prefabricated formwork and boom type concrete placement units* was unable to be conducted.

Equity

No regional or small business equity issues were identified.

Competition

No competition issues were identified.

Unintended consequences

No unintended consequences were identified.

Transitional

The Australian Industry Group suggested a transitional arrangement be put in place and not apply the requirement retrospectively.

7.9.5 Direction

The proposed change raised few concerns and so should be accepted.

8. Examination of proposed regulatory changes: tilt-up construction, spray painting, welding, abrasive blasting, isocyanates and styrene and thermal comfort

This proposed change is a collation of five topics that are currently covered by specific regulations and would no longer be covered by regulation under the WHS model regulations. The topics are:

- tilt-up construction;
- spray painting;
- welding;
- abrasive blasting; and
- isocyanates and styrene.

For the purposes of the Regulatory Impact Statement, we separated *Spray painting* from *Tilt-up construction, welding, abrasive blasting, isocyanates and styrene*.

8.1 Spray painting

8.1.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 42.

Table 41: Current and changed requirements for spray painting

There are *prescriptions* in relation to safe work practices for *spray painting*. For example, there is a requirement for spray painting to be carried out in a booth that is in accordance with an Australian New Zealand standard.

No prescriptions in this area.

8.1.2 Background

Industries involved

Industries impacted by this change include those in construction, autobody repairs and refinishing, manufacturing, among others.

Nature and size of businesses

Business of all sizes would be affected by this change, from large construction companies to smaller independent businesses.

8.1.3 Summary of benefits and costs from change

Input from industry

The Motor Trade Association WA is strongly opposed to the removal of these prescriptions. The Shire of Donnybrook Balingup and a personal written submission (Tim Hunter) also expressed concern with the removal of the prescriptions, and the risk of reducing safety.

The Safety Institute of Australia and a respondent from the construction industry [Ausdrill] were of the view that removing these prescriptions may reduce safety and have a detrimental effect on the environment. They suggest retaining the current provisions as non-core WHS regulations.

Unions WA along with CPSU / CSA believe that the omission of any regulations specific to spray painting (such as carcinogens, respiratory sensitizers, reproductive toxins) should be remedied by including the South Australian, WA and NSW standards in regulation as the minimum protection.

Input from WorkSafe

WorkSafe WA inspectors indicated informally some concern with the removal of a specific regulation for spray painting. They indicated that WorkSafe WA do use the regulation and have issued approximately 100 improvement notices under this regulation in recent years. However, WorkSafe WA acknowledge that compliance with the existing regulation is poor.

Summary of benefits

- A clear benefit of the removal of this prescription is the reduced compliance costs incurred by businesses.

Summary of costs

- Most respondents for this topic were opposed to the removal of the prescriptions, acknowledging the safety risk this would pose. Feedback from WorkSafe WA indicates that this potential reduction in safety is likely to be a concern.

8.1.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Spray painting* was unable to be conducted.

Equity

No equity issues were identified.

Competition

No competition issues were identified.

Unintended consequences

No unintended consequences were identified.

Transitional

No transitional issues were identified.

8.1.5 Direction

The proposed change should be delayed. Further consideration should be given to whether the removal of the existing regulations for spray painting would reduce safety levels and whether these impacts could be adequately mitigated through the introduction of a Code of Practice.

8.2 Tilt up construction, welding, abrasive blasting, isocyanates and styrene

8.2.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 43.

Table 42: Current and changed requirements for tilt-up construction, welding, abrasive blasting, isocyanates and styrene

There are *prescriptions* in relation to safe work practices for tilt-up construction, *abrasive blasting, isocyanates and styrene*.

No prescriptions in these areas.

8.2.2 Background

Industries involved

Industries impacted by this change include those in construction, autobody repairs and refinishing, manufacturing, among others.

Nature and size of businesses

Business of all sizes would be affected by this change, from large construction companies to smaller independent businesses.

8.2.3 Summary of benefits and costs from change

Input from industry

The Motor Trade Association WA is strongly opposed to the removal of these prescriptions. The Shire of Donnybrook Balingup and a personal written submission [Tim Hunter] also expressed concern with the removal of the prescriptions, and the risk of reducing safety.

The Safety Institute of Australia and a respondent from the construction industry [Ausdrill] were of the view that removing these prescriptions may reduce safety and have a detrimental effect on the environment. They suggest retaining the current provisions as non-core WHS regulations.

Input from WorkSafe

WorkSafe WA inspectors indicated informally that Western Australia is the only state with a regulation for tilt-up construction, which was developed following a series of incidents around 10 years ago.

WorkSafe WA noted that there is currently no Code of Practice that is relevant to this topic. Overall the WorkSafe WA inspectors indicated that work practices had improved in this area and it is currently unclear whether removing the regulation would impact on these practices.

In 2011-12, WorkSafe WA identified 405 tilt-up construction notifications that they investigated. The proposed change would not require WorkSafe WA to be notified of any tilt-up construction work, lessening the workload for them.

Welding

WorkSafe WA inspectors indicated informally that they are not concerned with the removal of a specific regulation for welding, in part as this is partly covered by a Code of Practice.

Abrasive blasting

WorkSafe WA inspectors indicated informally that they are not concerned with the removal of a specific regulation for welding, in part as this is covered by a Code of Practice.

Isocyanates and styrene

WorkSafe WA inspectors indicated informally that they have not tended to rely on the specific regulation for styrene and isocyanates. Instead WorkSafe WA has tended to rely on regulations for Hazardous Substances.

Summary of benefits

- A clear benefit of the removal of these prescriptions is the reduced compliance costs incurred by businesses.

Summary of costs

- Most respondents for this topic were opposed to the removal of the prescriptions, acknowledging the safety risk this would pose.

8.2.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Tilt-up construction, welding, abrasive blasting, isocyanates styrene and thermal comfort* was unable to be conducted.

Equity

No equity issues identified.

Competition

No competition issues were identified.

Unintended consequences

None identified.

Transitional

WorkSafe WA had previously advised that if there were no national Codes of Practice that they may construct their own guidance material.

8.2.5 Direction

The change should be accepted. However, consideration should be given to the development of additional guidance or codes of practice.

8.3 Thermal comfort

8.3.1 Current and changed requirements

WorkSafe WA provided a summary of the current and new requirements of this proposed change as set out in Table 42.

Table 43: Current and changed requirements for thermal comfort

<p>An employer <i>must ensure</i> that, in a workplace in a building or structure, <i>heating and cooling is provided</i> to enable employees to work in a comfortable environment, as far as practicable.</p>	<p><i>No prescription</i> for this.</p>
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8.3.2 Background

Industries involved

The proposed change potentially impacts on a broad range of businesses across all industries. Discussions with WorkSafe WA indicate that the definition of “building or structure” would include vehicles.

8.3.3 Summary of benefits and costs from change

Current requirements dictate that an employer must ensure that heating and cooling is provided to employees to ensure a comfortable working environment. The new requirements have removed this prescription.

Input from industry

Discussion of the proposed change drew a broad range of responses from workforce participants.

One respondent was supportive of the proposed change and stated:

Adoption of the proposed regulation will benefit businesses as it cuts red tape and brings this topic back to managing it under general duties of the PCBU.

The Motor Trade Association WA is opposed to the change and believes the current regulations should be retained while the Shire of Capel believe that the proposed change will lead to a reduction in health and safety in the workplace.

One respondent commented:

The provision of a thermally comfortable working environment is hard to ensure employers provide even with a legislated requirement. Removing this protection will enable employers to require employees to work in uncomfortable thermal environments with no recourse.

The Safety Institute of Australia and a respondent from the construction industry [Ausdrill] stated that thermal comfort regulation is required for areas of Western Australia that experience extreme weather such as the northern parts of the State.

On the other hand, the Australian Industry Group (AiG) do not believe that the proposed change would have a significant impact on industry as this is addressed in the Code of Practice for ‘managing the work environment and facilities’. A respondent in the mining industry [Rio Tinto] stated that in the event that employees are likely to be at risk of heat illnesses then the general duty of care of the PCBU could be utilised. It was noted by a respondent that risk assessments would still need to be conducted to ensure the health and safety of workers.

Input from WorkSafe

Marsden Jacob interviewed two WorkSafe WA inspectors who indicated informally that they do not use this regulation heavily.

The inspectors indicated that where safety is an issue there are other elements of the legislation they are able to rely on - relating to provision of a safe workplace.

Summary of benefits

- This may potentially reduce compliance costs for employers.

Summary of costs

- There is concern among a number of respondents that a lack of prescription in this area will lead to a significant reduction in worker health and safety.

8.3.4 Assessment against criteria

Benefit Cost Analysis

As there were insufficient data available, a benefit cost analysis for *Thermal Comfort* was unable to be conducted.

Equity

No regional or small business equity issues identified.

Competition

No competition issues were identified.

Unintended consequences

No unintended consequences were identified.

Transitional

It was suggested that there be preparation of additional guidance or Codes of Practice for transitional provisions prior to implementation.

8.3.5 Direction

The proposed change should be accepted as the current regulation is not used extensively and so its removal is unlikely to have a substantial impact.

9. Other important matters

This chapter draws together several other important issues:

- definitions in the model WHS Act;
- first stage Codes of Practice;
- other regulation topics raised by respondents; and
- responses related to transitional provisions.

9.1 Definitions in the model WHS Act

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

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

While these definitions are not strictly within the scope of the Regulation Impact Statement, these terms are used throughout the regulations and so interact with changes that arise in the model WHS regulations. For this reason, comments received on the benefits and costs arising from these and other changes in legislation were also compiled.

9.1.1 Overview

Respondents were asked about their views of the operation of the Model Act in respect of the Regulations and in particular the definitions in the Model Act. The views expressed included descriptions of difficulties with the definitions in the legislation *per se*, concerns that provisions contradicted equally applicable legislation that the Model Act was over prescriptive or under-prescriptive in parts as well as being inconsistent with the WA OH&S Act.

A number of submissions proffered cost-benefit information relating to these issues and representative extracts are given below together with proposals for dealing with the issues raised either through legislative change, regulatory change or other measures. Specific definitions and related issues included the following:

- PCBU:
 - overlapping duties;
 - multiple PCBUs;
 - Worker and PCBU;
 - broadening the pool of people now accountable; and
 - volunteers;
- over-prescription;
- contradictory provisions;
- inconsistencies between the Model Act and WA OHS Act; and

- room for doubt in drafting.

Overall the general criticisms are that the definitions are unduly burdensome and questionable in terms of promoting safety. A number of definitions in particular are not supported, either because they are:

- ambiguous;
- likely to create safety failures;
- being removed and therefore creating uncertainty; and
- expanded to such an extent as to be unduly burdensome or will require clarification and training of the industry by the regulator.

Alternatively, definitions are not supported because they are:

- not sufficiently specific, making the consequential bureaucratic processes difficult; or
- too specific, creating costs for smaller jobs.

Of greater concern are situations where a prescription (in the form of AS/NZS standards) has been removed, creating ambiguity in interpretation which, when combined with ambiguity over who is responsible, creates unsafe working conditions.

The specific definitions commented on are listed in **Table 44**. The table shows whether the definition in its current form is supported and gives an indication of the frequency of response. (Larger balls indicate multiple similar responses, smaller less).

It can be seen that concerns over PCBU are most prevalent.

The next sections describe each issue, indicate coverage and scale of impact and provide quotes and illustrative points drawn from the submissions.

Table 44: Type and depth of stakeholder response to Model Act definitions

PCBU	PCBU
Reasonably practicable	Reasonably practicable(should include actual control)
High risk	Worker
	Divers
	Prescribed serious illness
	Frequently required (Audiometric testing)
	Personal Protective Equipment
	Competent person (Crane or Plant)
	Construction project
	Prescribed items of plant
	Emergency Removal (Asbestos)
	Notifiable incident
	Notifiable illness
	Import (Plant)
	Testing electrical equipment (standard removed)
	Covering of holes and edge protection (standard removed)
	Exceptional circumstances (plant inspections)

9.1.2 The impact of changes in definition

PCBU (Person Carrying on a Business or Undertaking)

PCBU attracted a great deal of comment with specific and important issues raised in the areas of disability, aged care, mental health and for volunteers. The definition expands the range of people with accountability or responsibility for safety from the range identified in the current WHS Act. The expansion is as much as two-fold and is largely raised in areas traditionally the province of volunteers and welfare workers as well as in physical environments that would otherwise be considered non-standard workplaces if at all. The private home is one such example, potentially attracting liability in asbestos, aged care, disability care and mental health. Similarly the identification of the entity – person, company or other legal entity - represented as the PCBU is unclear and apparently equally expansive. Unions WA commented:

The model regulations lack clarity as to who the duty holder is in many circumstances. This is especially the case when the single word person is used. It is often unclear if the duty holder is a PCBU or a natural person, or a manufacturer etc. This requires re-drafting across the regulations.

