REPORT

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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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Executive summary and conclusions

On 3 July 2008, the Council of Australian Governments (COAG) committed to the national harmonisation of occupational safety and health laws. The agreement was formalised in the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (the IGA).

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

- the exclusion of four areas that it would not be adopting as law in this State;
- WorkSafe WA retaining the exclusive responsibility within the Government in Western Australia to bring prosecutions for offences against WHS legislation and regulation;
- the need to ensure that the harmonisation in WA of WHS regulation for mining and general industry is maintained; and
- the assessment of its impacts, benefits, and costs to the State – in particular changes from the existing WA framework – all of which will guide the Government on the adoption of particular regulations.

While a Regulation Impact Statement (RIS) has been prepared at a national level, it contained little State specific detail, and was considered inadequate for Western Australia. It did not enable the Western Australian Government to assess fully the local impact of the model WHS regulations and first stage Codes of Practice.

As a result, the decision was taken to commission a separate assessment of the benefits, costs and other impacts of the proposed changes in regulations and related codes of practice.

Marsden Jacob Associates (Marsden Jacob) has been contracted by WorkSafe WA to:

- undertake consultation to identify the impacts that are likely to be experienced as a result of implementing the model WHS regulations; and
- identify the qualitative and quantitative impacts (benefits and costs), of the WHS regulations and first stage Codes of Practice on Western Australian business, community and Government sectors.

Following discussions between WorkSafe WA and the Regulatory Gatekeeping Unit, this review was extended to become a formal Decision RIS.

This Decision RIS does not:

- include legislation (i.e., the model Work Health and Safety Act); or
- cover the application of the new mining-specific laws for the mining industry, which are still under development. The impact of the mining-specific content is planned to be addressed as part of a separate exercise conducted by the Resources Safety Division of the Western Australian Department of Mines and Petroleum.

RIS guidelines

The scope and process adopted by Marsden Jacob in preparing the RIS follows the guidance and advice of the Regulatory Gatekeeping Unit within the WA Department of Treasury primarily with additional guidance from the relevant Commonwealth guidelines.

The Information and Issues Paper, jointly prepared by WorkSafe WA and Marsden Jacob constitutes the 'Consultation Regulation Impact Statement'. The Information and Issues paper provided an overview of harmonisation and the RIS process and called for submissions and consultation.

Consultation undertaken

An extensive program of consultations, workshops, information briefings and online surveys was undertaken to ensure adequate opportunity for all workplace participants to be briefed and consulted.

The RIS consultation process ran for an eight week period from 17 August to close of business on 12 October 2012. Together with WorkSafe WA, Marsden Jacob requested submissions through the following methods:

- completing the online survey;
- making a written submission; and/or
- attending a consultation session in a regional centre in Western Australia or in Perth.

As part of the consultation process, 12 consultation sessions were conducted which allowed workplace participants to attend in person and discuss questions and issues they had about the proposed WHS laws. The consultation sessions included:

- Seven (7) regional forums (Port Hedland, Broome, Geraldton, Albany, Bunbury, Kalgoorlie, and Merredin);
- Four (4) Perth based forums (Small Business, Volunteer and Not For Profit, Mining; and Asbestos); and
- One (1) information briefing open to all industries.

There were approximately 3,500 downloads of the Information and Issues Paper, and other consultation documents. More than 350 people attended the forums or provided written or survey responses.

Altogether there were 196 attendees to the Perth forums, 60 attendees to the regional forums, 53 written submissions, and 115 survey responses. The 115 survey responses were comprised of 89 who responded to the full survey and 26 who responded to the small business survey.

Analysis undertaken

The model WHS regulations contain approximately 424[1] changes when compared to the existing regulations. When preparing the Information and Issues Paper, WorkSafe WA

[1] Norton Rose Australia, supporting Marsden Jacob's analysis, identified 424 provisions in the model WHS regulations which have no equivalent in the existing WA OSH regulations.

identified 39 changes that may potentially have a significant impact upon workplace participants. These 39 changes were a point of focus when submissions were sought on the likely impact of the model WHS regulations on workplace participants, industry, and the economy and community as a whole. In addition, the impacts on small and regional businesses were examined and reported in detail.

Taken as a whole, the package of proposed regulatory changes is seen by the WA businesses surveyed by Marsden Jacob as achieving:

- the objective of reasonable improvements in health and safety; but with
- definite increases in compliance and other costs.

The 39 proposed changes received varying numbers of comments from the forums, workshops, submissions and online surveys. For 14 changes, cost information could be obtained or reasonably estimated from data submitted by respondents. For the 14 changes that were assessed quantitatively, the tests used are summarised in Box 1.

Box 1: Benefit cost tests and other RIS criteria

An important component of the RIS is the Benefit Cost Analysis (BCA). To conduct a BCA, Marsden Jacob assessed the package of changes as a whole to determine if any trend had emerged from the responses. Three separate comparisons of benefit and costs are employed in this RIS. These are:

Cost efficiency gains: Is the regulatory change likely to reduce the costs of compliance (sufficient to offset the transitional costs) without any reduction in health and safety outcomes? That is, is the change worthwhile even without any improvement in safety.