PCBU will improve safety

The definition of PCBU did raise some support. For example, the Australian Industry Group (AIG) took the view that the new definition underpinned an approach that is:

far more consistent with the expectations of the regulators and the courts in relation to the complex interactions in some workplaces' and particularly for 'workplaces where there are high levels of contracting and/or labour hire arrangements'.

In contrast, the WA OSH Act showed a:

lack of clarity about who has duties to whom (which needed to be addressed by the laws.

Accordingly, the:

concept of PCBU and worker more accurately reflects the obligations of organisations than the current complicated set of provisions included in the WA OSH Act.

This is achieved because the definition creates integrated obligations to ensure and to consult, cooperate and coordinate. Together, these move the workplace questioning from 'what can I presume someone else is doing' to 'what do I need to do'.

PCBU: overlapping duties

The most repeated comments related to the need for clarity of the various roles and responsibilities of those people involved in safety situations. The new definition is not clear and the effect is compounded with the removal from the Act of the concept of control which had previously narrowed the field to those directly in control of safety and accordingly responsible. The broader definition brings about some consequences not considered desirable including that the regulator may now choose which of a range of PCBUs to hold responsible. In addition, the definition of worker and of PCBU may apply to one or more parties in combination at the same time. The ABN group commented:

Clause 20 of the WHS Act establishes the duties of a person with management control of a workplace. Currently Builders rely on the expertise of contractors in determining risk or liability of worksite actions. Subcontractors and the self-employed will have ambiguous responsibilities as both workers and PCBUs for the purposes of the Act. As a result of this conflict in roles and responsibilities, the proposed Act increases the risks for OHS compliance and certainty. (

A mining services contractor [Ausdrill] commented that the situation is compounded where there are multiple tenants in a building.

The Chamber of Commerce and Industry commented:

Employers are particularly concerned about the increased responsibilities imposed by the model Act and the fact that these don't appear to have been properly (or at all) assessed in relation to impact in Western Australia and the overarching principles which will come into play. The concept of "a person carrying on a business or undertaking (PCBU)", which extends the class of people who will fall into the category of primary duty holder, the extended definition of "worker" and the provisions related to officer responsibilities aren't included in the current consultation papers.

The Disability Services Commission commented that there is concern that there is potential for unintended negative consequences if the definition of PCBU is applied to people with disability. As disabled people move to exert greater control over their lives, including self-management of funds and services, there is potential that some may be caught by the definition of PCBU as they manage people providing services to them. The Commission is seeking exemption from the requirements of the Act arising from PCBU classification for disabled people who employ support workers.

Multiple PCBU options create uncertainty

Concerns over potential candidates for the role of PCBU were also evident where time and intervening events changed an entity's status.

- S425(1) requires that the PCBU has an asbestos register for the workplace. As the wording stands this will be an additional cost to the business, regardless of whether they are the building or premises owner. The fact that both parties can be viewed as the PCBU could give rise to the situation in which nothing is put in place while the parties debate who is responsible for providing the relevant documents.

The National Electrical and Communications Industry WA (NECA) recommendation supported by the Safety Institute of Australia (SIA) is that the building owner be determined to have this responsibility.

- In respect of labelling hazardous chemical imports the SIA recommends that should the PCBU also be a supplier then they must comply, however if the PCBU is the end user only then the onus should be on the importer.
- The Roofing Tile Association commented that the concept of PCBU, while supported, adds ambiguity between actual tradespeople engaged in activities and others who set the specifications and standards, which may cause various parties with a duty of care to be unsure of their obligations.

Worker and PCBU

The status of a worker as defined is equally confusing and raises particular adverse consequences for certain groups.

- The requirement is for the PCBU to have responsibility for a worker. This is ambiguous as it could mean workers other than employees of a PCBU and could include workers for contractors, sub-contractors or labour hires – who have their own PCBUs. (Raised by a mining services contractor [Ausdrill])
- The meaning of PCBU is confusing and contradictory with regard to the role of the person as a worker, contractor or subcontractor, and the responsibility and duty of care entailed in the definition of “exercise control” rather than “influence” decision in a workplace. (Raised by a representative from the construction industry [Civil Contractors Federation WA])
- The audiometric testing requirement of the PCBU is towards a “worker”; which could be interpreted to mean any worker (not necessarily only the worker of that PCBU) that could be captured under this requirement e.g. a Contractor or sub-contractor; labour hires etc. This would be significant burden on a PCBU and could result in confusion relating to duplicated obligations of PCBUs that have dual obligations within a workplace.
- PCBU responsibilities must be competently fulfilled by some entity. Disability service organisations have traditionally served in this role but the model Act provisions would shift this to the worker who would bear both worker and PCBU responsibilities (in lieu of the disabled person owner) in relation to services in disabled person dwellings. This has potential to create legal opportunity for dispute if workers’ understanding of their risks and obligations are not clarified. (Raised by the National Disability Services)

Impact of PCBU definition on individuals receiving care services

- Collaborative work between WorkSafe WA, National Disability services and the Disability Services Commission has indicated that some recipients of disability services who self-manage their funds are likely to fall within the definition of a Person Conducting a Business or Undertaking. The Disability Services Commission commented that:

Work is being undertaken to identify and develop strategies that enable people with disability to achieve as much choice and control as they wish.
- This comment appears to imply a spectrum is likely to exist, where only some recipients of disability services fall within the definition of a PCBU. Those recipients deemed to be a PCBU are likely to incur additional responsibilities and costs.

Broadening the pool of people now accountable

- If the definition of amusement devices includes playground equipment there could be a considerable cost arising from the interpretation of “competent person” by the regulator and whether this is a playground assessor or a structural engineer. A similar definition related cost increase may arise in regular inspections of the council crane – currently undertaken by a consultant not a structural engineer. (Raised by the Shire of Donnybrook Balingup)

Volunteers

National Disability Services state that confusion regarding responsibilities extends to volunteers – who make up a significant proportion of service providers in the disabilities services sector.

The classification of worker under the model Act also extends to people who provide informal and unpaid support and may be unaware that they are ‘volunteers’ and, under the proposed legislation, also ‘workers’.

- The Shire of Capel depends on volunteers in libraries, home help, community care services and the bush fire brigade. Defining volunteers to be workers places an obligation for training when the person may work as little as 40 hours per year. This will significantly increase administrative and operating costs. The additional requirements may also lead to a reduction in volunteering.
- Emergency Services Associations Management Committee were most concerned about officer liability and the general burden of additional red tape. They are concerned that WHS will bring additional red tape which will make it harder to volunteer. The concern is that these factors will combine to discourage volunteers and reduce numbers – which would have a substantial impact on regional communities.
- Emergency Services Associations Management Committee commented that the definition of worker and workplace has the potential to impede the duties of volunteer emergency responders who by the very nature of their duty are exposed to hazards. While every effort is made to ensure that the response and equipment used is safe, it is practically impossible to apply the same safety measures to a rapidly developing emergency situation than to a standard workplace. It was noted that emergency services volunteers are different from other volunteers as work is not planned in advance. Furthermore they do not have a standard workplace environment and by definition the workplace is not safe.

Definition of construction

A large manufacturing company [Austral] that produces large custom built vehicles commented:

The model WHS Legislation may be interpreted to reclassify [Austral's] workplace as a construction site. Currently [Austral] is classified as a Manufacturer which is correct and aligns with the other classification systems industrially e.g. ANZIC Code, Industrial Awards etc..

Definition of import

The Plastics and Chemicals Industries Association noted that the model WHS Act defines the term ‘import’ as to bring into the jurisdictions from outside Australia. Currently in WA ‘import’ is defined in the *Occupational Health and Safety Act, 1984* as to bring into the state whether from outside Australia or otherwise. The Plastics and Chemicals Industries Association commented that:

The Consultation RIS portrays the adoption of the WHS ‘import’ definition in a negative manner. It notes that, by adopting the WHS ‘import’ definition, that there could be potential for delays and increased risk to workers and property if an error on a label or SDS is identified in WA, as it would require the cooperation of the WHS regulator in other jurisdiction to correct, if the first supplier in Australia was in another jurisdiction.

The Plastics and Chemicals Industries Association does not agree with this view and recommends the adoption of the term ‘import’ as proposed in the WHS Act.

9.1.3 Other changes in the model WHS Act

Risk assessment not prescription

- A mining company [BHP Billiton WA] commented that a modern business risk based approach to OHS is needed to ensure effective controls are in place for the specific requirements of all equipment and work tasks. Prescriptive guidelines may not accord with risk assessments and may well lead to ineffective or cost inefficient outcomes. Model regulations should provide minimum prescription to leave flexibility for specific workplace efficiency and effectiveness.

Contradictions with other legislation

The definition of a person undertaking electrical work appears to be redefined in the model legislation as well as directly contradicting other pieces of legislation.

- In 146(2)(g), within the context of 146(2) it would seem that (g) expressly deems that an unqualified person undertaking electrical work, is not undertaking electrical work. Currently in Western Australia, an Electrical Apprentice is required to have a training licence issued by Energy Safety WA and whilst they do not work on “live” systems they are still deemed to be undertaking electrical work.
- The National Electrical and Communications Association WA (NECA WA) recommends clarification of 146(2)(g) to ensure that the proposed regulations do not contradict existing electrical safety legislation/standards or definitions.
- The prohibition on working with live or energised electrical equipment (154) cuts across the definition of what is able to be done to test whether a system is live before isolating it or in undertaking fault loop or impedance testing.
- NECA WA is of the view that certain testing activities are prohibited by the definition of live systems and constraints placed on testing in 157(1)(c) and this presents a serious safety issue. As identified in the draft Electrical Code, testing is the means of ensuring that the qualified electrical worker knows what they are confronting. If they do not know and are prohibited from knowing then they will expose themselves to inordinate danger and work would not proceed.
- NECA WA recommends that the words “required under regulation 155” under 157(c) should be deleted.
- A health industry respondent [South Metropolitan Health Service] noted that exposures to blood and body substances are already reported to Healthcare Associated Infection Surveillance Western Australia (HISWA). There are conflicting requirements of maintaining confidentiality which will cause increased demands on OSH staff time and resources.
- The Model regulations (Part7.1) do not apply to therapeutic goods defined in the Therapeutic Goods Act but OSH Regulations. 1996 Part 5 includes regulations for scheduled carcinogens like Cyclophosphamide even though they are Therapeutic Goods and the regulations should not apply.

INCIDENT NOTIFICATION

NECA WA commented:

The Model Work Health and Safety Act (2011) require Persons Conducting a Business or Undertaking (PCBU) to notify their Regulator in the event of a death, serious injury/illness or dangerous incident that arises out of the conduct of the business of undertaking.

The introduction of the serious incident category and increased reporting responsibilities on the PCBU will initially result in confusion and will require a significant information campaign from regulator.

The City of Cockburn also commented that the introduction of the serious incident category will result in a broadening of reported incidents.

9.2 First stage Codes of Practice

In addition to the changes in regulation, the Information and Issues paper sought input on the first stage Codes of Practice. In this section of the consultation process, respondents were asked to identify:

the likely benefits/problems and costs that may arise as a consequence of the adoption of the first stage model codes of practice in Western Australia

It is intended that the model Codes of Practice will replace the existing Codes of Practice approved under Western Australia's *Occupational Safety and Health Act 1984* or Western Australian guidance note.

9.2.1 First stage codes of practice

The Information and Issues paper outlined 11 first stage Codes of Practice. Some already have a Code of Practice on the same topic in Western Australia. The codes are listed below:³⁰

- How to Manage Work Health and Safety Risks
- Hazardous Manual Tasks
- Managing the Risk of Falls at Workplaces
- Labelling of Workplace Hazardous Chemicals
- Preparation of Safety Data Sheets for Hazardous Chemicals
- Confined Spaces
- Managing Noise and Preventing Hearing Loss at Work
- Managing the Work Environment and Facilities
- Work Health and Safety Consultation Cooperation and Coordination
- How to Safely Remove Asbestos
- How to Manage and Control Asbestos in the Workplace

For these particular codes, respondents were asked to consider:

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

9.2.2 Responses provided

No respondents commented on the costs and benefits of the codes. However, a number of respondents provided general comments on the content of particular codes, which are summarised in turn below.

³⁰ Copies of the Codes of Practice are available at: <http://safeworkaustralia.gov.au/Legislation/model-COP/Pages/Model-COP.aspx>

How to manage Work Health and Safety risks

The Australian Industry Group stated:

Throughout the Codes of Practice it is highlighted that, whilst undertaking a risk assessment may be an essential part of the process in some circumstances, it is not necessary if “you already know the risk and how to control it effectively”.

For many years Ai Group has been a strong supporter of this approach, which was introduced in Victoria in 2007.

In contrast the Chamber of Commerce and Industry stated:

There is a strong view by industry that the (model) Code of Practice on Risk management is appalling in that it lacks any clear and user-friendly methodology for the PCBU (particularly one less experienced with risk management concepts) to be able to follow and implement, and in its current format will impose significant cost to any organisation to follow. There will be a need therefore to ensure that the Regulator has a solid educative program in place to assist the PCBUs in their understandings and application.

Managing the Risk of Falls at Workplaces

Roofing Tile Association of Australia Inc. stated:

There can be no serious objections to the adoption of the Model Act, Regulations and Codes of Practice as they apply to prevention of falls in the housing industry as the provisions have been subject to extended debate and fully costed through the process that led to majority acceptance by the Ministerial Council and publication by SWA.

How to Safely Remove Asbestos & How to Manage and Control Asbestos in the Workplace Asbestos

A respondent from the demolition industry [Demolition Works, Berriman Resources Pty Ltd] stated:

I have concerns with the current and new codes of practice coming out because we do not have a clear work method of removal covering difficult situation to remove asbestos from structures and dealing with residue entrapped in construction structures this area leaves all contracts open to the inspectors scrutiny and interpretation of the regs and codes and can lead to notice being issued and acted upon by the compliance officers and would result in a unfair and punitive cost to small business.

National Electrical and Communications Association WA (NECA WA) stated:

Review the wording of the identified regulation to enable safe work to continue on meter boards or ensure clarity that this is contained in the associated Code of Practice.

Review (asbestos register) to ensure that the building owner has the responsibility to provide an asbestos register for their building and define the timeframes for review i.e., annual, bi-annual etc. This can be addressed in depth in the Code of Practice if necessary.

Confined Spaces

The Western Australian Volunteer Fire and Rescue Services Association (Inc.) stated it:

would like to see a Code of Practice for confined spaces, but ... the requirements for emergency responders would have to be realistic and practical in emergency situations.

Work Health and Safety Consultation Cooperation and Coordination

City of Cockburn stated that the requirements for employee consultation under this code were:

Untested but could become bureaucratic.

9.2.3 Other comments

Process for developing further codes of practice

An informal comment provided by a mining company representative raised concerns about the level of consultation for further codes of practice. This comment is partially supported by the Master Builders Association of WA which stated:

MBAWA ... took the position it would assess the draft model harmonised laws and codes of practices on their respective merits as part the review process via Master Builders Australia. We continue to do so today as draft codes of practice are released for comment by Safe Work Australia (SWA) though the time frames provided by SWA for response often remains totally inadequate for proper consideration and informed input.

General diving

The family of a diver who died in a work place incident provided the following comments on the existing General Diving code:

The existing "General Diving" code simply does not protect the divers and is an out-dated Code of Practice. It's time it came into present time that is 2012. A lot has been learned from the "Commercial Diving" regulations and it is every employee's right to have the best protection they possibly can. Change is necessary and the Code of Practice is available and ready to be implemented.

Model Code of Practice: facilities for construction sites

A group related to building and construction [Housing Institute of Australia] stated:

[HIA] understands there is a Model Code of Practice – Facilities for Construction Sites that outlines the provisions for amenities for construction sites. This Model Code delineates between the different types of construction and provides a brief overview of the amenities required.

The absence of a specific reference in the Regulations to Codes of Practice for different industries will create confusion over what types of facilities are reasonable for a housing construction site, and potentially results in a (mis) interpretation that a housing construction site would also require meal rooms, microwaves, and hot water for hand washing

Emergency plans

A group related to building and construction [Housing Institute of Australia] stated:

Regulation 43 (Part 3.2) requires that a PCBU must ensure that an emergency plan is prepared for the workplace and these are to be tested. It requires also, Reg 43(1)(c) that all workers are to be provided information, trained and instructed in the procedures.

The respondent [Housing Institute of Australia] recommends that clearer guidance be given to residential building industry to clarify the practical application of this regulation, possibly in a relevant or general Code of Practice.

General electrical safety in workplaces and energised electrical work

NECA WA stated:

The concerns we have with this section of the proposed regulations (General electrical safety in workplaces and energised electrical work) are the lack of clarity around implied understandings and some clauses appear to prohibit what is industry recognised good safe work practice. To ensure clear interpretation of the regulations the following matters need to be clarified either in the regulations or in the supporting codes of practice.

9.2.4 Analysis of comments provided

The majority of the comments provided do not fit well within the RIS criteria of assessing whether the legislation will deliver a net benefit.

However, a common trend amongst these comments is the request for greater detail or clarity – which the respondents anticipate can be provided through codes of practice.

9.3 Other topics raised by respondents

In addition to the 39 topics identified by WorkSafe WA and summarised in the Information and Issues Paper, respondents were invited to comment on any other changes in regulations they had identified.

While a number of respondents identified other issues - none of the respondents provided sufficient information to allow an assessment (either qualitative or quantitative) of the benefits and costs of the proposed changes. For this reason the other topics identified are summarised in general terms below and were excluded from the Benefit Cost Analysis.

Other regulation topics raised by respondents beyond the changes outlined in the Information and Issues paper include:

- Falling objects
- Prevention of entry
- Definitions of certain terms
- Facilities for construction sites
- Excavation work notification
- Administrative obligations
- Duties of designers of structures
- Site security
- Referencing of Australian standards.

It is noted that the construction/building industry provided many of the responses in the following section. In addition the National Electrical and Communications Association WA (NECA) identified a number of issues relating to the regulations.

9.3.1 Expanded role of Resource Safety Division

Background

Under the proposed arrangement for the implementation of WHS, Resource Safety Division within Department of Mines and Petroleum will continue to oversee the implementation and enforcement of occupational health and safety on mine sites. The only significant change from the current arrangement is that under WHS the Resource Safety Division would be responsible for all elements on the mine site – including construction, which is currently generally excised from the mine site designation.

Respondent comments

A number of respondents attending the regional forums were supportive of Resource Safety Division's ongoing and enhanced role, but were concerned that this would impact on the levies paid by miners to support the Resource Safety Division and its inspectorate.

9.3.2 Asbestos

Asbestos management plan

NECA WA notes that under regulation 429 if asbestos or ACM is identified at a workplace, or likely to be present at a workplace, a person with management or control of the workplace must ensure that an asbestos management plan for the workplace is prepared and maintained.

NECA WA estimates that this would take around two days to complete and so would cost around \$2,500 per site.

Asbestos health monitoring

NECA WA notes that regulations 435 – 444 (Part 8.5.Division 1) is devoted to Asbestos Health Monitoring. NECA WA comments:

This section of the proposed Regulations represents a significant change in the management of Asbestos related safety to our membership and with these change significant increases in operating costs. Electrical and Communications contractors will now be required to introduce asbestos related health surveillance at the pre-employment process and train all existing staff in the new requirements in this area.

In addition NECA WA notes that regulation 436(b) appears to contradict regulation 437(1) as one recommends monitoring by a medical professional while the other states that examination by a medical practitioner is required.

Work involving asbestos

NECA WA comments that:

419(1) dictates that a PCBU cannot direct an employee to work on asbestos – Most domestic and commercial meter boards are known to be asbestos, currently electrical contractors are able to work safely on these boards using appropriate safe working practices. The inability to do this in the future is going to result in a significant cost to households and businesses. It would mean that prior to any household work being carried out a licenced asbestos removalist would need to be engaged.

419(2)(c) permits work defined as maintenance or servicing but not all work carried out by the industry on asbestos boards necessarily come under these definition's.

Alternative enforcement arrangements for asbestos

Demolition works stated:

We understand we cannot change the current regs and codes but I would like to high light and ask the following questions.

I believe whatever the new codes and regs are that the system should not be reliant on policing from the relevant authorities but to have the best impact should form part of the administrative process to obtain a building lic e.g., Rat baiting most councils will not issue a demolition lic if a lic pest control certificate is produced by the applicant. Simular administrative practice should be made compulsory by councils.

9.3.3 Electrical work

NECA WA identified a number of issues in the regulations relating to electrical work, including those that were not included within the 39 changes identified by WorkSafe WA in the Information and Issues paper. Due to the large number of topics these are summarised in a tabular form in Table 45 below.

Table 45: Suggested changes from NECA WA

144(1)(d)	General electrical safety in workplaces and energised electrical work	Delete subregulation 144(1)(d) and adopt WA Electrical Licencing Regulation 1991 definitions to prevent confusion or opportunities for misinterpretation
145(1)(a) 145(3)(a)	Electrical installation is “permanently electrical connected together” 145(3)(a) excludes all plug and socket connections as “not permanently electrical connected”.	Adopt WA Electrical Licencing Regulation 1991 definitions to prevent confusion or opportunities for misinterpretation.
146(2)	Certain exclusions for electrical work involve assessment of electrical risk to ensure the work can be undertaken safely	Provide clarification in the Code of Practice and ensure that any ambiguity is removed that might lead to unqualified persons undertaking electrical assessments or work
146(2)(f)	Appears to permit an unqualified person to locate and mount electrical equipment so long as it is not connected to an electrical supply.	Remove 146(2)(f) or clarify
146(2)(g)	Within the context of 146(2) it would seem that (g) expressly deems that an unqualified person undertaking electrical work, as not undertaking electrical work.	Need for clarification of 146(2)(g) to ensure that the proposed regulations do not contradict existing Electrical safety legislation/standards or definitions
154	Electrical work on energised electrical equipment — prohibited	The easiest solution at this point is to delete the words “required under regulation 155” from sub-regulation 157(1)(c).
155(1)	Specifically permits live testing in relation to the isolation process before (ie prior to commencing) de-energised electrical work and that is satisfactory. However 155(2)(a) is not so clear.	Under 157(c) delete “required under regulation 155”
155(2)(b)	Each high-voltage part is earthed after being de-energised.	Amend 155(2)(b) to read “each high voltage part is earthed after being de-energised and tested (if possible).”
157(1)(c)	it is necessary for the purpose of testing	Delete the words “required under regulation 155”, under 157(1)(c).
157(2)	157(2) that clarifies testing.	Delete 157(2). If this is not possible then clarification needs to occur in the Code of Practice
Division 4 of Part 4.7	Division 4 of Part 4.7 is notably silent on “fault-finding”.	Fault-finding should be grouped with testing particularly in relation to exemptions in relation to energised electrical work.

WorkSafe WA raised tag and test requirements for electrical products:

The WHS regulations apply to workplaces generally and require that electrical equipment is regularly inspected and tested by a competent person in prescribed conditions. The OSH regulations prescribe that all portable electrical equipment used on a construction workplace is to be tested and tagged in accordance with AS/NZS 3012:2003 and carried out by a competent person who is either a licensed electrician or person who has successfully completed a competency-assessed training course in the use of a Portable Appliance Tester. These prescriptive requirements are not included in the WHS regulations.

The removal of the prescription is likely to lead to savings for some workplaces. However, without the prescription, differences in views are likely between inspectors and PCBUs and workers at construction workplaces about the need for inspection and testing of electrical equipment.

9.3.4 Falling objects

The ABN Group stated:

The proposed provisions do not provide practical guidance or certainty on what is required. Erection of catch platforms is not considered a practicable measure. A roof carpenter for instance may well be on a roof for a couple of days, therefore erecting a catch platform will only add unnecessary cost to the average house.

The estimated cost associated with these provisions is largely dependent on the outcome of the falls provisions. However, it could well add a further \$2,000 to \$3,000 to the cost of the average house.

It is noted that the proposed change relating to falling objects may lead to an increase in compliance costs but to ask for guidance appears counter-intuitive as this would only serve to add more effective regulation which runs contrary to their general criticism of more red tape.

9.3.5 Prevention of entry

A respondent from the housing industry [HIA] stated:

Regulation 306 requires that a PCBU who proposes to excavate a trench at least 1.5m deep, must ensure, as far as reasonably practicable, that the work area is secured from unauthorised entry (including inadvertent entry)

The above appears to take the WA requirement to require suitable barriers a step further.

Home builders at times need to excavate to this depth on a housing site. It appears that they would be required, if the trench is left open, to enclose the site or a part of the site when it is necessary to leave it open.

Although difficult to estimate the cost because of the varying requirements a builder has indicated the cost of doing so will be approx. \$2000.

Although a qualification is included in 306(2)(b) to take into account the likelihood of unauthorised access occurring, if the site is near a school or open over a weekend the risk is obviously heightened and securing a site is prudent for compliance purposes.

9.3.6 Definitions of certain terms

Hazardous chemicals

Unions WA and CPSU / CSA stated:

There are many hazardous tasks which have been ignored by these regulations such as foundries, welding, electroplating and spray painting. Depending on the composition of the metal, welding can produce fumes containing cadmium, nickel or chromium. These hazardous tasks currently exist in regulations in states including WA and must be adopted in regulation as the minimum protections for all workers.

There is also a lack of positive duties i.e., no duty holder has an obligation to classify substances as hazardous. There is also no requirement to undertake a risk assessment or to document such a process.

A respondent from the mining industry [BHP Billiton WA] stated:

The Model Regulations change the term “Hazardous Substances” to “Hazardous Chemicals”. It is [BHP Billiton WA’s] view that this change is inappropriate and will cause confusion. The term “Hazardous Chemicals” is likely to only be associated with chemicals that come in a bottle or container and are used for some part of processing. The term would not be associated with many substances that are hazardous, for example, metal concentrates, ores, cutting concentrate, welding electrodes and building materials.

9.3.7 Facilities for construction sites

A respondent from the housing industry [HIA] stated:

[HIA] understands there is a Model Code of Practice – Facilities for Construction Sites that outlines the provisions for amenities for construction sites. This Model Code delineates between the different types of construction and provides a brief overview of the amenities required.

The absence of a specific reference in the Regulations to Codes of Practice for different industries will create confusion over what types of facilities are reasonable for a housing construction site, and potentially results in a (mis) interpretation that a housing construction site would also require meal rooms, microwaves, and hot water for hand washing.

[HIA] see risks that such uncertainty will not only lead to industrial issues arising on sites but also unnecessarily drive up the costs of housing construction.

For instance, [HIA] expect it will cost an additional \$2,500 - \$3,000 for an average project home to hire a meal room for the duration of a project. In addition, it is extremely impractical and unnecessary to have a meal room on a single detached dwelling site given that there is usually only several persons on site at any one time, the decreased size of blocks of land will hinder access and egress, and where it does not fit correctly on site it could become a public safety issue.

[HIA] recommends that to provide certainly for the industry, guidance is provided on facilities required for residential building sites.

Similarly, the ABN Group stated:

Specific reference is required as to what facilities are reasonable for housing construction sites. It is not reasonable or practicable to require meal rooms or hot water facilities. Reduced lot sizes make it impossible to accommodate such a requirement.

The ABN Group recommends that BCA Classes 1, 2 (low rise) and 10 be excluded from these provisions.

9.3.8 Excavation work notification

A respondent from the housing industry [HIA] stated:

[HIA] proposes that excavations for which a building permit is in force, is excluded from Part 6.3 (Reg 304).

It is a necessary requirement to obtain information on services for housing construction sites e.g. sewerage or drainage pipework and there should be no further requirement for a builder to maintain records of such information.

[HIA] recommends that an exemption is provided for excavation that is part of a project that is subject to a building permit.

The ABN Group were similarly opposed to the change:

The ABN Group does not support the requirement to give prior notification of any excavation greater than 1.5m. This provision will cause unnecessary delays and only adds to the ever increasing administrative burden. Approvals for sewerage and drainage are part of the building permit process, and no further requirements should be imposed.

9.3.9 Administrative obligations

WHS Management Plans

A respondent from the housing industry [HIA] stated:

The Model Regulations imposes an obligation on a principal contractor (where the construction project is over \$250,000 to produce a WHS Management Plan (WHSMP).

The first concern is that the threshold of \$250,000 for this obligation is significantly too low and as outlined above should be increased to an amount greater than the average cost of a new home or a definitional exclusion for housing construction (in line with BCA classes 1,2 (low rise apartments only) and 10) be imposed.

Regulation 301 requires that the sub-contractor must ensure a copy of the Safe Work Method Statement is given to the principle Contractor (PC) before high risk construction work commences.

It further requires that the PC must ensure that the SWMS is reviewed and as necessary revised if relevant control measures are revised under Reg 22.

[HIA] maintains that a small business producing housing projects that are regularly similar in building process, and impose a lower risk due to the regularity of the work,

do not need to have a sophisticated and complex process of paperwork and administrative burden imposed on them.

Safe Work method statements

A respondent from the housing industry [HIA] stated:

It is important to note that many companies have identified difficulty in getting subcontractors (PCBU) to understand and complete SWMS and as required by Reg 301 to give a copy to the PC. Additionally one of the key difficulties faced by the majority of principal contractors is complying with the obligation to ensure a SWMS is completed and followed by the subcontractor.

Typically a house builder will have a number of sites under construction at any given time. Generally the builder will visit these sites at key predetermined times and rely on the expertise of their contractors as it is not reasonably practicable to provide 24 hours supervision on every individual construction site.

The focus of responsibility for SWMS must be on the relevant PCBU performing the work. These are the persons with actual control over the method of work and provide relevant training for their workers.

[HIA] recommends that the duties on the principal contractor to collect SWMS and ensure compliance to such, be removed.

The ABN Group stated:

The additional requirement to keep SWMS for up to 2 years will be another impost on business. It once again increases Red Tape which the Model Regulations was intended to reduce. Safe work not paper work should be our motto.

Emergency plans

A respondent from the housing industry [HIA] stated:

Regulation 43 (Part 3.2) requires that a PCBU must ensure that an emergency plan is prepared for the workplace and these are to be tested. It requires also, Reg 43(1)(c) that all workers are to be provided information, trained and instructed in the procedures.

Clause (3) states that for the purposes of the above, consideration must be given to eg the nature of work being carried out, the nature of hazards at the workplace and importantly the size, the location and number and composition of the workers and others at the workplace.

This requirement is more demanding than the current WA requirement for an “evacuation procedure”

On construction sites where builders generally undertake construction work by way of sub-contracting arrangements, there are multiple duty holders. It is unclear who has the duty and ultimate responsibility.

In housing construction where supervisors have multiple jobs under their control (15-25, depending on size and complexity), it has the potential to cause confusion, first of all is it needed, as well as if so, who is responsible to ensure it is prepared.

[HIA] recommends that clearer guidance be given to residential building industry to clarify the practical application of this regulation, possibly in a relevant or general Code of Practice.

Record keeping

A respondent from the housing industry [HIA] stated:

The Model Regulations impose a large number of increased record keeping requirements. This will significantly increase the amount of paperwork that is required to be kept by a business and will impose a significant burden on all business but more particularly small businesses.

The records that are required to be kept are on many occasions not aimed at improving safety outcomes or for the good of WHS practice, but [HIA] questions whether they are to be kept in order to check compliance?

When requiring a record to be kept, it is important that it is not as onerous so as to be a detriment than actual safety at the workplace. A record should only need to be kept where it is recording is an inherent part of the safety process.

A danger is that failure to reduce the number of record keeping requirements will lead to responsible persons in the industry as well as safety Inspectors wanting only to see the “paperwork” as proof of compliance rather than what is actually occurring in the workplace.

[HIA] recommends that the Model Regulations be reviewed so that only those records that are inherent in an actual work procedure are required to be kept

9.3.10 Duties of designers of structures

A respondent from the housing industry [HIA] stated:

Part 6.2 of the Model Regulations requires a person who commissions construction work to consult with the designer about how to ensure that safety risks arising during construction can be eliminated and or minimised. It also requires that the Designer must provide the PCBU with a written report that specifies any hazards relating to the design of the structure.

Regulation 6.2 would impose an additional burden on a designer to produce a report detailing matters that are typically outside the expertise of most designers. The effect of this regulation is that building designers will have to commission expert advice to produce the required report and pass this cost on, ultimately to consumers.

Regulation 6.2.2 would also capture builders as frequent designers of temporary structures, such as the siting and construction amenities, access points, temporary guardrails and other such structures, each of which will trigger a requirement for a written report to be given to the person who commissioned the construction work. This will be an additional burden in all jurisdictions but one that would serve no useful purpose, as the person who commissioned the work is unlikely to be able to act on the report, leaving it up to a builder to address the hazards and risks.

[HIA] recommends that this duty should exclude the builder from any requirement to provide a report relating to temporary structures.

The ABN group stated:

The Model Regulations requires a designer to specify in writing any hazards relating to the design of the structure. Once again this adds an unnecessary administration burden on small business given the relative simple construction methods of a standard home.

The ABN Group recommends that this provision be excluded from BCA Classes 1, 2 (low rise) and 10.

9.3.11 Site security

A respondent from the housing industry [HIA] stated:

Part 6.3 Regulation 298 requires a person with management or control of a workplace at which construction work is carried out to ensure, as far as reasonably practicable, that the workplace is secured from unauthorised access.

Although some guidance is given as to the application of this regulation e.g. the proximity of places frequented by children, schools, parks and shopping precincts, the requirement causes concern to the industry because it does not provide certainty for its application.

It is seen by some that it will lead to all sites being fenced at an additional cost estimated by industry of approx \$6000 per contract.

The ABN Group raised some other issues:

The WHS Regulations require the work place to be secure so far as practicable against unauthorised entry. The Housing Industry requires practical guidance on what is required. A one size fits all option is no practicable. Should this provision lead to full perimeter fencing of all housing sites it will add a further cost impost to the average home without an increase in safety outcomes.

Learning's from other Jurisdictions should be considered. Often the fencing itself creates a safety issue, restricts deliveries and causes greater traffic congestion as site access is impeded. The ABN Group recommends that BCA Classes 1, 2 (low rise) and 10 be excluded from these provisions.

9.3.12 Referencing of Australian standards

A respondent from the housing industry [HIA] stated:

[HIA] notes that Australian Standards have been referenced on numerous occasions in the Model Regulations.

These standards are likely to change in the future either in content or title, and if included in the Model Regulations they become quasi regulations that have legal as well as operational impact, including the potential to be used against a business.

Legislation is meant to be readily available and free of charge to the public. Australian Standards come at a considerable cost to industry and for this reason should not be referenced.

Industry could not estimate the additional cost of obtaining and referenced standards as they were unsure at this time where this applied in practice.

[HIA] does not support the referencing of “specific” Australian Standards in Regulations as they are subject to change.

The ABN Group had similar views:

Standards change from time to time which can inadvertently change the intent of the Model Regulations as they become quasi Regulations. This will mean that small businesses will then need to subscribe to the relevant Australian Standards at an additional cost. Any Legislation should be total [sic] free of charge. The ABN Group recommends that the Model Regulations do not reference Australian Standards.

9.3.13 Safety and health representatives

A large public service organisation [WA Department of Education] stated:

Safety & health representatives (SHRs) elected every three years will provide more continuity of service. However, it will impact on resourcing and funding to update training of 620 SHRs on the new WHS laws.

9.4 Responses provided on transitional provisions

Table 46 outlines respondents’ comments in relation to suggested transitional provisions for various topics drawn from the surveys and workshops.

In addition to these responses comments were included in written submissions as well as informal comments provided verbally. Details for each of the suggested transitional provision for each of the 39 changes are provided in sections 2-8 above.

Table 46: Responses provided on transitional provisions

1	Asbestos – air monitoring and clearance	<p>Delaying implementation by more than 5 years</p> <p>Having a 'staggered start' (such as short-term exemptions for some industries)</p> <p>Having a 'staggered start' (such as short-term exemptions for smaller businesses)</p>	
1	Asbestos – analysis of samples	Delaying implementation 1-2 years	
2	Asbestos – register	<p>Having a 'staggered start' (such as short-term exemptions for some industries)</p> <p>Recognition and accreditation of prior experience and learnings</p> <p>Clear documentation to be provided to industry by the regulator on what has changed and what needs to be done within a business and by when. Without this there will be a lot of activity but not necessarily activity in the right areas.</p>	Cost would be the same as attendance at a course as the RPL process would need resources to complete
3	Asbestos – removal licences	<p>Delaying implementation 3-5 years</p> <p>Delaying implementation by more than 5 years</p> <p>Having a 'staggered start' (such as short-term exemptions for some industries)</p> <p>Having a 'staggered start' (such as short-term exemptions for smaller businesses)</p>	

3	Asbestos – training	<p>Delaying implementation 3-5 years</p> <p>Delaying implementation by more than 5 years</p> <p>Preparation of additional guidance or codes of practice prior to implementation [x2]</p>	<p>This should prevent waste of resources through lack of clarity around actual changes and requirements are needed</p>
2	Definitions in the Act	<p>Delaying implementation 1-2 years [x2]</p>	
4	Fall prevention	<p>Preparation of additional guidance or codes of practice prior to implementation [x2]</p> <p>Recognition and accreditation of prior experience and learnings</p> <p>Having a 'staggered start' (such as short-term exemptions for smaller businesses)</p>	<p>There would potential be less time lost to work as staggering would allow for planning of training etc. However, the actual training costs would remain the same.</p>
2	Hazardous chemicals – classification, labels, MSDS and controls	<p>Having a 'staggered start' (such as short-term exemptions for some industries)</p> <p>Preparation of additional guidance or codes of practice prior to implementation</p>	<p>Hard to say, but comparable to 100% due to requirements on international suppliers</p> <p>Minimal cost & Minimal hours</p>
4	Hazardous chemicals – risk assessment and record keeping	<p>Preparation of additional guidance or codes of practice prior to implementation</p> <p>Having a 'staggered start' (such as short-term exemptions for smaller businesses)</p> <p>Having a 'staggered start' (such as short-term exemptions for some industries)</p> <p>Recognition and accreditation of prior experience and learnings</p>	
2	Incident notification – prescribed serious illnesses	<p>Recognition and accreditation of prior experience and learnings</p> <p>Preparation of additional guidance or codes of practice prior to implementation</p>	

4	Noise: audiometric testing	<p>Delaying implementation 3-5 years [x2]</p> <p>Preparation of additional guidance or codes of practice prior to implementation [x2]</p> <p>Having a 'staggered start' (such as short-term exemptions for some industries)</p> <p>Having a 'staggered start' (such as short-term exemptions for smaller businesses)</p>	<p>\$27,000 pa over 5 years</p> <p>300 hours</p> <p>Not measurable, as the requirements prior to testing reduce the effectiveness and efficiency for testing agents for those companies with fixed parallel shifts.</p>
1	Noise: managing risks	<p>Delaying implementation 1-2 years</p> <p>Preparation of additional guidance or codes of practice prior to implementation</p>	Not measurable
1	Other - Safety & health representatives	Delaying implementation 1-2 years	minimal
2	Personal protective clothing and equipment (PPE)	Preparation of additional guidance or codes of practice prior to implementation [x2]	
1	Thermal comfort	Preparation of additional guidance or codes of practice prior to implementation	

10. Summary table

Table 47 provides a summary of the key issues relating to the proposed changes, including the current and new requirements, a summary of consultation, the change in costs and threshold BCA results, unintended consequences and Marsden Jacob’s recommendations.

Table 47: Summary table

Asbestos							Delay / Clarify
Asbestos - register	<p>Although there is no regulation covering age of buildings that require an asbestos register, the WA public sector Asbestos Steering Committee (which included WorkSafe WA) advised government agencies to maintain a register for buildings constructed before 1990. This is based on the history of asbestos building product manufacture and use in WA.</p>	<p>A person with management or control of a workplace must prepare and keep an asbestos register at the workplace for buildings built before 2003. [Reg. 425] The details to be in the register are specified in the regulations and include the location, type and condition of the asbestos or ACM. If asbestos is not present, the register must state that no asbestos or ACM is identified or likely to be present from time to time.</p>	<p>Extension of the requirement for an asbestos register from 1990 to end 2003</p>	<ul style="list-style-type: none"> Extending the asbestos register from workplaces built before 1990 to those built before 2003 has been recognised as an improvement in work health and safety as the use of asbestos in buildings was not banned until the end of 2003 - although many uses ceased around 1990 with some materials remaining in stockpile. Some respondents do not anticipate the proposed change to be overly administratively onerous. Around 10,000 extra assessments of commercial buildings will lead to a rise in business compliance costs. It is unclear how many residences constitute a workplace and would need to be included on registers. 	<p>↑ \$41 million</p> <p>Unclear - but potentially Onerous</p>	<p>Likely that there is currently low levels of compliance for residences that are workplaces. Non compliance may be exacerbated under the proposed change</p>	<p>Proposed changes should be delayed pending clarification of:</p> <ul style="list-style-type: none"> coverage or exclusion of residences that are workplaces; numbers of buildings to be captured by the extension of the coverage date; and the sensitivity of benefits and costs to possible intermediate dates between 1990 and 2003.
Asbestos - Naturally Occurring Asbestos	<p>An employer or self-employed person must not use asbestos at the workplace, other than to remove and dispose of it, unless it is used only in analysis or bona fide research and such use has been approved by the WorkSafe Western Australia Commissioner [OSH reg 5.31(1)]. However, a person does not commit an offence under regulation 5.31(1) if the asbestos is in its natural state and has not been moved for its natural location [OSH reg 5.31(2)].</p>	<p>A person with management or control of a workplace must manage the risks to health and safety associated with naturally-occurring asbestos at the workplace. [Reg 431]. In addition, if naturally-occurring asbestos is:</p> <ul style="list-style-type: none"> Identified at a workplace; or Likely to be present at a workplace, <p>A person with management or control of the workplace must ensure that a written Asbestos Management Plan is prepared in relation to the naturally-occurring asbestos. [Reg 432] The Asbestos Management Plan must be reviewed and, as necessary, revised. [Reg 433].</p> <p>A person conducting a business or undertaking must ensure that appropriate training is provided to workers who carry out work where naturally-occurring asbestos is likely to be found. [Reg 434].</p>	<p>Formalises the requirement for a safety management plan where naturally occurring asbestos exists. Only relevant in limited locations (parts of Pilbara and Goldfields)</p>	<ul style="list-style-type: none"> Potential to mitigate health risks to workers of naturally occurring asbestos. Specifies a requirement that was previously included in the general duty of care. 	<p>n/a</p>		<p>Accept</p>

<p>Asbestos - air monitoring and clearance</p>	<p>Class A (unrestricted) asbestos removalist licence holders are required to use a competent person to carry out air monitoring when friable asbestos is being removed. Employers, main contractors, self-employed people and persons in control of a workplace must ensure that any asbestos removal work is done by a licensed asbestos removalist. The latter should obtain a clearance certificate from a competent person as a licence condition, as recommended in a code of practice.</p>	<p>A person conducting a business or undertaking who commissions asbestos removal work requiring a Class A asbestos removal licence must ensure that an independent licensed asbestos assessor undertakes air monitoring. [Reg. 475] In the case of work involving friable asbestos, a person who commissioned removal work must obtain a clearance certificate from a licensed asbestos assessor, or for other asbestos removal work, a competent person. [Regs. 473, 474 and 477(6)] The licensing of licensed asbestos assessors is prescribed in some detail and involves the applicant completing a VET course or tertiary qualification as a pre-requisite. [Reg. 495]</p>	<ul style="list-style-type: none"> ▪ Air monitoring only required for Class A - (already required under code) - move from "competent person" to "licensed asbestos assessor" for air monitoring and clearance certificates associated with the removal of friable asbestos; ▪ a requirement for the person doing the clearance inspection to be "independent"; and ▪ the requirement that the person who commissions the asbestos removal work "must" (rather than should) obtain a clearance certificate 	<ul style="list-style-type: none"> ▪ Potential safety benefits in asbestos removal and demolition <ul style="list-style-type: none"> ▪ Increased costs for asbestos removal ▪ Possible increased pressure to remove asbestos illegally 	<p>↑ \$86 million Unclear - but potentially Onerous</p>	<p>Requirements for Independence may be unworkable in regional areas</p>	<p>Delay / Clarify Further consideration is required to estimate the nature and levels of certification required and the costs involved.</p>
<p>Asbestos - analysis of samples</p>	<p>A person who is an employer, main contractor, self-employed or person in control of a workplace must ensure that the presence and location of asbestos at the workplace is identified and the process for doing this is in accordance with a national code. The code specifies that laboratory testing must be carried out if is uncertain whether something is asbestos.</p>	<p>A person with management or control of a workplace may identify asbestos or asbestos containing material by arranging for a sample to be analysed. They must ensure the sample is analysed by: (a) a NATA accredited laboratory accredited for the relevant test method; (b) a laboratory approved by the regulator according to guidelines published by Safe Work Australia; or (c) a laboratory operated by the regulator. [Reg. 423]</p>	<p>Requirement to use a NATA approved laboratory or as approved by the regulator. (WorkSafe have indicated they do not propose to approve laboratories)</p>	<ul style="list-style-type: none"> ▪ Improved reliability of analysis ▪ Potential small price increase 	<p>n/a</p>	<p>Introduces a large fixed cost to stay in or enter industry - may force small businesses to exit May create barriers to entry in a small market Will increase costs - possible increased pressure to remove asbestos illegally</p>	<p>Accept</p>
<p>Asbestos - certified safety management systems</p>	<p>No requirements.</p>	<p>Applications for a Class A asbestos removalist licence must include, amongst other things, evidence that an applicant has a 'certified safety management system'. [Reg 493] This is defined as a system complying with Australian Standard AS 4801: 2001. The regulator may make a determination for the purposes of the definition of a 'certified safety management system'. [Reg. 6]</p>	<p>Class A asbestos removalists will require a <i>certified safety management system</i></p>	<ul style="list-style-type: none"> ▪ Potential safety benefits through improved work practices ▪ Increased costs for Class A asbestos removal ▪ May cause a "shakeout" of the industry prompting some operators to surrender their licence 	<p>↑ \$10 million Unclear - but relatively easy to achieve</p>	<p>Introduces a large fixed cost to stay in or enter industry - may force small businesses to exit May create barriers to entry in a small market Will increase costs - possible increased pressure to remove asbestos illegally</p>	<p>Delay / Clarify Further consideration is required to estimate the number of workers who would directly benefit from changes in the requirements for asbestos work.</p>

<p>Asbestos - removal licences</p>	<p>Restricted (Class B) and Unrestricted (Class A) licences are issued for the removal of asbestos. These licences can be issued to individuals and entities for three years.</p> <p>In order to qualify for the</p> <ul style="list-style-type: none"> Restricted Asbestos Licence applicants must complete a WorkSafe WA approved Restricted Asbestos Removal Licence training course with a Registered Training Organisation. Unrestricted Asbestos Licence applicants must submit their relevant manuals and curriculum vitae of each person employed as a manager or supervisor of asbestos removal work for WorkSafe WA to consider. 	<p>Class A Asbestos Removal Licence is required for the removal of friable asbestos [Reg 485] and Class B Asbestos Removal Licence is required for the removal of 10 sqm or more of non-friable asbestos or ACM [Reg 487]. In order to qualify for the:</p> <ul style="list-style-type: none"> Class A Asbestos Removal Licence, applicants must have: <ul style="list-style-type: none"> at least one competent person who has completed the prescribed asbestos supervisor training course; evidence the supervisor is over 18 and has at least 3 years relevant experience; and a certified safety management system and each supervisor is over 18 [Reg 493]; and <ul style="list-style-type: none"> Class B Asbestos Removal Licence, applicants must have: <ul style="list-style-type: none"> at least one competent person who has completed the prescribed asbestos supervisor training course; and the supervisor is over 18 with at least 1 year of relevant experience [Reg 494]. <p>VET course records for with the asbestos training details for supervisors will have to be provided to the regulator during the licensing process. [Reg 493]</p> <p>The Licensed asbestos removalist will have to retain the training records of workers for five years. [Reg 461]</p> <p>The Class A and Class B Asbestos Removal Licences require renewal after five years. [Reg 503]</p> 	<p>Specifies the staffing and training requirements for licensees</p>	<p>General support - but note that it will increase costs</p>	<p>n/a</p>	<p>May encourage building owners to use exemptions or remove asbestos illegally</p>	<p>Accept</p>
<p>Asbestos - removal - notifications</p>	<p>Only Class A (unrestricted) asbestos removalists must notify WorkSafe WA in writing before a removal job. There are only seven businesses in this category in WA.</p> <p>Class B licence holders do not have to notify WorkSafe WA, except where demolition regulations apply.</p> <p>[Note: Class B work is restricted to bonded asbestos work eg removal of asbestos cement sheets.]</p>	<p>A licensed asbestos removalist must give written notice to the regulator at least five days before the removalist commences licensed asbestos removal work. [Reg. 466]</p> <p>The regulations provide details about the information that must be included in the notification. This includes business details such as ABN, names of competent persons and workplace location, date of work, type and quantity of asbestos and competency details for each worker involved in the work.</p>	<p>Requirement to give 5 days notice prior to asbestos removal</p>	<ul style="list-style-type: none"> Unclear the number of notifications Potential to lead to more accurate auditing of asbestos removalists, and thereby improve health and safety. Increase in administrative burden. Five day notification period was not long enough to ensure compliance: suggested that flexibility be arranged for small businesses and those that are not commercial asbestos removalists but encounter asbestos during construction/mining work. 	<p>↑ \$12 million</p> <p>Unclear - but relatively easy to achieve</p>	<p>Will introduce delays where Asbestos is found unexpectedly.</p> <p>May encourage notification wherever asbestos is possible creating additional work for industry and WorkSafe</p>	<p>Delay / Clarify</p> <p>Further consideration is required to estimate the number of workers who would directly benefit from changes in the requirements for asbestos work.</p>

<p>Asbestos - training</p>	<p>There is a WA course to obtain a Class B licence. There is no WA course for Class A licences.</p>	<p>There are increased training requirements. The new regulations establish an extensive training framework for licensed asbestos removalists and assessors. There will be VET training courses for individual asbestos removal workers, asbestos removal supervisors (Class A), asbestos removal supervisor (Class B) and asbestos assessor work. [Regs. 460, 493 and 495]</p> <p>Version 7 of the CPC08 Construction, Plumbing and Services Training Package was endorsed by the National Skills Standards Council (NSSC) on October 26th and is now available on training.gov.au</p> <p>This latest version of CPC08 includes four new units of competency related to the removal of asbestos containing materials, which are detailed below.</p> <p>CPC083014A Remove non-friable asbestos CPC083015A Remove friable asbestos CPC084051A Supervise asbestos removal CPC085014A Conduct asbestos assessment associated with removal</p> <p>It is intended that these units will be required before the asbestos licences can be issued by regulators.</p>	<p>Currently a 4 hour training course Now will be: 2 days - Class B (bonded asbestos) 4 days - Class A (friable asbestos) 1 additional day for supervisors</p>	<ul style="list-style-type: none"> Some respondents could see the advantage of increasing the training of asbestos removalists to harmonise asbestos laws across Australia. Some respondents could see the benefit that increased training requirements would have on health and safety. A number of respondents identified extra costs that would be incurred from additional training requirements, particularly because there are high employee turnover rates for asbestos workers. Advantage of harmonising qualifications across Australia and making skills more transferrable. Increased training requirements equate to increased costs that businesses will incur to comply with the new laws. Increased business costs have the potential to translate to higher asbestos removal services if the costs are passed on to the consumer. This may in turn reduce business competitiveness. 	<p>↑ \$89 million</p> <p>Unclear - but potentially onerous</p>	<p>Will increase costs - possible increased pressure to remove asbestos under exemption or illegally</p>	<p>Delay / Clarify</p> <p>Further consideration is required to estimate the number of workers who would directly benefit from changes in the requirements for asbestos work.</p>
<p>Construction projects</p>							
<p>Construction projects - appointment of a principal contractor</p>	<p>A 'main contractor' for a 'construction site' must ensure that, where five or more persons are, or are likely to be, working at the same time that an occupational safety and health management plan is prepared before work commences and the plan is kept up to date.</p>	<p>Various regulations place prescriptions on a 'principal contractor' in relation to ensuring the safety and health at a 'construction project', such as preparation of a 'WHS management plan'. 'Construction project' is defined as a project costing \$250,000 or more. However, there is no provision for how the construction work costs are calculated. [Reg. 292]. Some guidance is provided in a supporting code of practice.</p>	<p>Current threshold of 5 or more persons, now will be \$250,000</p>	<ul style="list-style-type: none"> Some respondents indicated that moving away from the headcount threshold would be beneficial for them as the number of workers may vary on construction sites and that the current requirement places a level of unwarranted burden on businesses Some respondents indicated they expected increased costs, both in the changeover period and ongoing The \$250,000 threshold may be too low, and therefore may prove onerous for those with construction sites in remote or regional areas Some respondents indicated they expected reduced levels safety due to the potential for some employers to split the value of construction projects to avoid the obligation to prepare a WHS management plan WorkSafe expects a potentially high increase in costs associated with contract value disagreements 	<p>↑ \$35 million Possible - Likely</p>	<p>Will capture smaller projects in the regions due to the higher costs of construction - creating inequity within WA and between states May encourage contracts to be squeezed under the \$250,000 threshold</p>	<p>Reject</p> <p>The proposed change will apply inequitably to businesses in regional areas where construction costs are elevated..</p>
<p>Diving work</p>							
<p>Diving work</p>	<p>Only 'construction diving work' is regulated under WA's occupational safety and health regulations.</p>	<p>"High risk diving work" (i.e., construction diving) AND "general diving work" and are regulated and a range of duties are imposed on the person conducting the business or undertaking. For general diving work, the duties include minimum training and experience for divers, appointment of a competent person to supervise diving work and keeping of dive safety logs. [Part 4.8]</p>	<p>Range of new requirements (16 individual regulations) covering fitness, dive plans, logs and supervision</p>	<ul style="list-style-type: none"> Significant improvement in health and safety for those in the 'general diving' category. Extending requirement to cover general divers will pose additional costs for divers and WorkSafe in complying with the regulations 	<p>n/a</p>		<p>Accept</p> <p>Based on the consultation responses provided, this regulation may be accepted in its current form. NB. Marsden Jacob was advised informally that Safe Work Australia is considering amending this regulation.</p>
<p>Fall prevention</p>							

<p>Fall prevention</p>	<p>Employers and main contractors, self-employed people or a person having control of a workplace must ensure that:</p> <p>a. edge protection is provided and kept in place where there is a risk of a fall of two or more meters from the edge of a scaffold, fixed stair, landing, suspended slab, formwork or falsework at the workplace; and</p> <p>b. for any other edges where there is a risk of a fall of three or more metres, edge protection or a fall injury prevention system must be provided.</p>	<p>Where it is not reasonably practicable to eliminate the risk of falls from one level to another, then the person conducting a business or undertaking must provide adequate protection against the risks by:</p> <p>a. providing a fall prevention device if it's reasonably practicable to do so;</p> <p>b. if the above is not reasonably practicable, provide a work positioning system; or</p> <p>c. where the above two measures are not reasonably practicable, provide a fall arrest system.</p> <p>[Reg 78 & 79]</p>	<p>Introduces a hierarchy of measures to minimise falls risks</p>	<ul style="list-style-type: none"> Some expected reduced costs, both in the changeover period and ongoing and improved safety Some expected increased costs, both in the changeover period and ongoing and reduced levels safety 	<p>↑\$3,650 million Industry figures ↑\$131 million based on SA figures</p> <p>Onerous / Easily achieved (depending on figures)</p>	<p>Industry estimates it will increase the costs of residential house construction by ~ \$20,000</p>	<p>Further Consideration</p> <p>Should be delayed pending clarification and better understanding of likely costs to construction and building industry and their final customers.</p>
<p>Hazardous chemicals</p> <p>Hazardous chemicals - classification, labels, MSDS and controls</p> <p>Hazardous chemicals - import</p> <p>Hazardous chemicals - "restricted hazardous chemicals" - crystalline silica silicon dioxide</p> <p>Hazardous chemicals - risk assessment and record keeping</p>	<p>Manufacturers and importers of 'hazardous substances' must classify the substances and prepare their labels and safety data sheets according to the 'AC Classification System' or, more recently, the GHS Classification System, an international globally harmonised system.</p> <p>A range of duties are placed on importers to ensure the safety of 'hazardous substances'. 'Import' is defined under the Occupational Safety and Health Act 1984 as 'means to bring into the State, whether from outside Australia or otherwise'.</p> <p>Crystalline silica is prescribed as a "hazardous substance prohibited for specified uses or methods of handling". In particular, a substance that contains crystalline silicon dioxide is prohibited for use as an abrasive material in abrasive blasting except where less than 2% dry weight of crystalline silicon dioxide is present as a contaminant.</p> <p>The employer, main contractor and self-employment must conduct a risk assessment and assess the risk of injury or harm to a person as a result of a person being exposed to 'hazardous substances'. This must involve identifying each 'hazardous substance', a review of the relevant Material Safety Data Sheets and identification of the likelihood of injury or harm from exposure. If this identifies a significant risk, then a report must be prepared on the assessment and the action to be taken to comply with relevant regulations. This report must be kept in a register at the workplace.</p>	<p>Manufacturers and importers of 'hazardous chemicals' must classify the substances and prepare their labels and safety data sheets according to the GHS Classification System. [Reg 335]</p> <p>A range of duties are placed on importers to ensure the safety of "hazardous chemicals". However, importer is defined as per the Model WHS Act and, under this, import is defined as "means to bring into the jurisdiction from outside Australia". An importer of a hazardous chemical may be located in another jurisdiction. This may mean that if an error on a label or SDS is identified, having the improvement implemented would require the cooperation of the WHS regulator in the other jurisdiction, with the potential for delays. Errors on labels or SDS may mean that the proper controls for using the chemical are not known or not used, with increased risk of harm to workers or property [Reg 329]</p> <p>Silica is classified as a "restricted hazardous chemical". Its use, in relation to abrasive blasting, is restricted to a concentration of less than 0.1%. [Reg 382 and Schedule 10, Table 10.3]</p> <p>While the general duty of care for safety and health is relevant, there is no specific requirement for a risk assessment for 'hazardous chemicals' or preparation of a risk assessment report.</p>	<p>Manufacturers and importers will need to reclassify substances under the international standard/system, the GHS Classification System and change their production lines to update labels and safety data sheets.</p> <p>Defines import - as being brought into Australia</p> <p>Reduced levels of Silica used in sand blasting.</p> <p>Removal of a specific requirement for risk assessment and record keeping</p>	<ul style="list-style-type: none"> Alignment with other jurisdictions globally would be beneficial for businesses. Concerns raised were around costs associated with not implementing the change and ensuring an appropriate transitional period is implemented. Potential to reduce costs incurred by businesses in meeting the current requirements <ul style="list-style-type: none"> Improved information sharing across jurisdictional regulators. May be delays and difficulties in managing errors on labels or safety data sheets, which may risk harm to workers or property. Potential health benefits from reduced amounts of crystalline silica silicon dioxide <ul style="list-style-type: none"> Implementation costs. Some respondents indicated that making the regulations less prescriptive will reduce administrative burden, and therefore reduced ongoing costs going forward Some respondents indicated that this change may lead to a reduction in health and safety 	<p>n/a</p> <p>n/a</p> <p>n/a</p> <p>↓\$49 million</p> <p>Easily achieved</p>	<p>Accept</p> <p>Accept</p> <p>Accept</p> <p>Accept</p>	<p>Accept</p> <p>Accept</p> <p>Accept</p> <p>Accept</p>

<p>Hazardous chemicals - therapeutic goods and agricultural veterinary (agvet) chemicals</p>	<p>Through reference to a national code, manufacturers and suppliers of therapeutic goods and agvet chemicals that are packed for end use in a workplace are exempt from the requirements for labels. For ag vet chemicals, labels approved by the Australian Pesticides and Veterinary Medicines Authority (APVMA) are considered acceptable.</p>	<p>Manufacturers and importers of 'hazardous chemicals' will need to ensure that the selection and use of label elements is in accordance with the above-mentioned international standard/system, the GHS Classification System. The changes means that labels will need to include additional information, such as hazard statements and hazard pictograms.</p> <p>Therapeutic goods will continue to be exempt except where there is a risk to workers eg bulk containers of powders to be turned into tablets. In addition, therapeutic goods not intended for human consumption, eg disinfectants, will no longer be exempt. For agvet chemicals, including herbicides, fungicides and veterinary chemicals, the labels will need to include the information required by the APVMA plus the relevant hazard and precautionary statements.</p>	<p>Manufacturers and importers will need to reclassify substances under the international standard/system, the GHS Classification System and change their production lines to update labels and safety data sheets.</p>	<ul style="list-style-type: none"> Some respondents indicated that more stringent labelling would lead to an improvement in safety Several respondents stated that the proposed regulation is confusing to end users 	<p>n/a</p>		<p>Accept</p>
<p>Health monitoring</p>							
<p>Health monitoring - reports to the regulator</p>	<p>Medical practitioners must give health surveillance reports to the regulator.</p>	<p>A person in control of a business or undertaking must give copies of health monitoring reports to the regulator where problems are identified. [Reg. 376]</p>	<p>Where health issues have arisen from handling hazardous materials the health reports must be provided to the regulator by the PCBU</p>	<ul style="list-style-type: none"> Potential reduction in reporting requirements for some employers without reducing the health and safety of workers A number of respondents disagreed with transferring the reporting responsibility from a medical practitioner to the PCBU. This is because the change relies on the PCBU to make a judgment as to whether there is a problem deemed serious enough to notify the regulator. It also imposes costs on the organisation due to extra reporting responsibilities of the PCBU. There were also concerns in relation to workers' confidentiality as a result of the new PCBU responsibility. 	<p>n/a</p>		<p>Delay / Clarify</p> <p>The regulation change should be delayed pending clarification of the:</p> <ul style="list-style-type: none"> issues raised surrounding worker confidentiality; and costs of the compliance burden and efficiency of administrative processes compared to the potential benefits of the change.
<p>High risk work licences (HRWL)</p>							
<p>High risk work licences (HRWL) - boilers (pressure equipment)</p>	<p>There are five pressure equipment operation HRWL licence classes. Operation of boilers with an output of 500 kilowatts or less does not require a HRWL.</p>	<p>There are four HRWL licence classes. As part of this, three current classes, Pressure Equipment (Basic), Intermediate and Advanced, have been converted to two classes, Standard and Advanced Boiler Operation.</p> <p>The change means that operators with a Basic Boiler HRWL will need to obtain at least a Standard boiler HRWL in order to continue to operate.</p> <p>The definition of boiler in the model WHS Regulations excludes boilers with less than 5 square metres heating surface or 150 kilowatt output from requiring an HRWL. Therefore boilers of between 150 and 500 kilowatts will be required to obtain an HRWL [Reg 5 & Schedule 3].</p>	<p>Move from 3 to 2 classes of Boiler Operator requiring a changeover for existing licence holders.</p> <p>Also - lowering of the threshold requirement for a licence from 500 to 150 kilowatts.</p>	<ul style="list-style-type: none"> Standardised licences for boiler operation across Australia. Increased levels of safety for the operation of boilers above 150 kilowatts. Increased training and licensing costs The potential of a lack of training courses may delay some businesses in complying with the requirements by the implementation date 	<p>↑ \$10 million Possible</p>	<p>May encourage installation of boilers below the 150 kilowatt threshold</p>	<p>Accept</p>
<p>High risk work licences (HRWL) - concrete placing boom</p>	<p>An HRWL is required to operate a vehicle mounted concrete placing boom.</p>	<p>The HRWL requirements have been expanded by definition (Schedule 3) to include the use of all Concrete placing booms, not just those that are vehicle mounted.</p> <p>Apart from deleting the reference to vehicle mounted, the definition of concrete placing boom also has other slight differences to the definition in the OSH regulations [Reg 5 & Schedule 3].</p> <p>A process for existing operators of concrete placing booms other than vehicle mounted concrete placing booms to obtain a licence is remains to be determined [Schedule 3]</p>	<p>Extension of the requirement for a licence to cover static booms (vehicle mounted booms are already covered)</p>	<ul style="list-style-type: none"> More complete and more consistent licensing regime for the use of concrete placing booms and result in enhanced operational safety. Costs will be limited to new and retrospective licensing. 	<p>n/a</p>		<p>Accept</p>

High risk work licences (HRWL) - Dogging and "slinging techniques"	The definition of "dogging work" includes reference to "applying slinging techniques". As a result, a HRWL is required in all situations where slinging techniques are applied. A person may apply to the Commissioner for a person or a workplace to be exempted from complying with a requirement of the regulations.	The definition of "dogging work" includes reference to the "application of slinging techniques". "Slinging techniques" is also defined and includes in its meaning the "exercising of judgement". As a result, a HRWL for dogging work will be required in the more limited circumstances where judgement is exercised in relation to the suitability and condition of lifting gear [Schedule 3 and Reg 5 – Definitions]	Clarification of the requirements for a licence to where judgement is exercised	<ul style="list-style-type: none"> Some respondents stated that allowing "exercising of judgement" will reduce the burden on businesses to obtain HRWLs as it will remove the need for HRWLs for more straight forward tasks, and therefore make compliance with OSH easier It was noted by some respondents that there may be increased costs associated with training to properly exercise judgement in relation to deciding which tasks require a HRWL Some respondents believe the new requirements are confusing and require further clarity 	n/a		Accept
High risk work licences (HRWL) - exemptions	A person may apply to the Commissioner for a person or a workplace to be exempted from complying with a requirement of the regulations.	The regulator may exempt a person or class of persons from compliance with a provision of the regulations requiring the holding of a HRWL. [Reg. 686]	Both the current and proposed regulations allow the granting of exemptions, but the change formalises the process. It could cause difficulties where one state grants an exemption and it is not supported in WA.	<ul style="list-style-type: none"> Provides harmonisation, and gives slightly greater authority to the regulator. 	n/a		Accept
High risk work licences (HRWL) - Reach stacker	In order to operate a reach stacker, a non slewing mobile crane HRWL is required.	The HRWL requirements have been expanded by definition to include the use a new class for Reach stackers (Schedule 3). This means: a. in future under the Model WHS Regulations, existing reach stacker operators holding a CN class HRWL may be required to transition to the HRWL class of reach stacker if they are operating solely a reach stacker; and b. new operators of reach stackers will have to be trained and assessed in a unit of competency specific to the operation of a reach stacker, which will omit many of the general competencies covered under the unit of competency to operate a non slewing mobile crane over three tonnes. The regulator will have to implement a transition period to migrate existing operators across to the class of RS.	Introduces a specific HRWL for Reachstackers requiring the reclassification of existing licence holders	<ul style="list-style-type: none"> This change will ensure a higher level of specific expertise is held by individuals operating reach stackers. The principal cost will be the cost of individuals acquiring and maintaining a license and the migration of HRWL licensees for licensing to operate reach stackers. WorkSafe will need to ensure a system for licensing and renewal. 	n/a		Accept
Incident notification							
Incident notification - prescribed serious illnesses	Certain prescribed diseases contracted in the course of work must be reported to the WorkSafe Western Australia Commissioner. These are tuberculosis, viral hepatitis, legionnaires' disease, HIV, Q fever, Anthrax, Leptospiroses and Brucellosis.	Persons in control of a business or undertaking are required to notify any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to: • carrying out work with micro-organisms; • providing treatment or care to a person; • contact with human blood/body substances; or • involves handling or contact with animals and certain aspects of animals. [Reg. 699(a)]	Broadens the regulation to cover any infection (from work with a human or animal) - as written will impact on schools, childcare, aged care and hospitals.	<ul style="list-style-type: none"> Most respondents indicated they expected improved health and safety from this change. Some respondents indicated that the removal of a specific list of illnesses that would require reporting may result in a large range of illnesses being reported due to a lack of clarity around what is categorised as a "serious illness". This would increase staff resources in compliance. The extra compliance requirements may also equate to changeover and increased ongoing costs. 	↑ \$643 million Unclear - but potentially onerous		Delay / Clarify The proposed change should be delayed until the issues of excessive breadth, lack of clarity and uncertainty are resolved
Lead risk work							
Lead risk work		There is a new requirement for a person in control of a business or undertaking to notify the regulator within seven days, where they have determined that work is 'lead risk work'. [Reg. 403]	One off notification that the business is conducting Lead Risk Work	<ul style="list-style-type: none"> This regulation imposes a higher duty of care on employers or managers to identify and manage the risk of Lead Risk Work. This will help obviate the risk of lead exposure to workers and produce health benefits for individuals and long term savings to the national health system. There will be short run costs on employers and business managers to ensure Lead Risk Work is minimised and managed. These short-run costs are likely to be exceeded by both private and public marginal benefits from this change. 	n/a		Accept

Noise							
Noise: audiometric testing	Audiometric testing is recommended in a code of practice.	Audiometric testing applies in relation to a worker who is frequently required by the person conducting the business or undertaking to use personal protective equipment to protect from the risk of hearing loss associated with noise that exceeds the exposure standard for noise. Testing required at commencement of employment and two yearly thereafter. [Reg. 58]	Requires testing of hearing on a 2 yearly basis for workers who use hearing PPE frequently or above an average exposure of 85dB. A requirement for hearing testing under Workcover remains for workers exposed above an average exposure of 90dB.	<ul style="list-style-type: none"> Increase in the level of health due to regular hearing monitoring and testing. Many respondents stated that they would incur significantly increased resource and cost implications (both in the changeover period and ongoing) if the proposed were implemented, and thereby risking business productivity. A key unknown cost is the travel time to and from testing facilities. Following from the experience noted in Queensland it is likely that these costs will be higher (per worker) for small businesses, particularly in regional and remote locations. 	<p>↑ \$188 million</p> <p>Impossible to meet</p>	Likely to impose inequitable costs on smaller regional businesses leading to poor compliance	Reject Should be rejected or amended from its current format.
Noise: managing risks	Employers must, as far as practicable, ensure that persons at workplaces are not exposed to noise above the exposure standard.	A person conducting a business or undertaking at a workplace must ensure that the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise. [Reg. 57(b)] The practicability element is not included as in the current WA regulation.	Absolute requirement to ensure that the noise that a worker is exposed to at the workplace does not exceed an 8 hour average of 85dB and a peak of 140dB.	<ul style="list-style-type: none"> Some respondents indicated they expected improved health and safety Some respondents indicated they expected increased costs in the changeover period, in terms of acquiring additional personal protective equipment and noise testing of work sites Some respondents indicated this requirement may have practicality implications 	<p>↑ \$916 million</p> <p>Impossible to meet</p>		Reject Should be rejected or amended from its current format.
Personal protective clothing and equipment (PPE)							
Personal protective clothing and equipment (PPE)	Where, after a risk assessment, it is concluded that a risk may be reduced by PPE, then employers and main contractors must ensure that the PPE is in compliance with certain prescribed Australian or Australian New Zealand standards.	The provision of PPE is prescribed where a risk cannot be eliminated or minimised by other means. [Reg. 36] There are various prescriptions for the selection of PPE to minimise risk but no reference to ensuring it is in compliance with Australian or Australian New Zealand standards. [Reg. 44]	Removes reference to the Australian Standard	<ul style="list-style-type: none"> Greater flexibility and improve ease of compliance (with potential cost savings in purchasing less expensive PPE) Some risk of reduced health and safety for workers or increased difficulty in prosecuting 	<p>↓ \$33 million</p> <p>Easily achieved</p>	Lack of clarity and high opportunity costs for small business	Accept with additional guidance WA should accept the change. However, further consideration around additional guidance may be necessary, especially for small business.
Plant							
Plant - amusement devices	Employers, self-employed people, persons having control of the workplace or its access must ensure that amusement structures are: <ul style="list-style-type: none"> operated, maintained and inspected and maintained: i) in accordance with Australian Standard AS 3533 or a steamers code of practice; or ii) in accordance with the instructions of the person who manufactured the structure or any competent person who develops instructions for the operation. A competent person is defined as "a person who has acquired through training, qualification or experience, or a combination of those things, the knowledge and skills required to do that thing".	The person with management or control of an amusement device at a workplace must ensure that a detailed inspection of it is carried out at least once every 12 months by a competent person. The definition of a competent person is prescribed as somebody who has: <ul style="list-style-type: none"> a) either the skills, qualifications, competence and experience to inspect the plant and is registered under a law that provides for the registration of professional engineers; or b) is determined by the regulator to be a competent person. [Reg. 241] 	Covers a broad range of "Amusement Devices" such as roller coasters to small bouncy castles. Annual inspections by a competent person (engineer) are required. (WorkSafe have indicated they do not propose to approve competent persons)	<ul style="list-style-type: none"> Annual inspections will help ensure that amusement equipment remains safe for use and adequately maintained. Costs will be limited to the cost of annual inspections for each relevant piece of equipment in the state, as well as any necessary expenditure to reach deemed safety and performance requirements. 	n/a	May place a large imposition on smaller operators	Reject / Debatable Further consideration around the requirements of the regulation and the transitional provisions may be necessary..
Plant - design registration - concrete placement units with delivery booms	Concrete placement units with delivery booms do not require design registration.	Concrete placement units with delivery booms are required to obtain design registration. [Reg 243 & Schedule 5, Part 1]	Covers design registration for both mobile and static concrete delivery booms. These can be design registered in other states.	<ul style="list-style-type: none"> Potential for improved safety Potential for significant costs to industry in the event that existing equipment does not meet any new design registration requirements 	n/a		Accept

<p>Plant - design verification - cranes</p>	<p>To obtain design registration of a crane, the design needs to be verified by a competent person as part of the requirements. A competent person is defined as "a person who has acquired through training, qualification or experience, or a combination of those things, the knowledge and skills required to do that thing".</p>	<p>A person is eligible to be a design verifier for the design of an item of plant if the person is a competent person. However, for cranes, a competent person is defined as 'a person who has the skills, qualifications, competence and experience to design the plant or verify the design. [Regs 5 and 252].</p>	<p>Design verification needs to be undertaken by a person with qualifications instead of a 'competent person'.</p>	<ul style="list-style-type: none"> The change may ensure that highly specialised engineering skills, rather than more generalised engineering skills, are applied. After period of adjustment, the net additional cost of this change will be minimal. 	<p>n/a</p>	<p>Accept</p>
<p>Plant - design verification - pressure vessels</p>	<p>To obtain design registration of a pressure vessel, the design needs to be verified against an Australian standard. Design verifier must be accredited to Australian Standard AS 3920.1</p>	<p>A person is eligible to be a design verifier for the design of an item of plant if the person is a competent person. [Reg. 252]</p>		<ul style="list-style-type: none"> This proposed change should result in a higher level of design verification. Some concern that the definitions of a competent person were not specific enough and may reduce the current standard Apart from the costs of managing the administrative change and associated transition, minimal costs are forecast. 	<p>n/a</p>	<p>Delay / Clarify</p> <p>The proposed change should be delayed pending clarification of the definition of "a competent person" and the provision of further guidance on this matter.</p>
<p>Plant - import</p>	<p>If the designer and manufacturer are outside of WA, the importer of plant must, as far as practicable, identify any hazards in the design, assess the risks and consider controls. They must also identify any hazards from the manufacture of the plant and assess these (with testing amongst other things) and consider controls or arrange with the designer for alterations to be made. 'Import' is defined under the Occupational Safety and Health Act 1984 as 'means to bring into the State, whether from outside Australia or otherwise'.</p>	<p>A range of duties are placed on importers to ensure the safety of 'hazardous chemicals'. However, importer is defined as per the Model WHS Act and, under this, import is defined as 'means to bring into the jurisdiction from outside Australia'. An importer of a hazardous chemical may be located in another jurisdiction. This may mean that if an error on a label or SDS is identified, having the improvement implemented would require the cooperation of the WHS regulator in the other jurisdiction, with the potential for delays. Errors on labels or SDS may mean that the proper controls for using the chemical are not known or not used, with increased risk of harm to workers or property [Reg 329]</p>	<p>No real change as interstate accreditation is already recognised</p>	<ul style="list-style-type: none"> Greater harmonisation across the states, and easier movement by businesses of their plant across the country. 	<p>n/a</p>	<p>Accept</p>
<p>Plant - item of plant registration</p>	<p>As part of the requirements to obtain individual item of plant registration for prescribed items of plant, an applicant must provide a signed statement by a competent person that the item of plant has been inspected by that competent person is safe to operate. A competent person is defined as "a person who has acquired through training, qualification or experience, or a combination of those things, the knowledge and skills required to do that thing".</p>	<p>As part of the requirements to obtain registration of prescribed items of plant, the applicant must obtain a statement that the plant has been inspected by a competent person and assessed as being operable. A person is competent to carry out the inspection if they have:</p> <ol style="list-style-type: none"> educational or vocational qualifications in an engineering discipline relevant to the plant to be inspected; or knowledge of the technical standards relevant to the plant to be inspected. [Regs. 266 and 267] 	<p>Slightly alters the definition of a competent person required to inspect the plant</p>	<ul style="list-style-type: none"> No significant cost implications with the proposed change. It does not explicitly require the inspector to be formally trained, qualified or experienced, as per the current regulation. If businesses refer to the engineering definition of a competent person, then there is the potential to improve safety among workers. Lowering of safety standards. 	<p>n/a</p>	<p>Accept</p>
<p>Plant - item of plant renewals</p>	<p>'Individual item of plant' registration for certain prescribed plant is required to be renewed when there is a change of ownership, it is relocated or altered. The fee for the above is currently \$79.00.</p>	<p>Persons conducting a business or undertaking will need to renew "individual item of plant" registrations every five years for certain prescribed plant. WorkSafe WA understands it is intended that the five yearly renewal will apply to plant that is currently registered and operational at workplaces. Therefore, plant that falls within this category will need to be identified and a renewal date established. A means of identifying the location of the plant and determining a means of classifying the plant in order to fairly and evenly spread the transition to the five yearly renewal system will need to be determined. [Reg. 272 and 273]</p>	<p>Currently plant is registered once and changes should be notified. Now plant registration will require renew every 5 years. Unknown numbers of plant affected (est ~30,000)</p>	<ul style="list-style-type: none"> Most respondents noted that the new requirements would impose significant costs on their businesses with little or no improvement in health and safety. If existing registered items of plant are required to be renewed simultaneously, this would impose large costs on businesses that have multiple items of plant. WorkSafe WA would need to implement drastic upgrades to their computer systems and employ extra staff to accommodate the influx of registration renewals that will be need to be processed. 	<p>↑\$17 million Relatively easily achieved if it changes maintenance behaviour</p>	<p>Accept</p>

<p>Plant - mobile and tower cranes</p>	<p>It must be ensured that registered mobile and tower cranes are maintained according to the manufacturer's instructions or, where these are not available, maintenance is carried out by a competent person. A competent person is defined as "a person who has acquired through training, qualification or experience, or a combination of those things, the knowledge and skills required to do that thing".</p>	<p>The person with management or control of a registered mobile and tower cranes at a workplace must ensure that maintenance, inspection and testing is carried out by a competent person. It must be ensured that the cranes are inspected at: (a) at the end of the design life recommended by the manufacturer; or (b) if there are no manufacturer's instructions, in accordance with the recommendations of a competent person; or (c) if it is not reasonably practicable to comply with the above, every ten years. The definition of a competent person is prescribed as somebody who has: (a) either the skills, qualifications, competence and experience to inspect the plant and is registered under a law that provides for the registration of professional engineers; or (b) is determined by the regulator to be a competent person. [Reg. 235]</p>	<p>Crane maintenance and testing has to be done by a person with professional engineering qualifications rather than a competent person.</p>	<ul style="list-style-type: none"> Strengthening of safety standards. The cost of a ten-year inspection of a sizeable crane is expensive, (estimated to be in the \$50,000 - \$100,000 range). Making the change to compulsory ten-year inspections will increase costs substantially. For example, each 100 mobile or tower cranes inspected annually equates approximately to \$7.5m per annum. 	<p>n/a</p>		<p>Accept</p>
<p>Plant - registration - prefabricated formwork and boom type concrete placement units</p>	<p>Boom type concrete placement units that are truck mounted require design registration.</p>	<p>Persons in control of businesses or undertakings will be required to obtain or ensure design registration for prefabricated formwork and boom type concrete placement units that are stationary, as well as truck mounted. Persons in control of businesses or undertakings will be required to also obtain 'individual item of plant' registration for boom type concrete placement units. [Part 5.3]</p>	<p>The regulation requires registration of design of formwork (used for pouring of concrete) and boom type concrete placement units (used to deliver the concrete into the formwork).</p>	<ul style="list-style-type: none"> Greater consistency in boom type concrete placement units, irrespective of whether they are truck mounted or not. This will prevent boom type concrete placement units from slipping through the design registration process. Owners or users of prefabricated formwork and boom type concrete placement units will be required to ensure design registration and to cover this cost. If the new regulation is not imposed retrospectively then the cost will be low. 	<p>n/a</p>		<p>Accept</p>
<p>Tilt-up construction, spray painting, welding, abrasive blasting, isocyanates and styrene</p>							
<p>Spray painting</p>	<p>There are prescriptions in relation to safe work practices for Tilt-up construction, spray painting, abrasive blasting, isocyanates and styrene. For example, there is a requirement for spray painting to be carried out in a booth that is in accordance with an Australian New Zealand standard.</p>	<p>No prescriptions in these areas.</p>	<p>Some requirements will be moved from Regulations to codes of practice. Where no national code of practice is proposed (eg. tilt up slabs) then WA may wish to develop its own code.</p>	<ul style="list-style-type: none"> Reduced compliance costs incurred by businesses. Potential reduction in safety levels - WorkSafe indicated informally some concern with the removal of a specific regulation for spray painting 	<p>n/a</p>		<p>Delay / Consider</p> <p>Further consideration should be given to whether the removal of the existing regulations for spray painting would reduce safety levels and whether these impacts could be adequately mitigated through the introduction of a Code of Practice.</p>
<p>Tilt-up construction, spray painting, welding, abrasive blasting, isocyanates and styrene</p>	<p>There are prescriptions in relation to safe work practices for Tilt-up construction, spray painting, abrasive blasting, isocyanates and styrene. For example, there is a requirement for spray painting to be carried out in a booth that is in accordance with an Australian New Zealand standard.</p>	<p>No prescriptions in these areas.</p>	<p>Some requirements will be moved from Regulations to codes of practice. Where no national code of practice is proposed (e.g., tilt up slabs) then WA may wish to develop its own code.</p>	<ul style="list-style-type: none"> Reduced compliance costs incurred by businesses. Potential reduction in safety levels, however, WorkSafe indicated these regulations were not used heavily 	<p>n/a</p>		<p>Accept</p>
<p>Thermal comfort</p>							
<p>Thermal comfort</p>	<p>An employer must ensure that, in a workplace in a building or structure, heating and cooling is provided to enable employees to work in a comfortable environment, as far as practicable.</p>	<p>No prescription for this.</p>		<ul style="list-style-type: none"> Potential reduction in compliance costs for employers. Potential reduction in worker health and safety - but if it's a real issue its still covered under the duty of care 	<p>n/a</p>		<p>Accept</p>