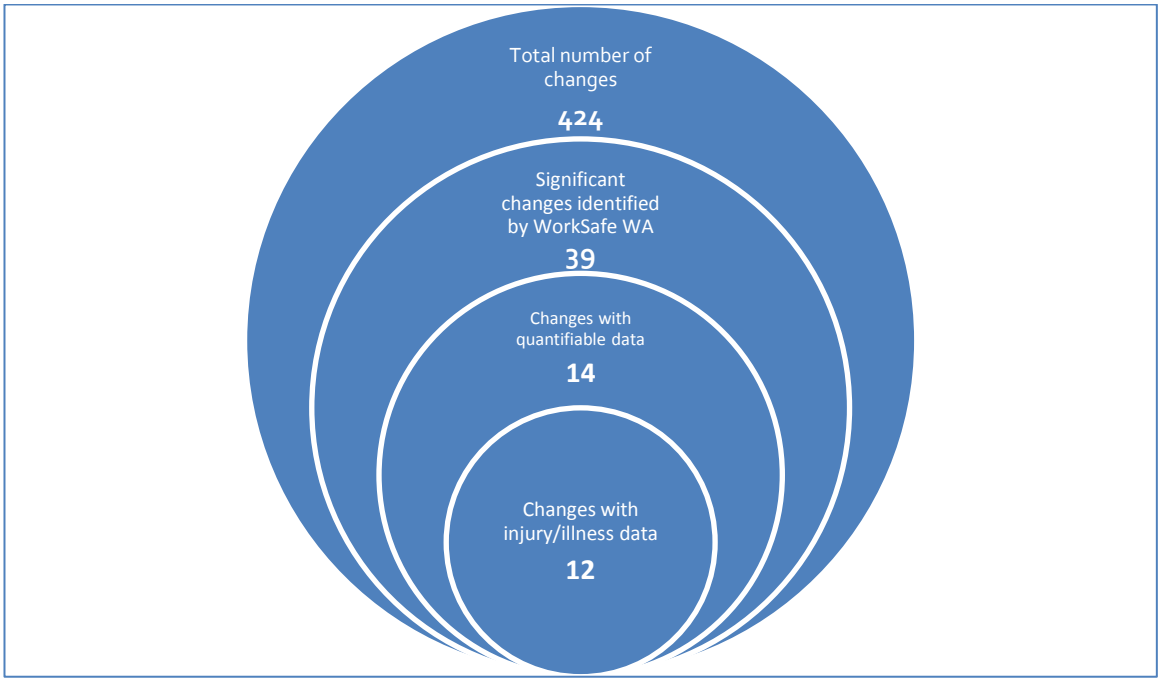
Threshold benefit cost test: Does consideration of the potential benefits (based on the size of the costs of relevant injuries and deaths) and plausible, modest reductions in incidents, suggest that the benefits are likely to exceed the threshold set by the measured costs?

As Low as Reasonably Practicable (ALARP) threshold: Reflecting the duty of care held by employers and other PCBUs, are the measured costs disproportionate to plausible, modest benefits? The rationale for this third test of benefits and costs is that it is desirable that compliance with the regulations is sufficient to prevent separate external litigation for Tort liability.

In addition to evaluating the benefits and costs the Decision RIS examines the impact in terms of: risk; parity of treatment across the sectors and WHS risks; administrative feasibility and efficiency; and market disruption and regional and small business effects.

Qualitative impact information was collected for all 39 topics through the consultation process; however 25 changes were unable to be quantified due to insufficient data to include in the benefit cost framework. Therefore, due to the limited quantifiable data available, a full benefit cost analysis was unable to be conducted for all changes. However, the remaining 14 out of the 39 changes were able to be quantified and included in the benefit cost analysis. Among the 14 changes that were able to be quantified, two were based on the *cost efficiency gains* method, while 12 were also assessed using the *threshold benefit cost test* and the *ALARP threshold* method. The latter 12 changes utilise injury and illness data from WorkCover to assess the cost to the economy. A summary of the assessment undertaken is shown graphically in Figure 1.

Figure 1: Assessment of changes undertaken



Outcomes of the Benefit Cost analysis

The cost efficiency gains test for the 14 changes that were assessed quantitatively is summarised in Table 1. It is noted that the national RIS for the regulations used 10 years and 7% as the base case – this is readily comparable with the figure of a net cost of $3,148 million. In addition, a discount rate of 4% and period of 20 years was used to assess the changes over a longer period and to reflect current low interest rates which have been recognised in recent decisions by regulators such as the Economic Regulation Authority.

Two lines are provided for fall prevention as Marsden Jacob identified two divergent estimates for the cost of implementation of the prevention of fall regulations. The housing industry estimates that the implementation of the changes will substantially add to the cost of residential construction – $25,000 for a single storey house and $17,000 for a double storey home. However, the South Australian government previously undertook an independent review which estimated the costs at $1,000 - $2,000 for a single storey home and $3,000 - $6,800 for a double storey home[2].

[2] Marsden Jacob used the upper estimates in all calculations.

Table 1: Summary of cost efficiency analysis for changes assessed quantitatively

	PV Costs (at 7% and over 10 years) $ m	PV Costs (at 4% and over 20 years) $ m
Asbestos - Air monitoring and clearance	45	86
Asbestos - Certified safety management systems	7	10
Asbestos - Removal - Notifications	6	12
Asbestos - Training	48	89
Asbestos - Register	39	41
Fall Prevention (using industry figures)	2,009	3,650
Fall Prevention (using independent figures)	138	131
Plant Registration renewals	13	17
HRWL-Boiler	6	10
Construction Projects - Appointment Of A Principal Contractor	31	35
Hazardous Chemicals - Risk Assessment And Record Keeping	-26	-49
Incident Notification - Prescribed Serious Illnesses	343	643
Noise: Audiometric Testing	105	188
Noise: Managing Risks	537	916
Personal Protective Clothing And Equipment (PPE)	-15	-33
Total (using industry figures for falls)	**3,148**	**5,617**
Total (using independent figures for falls)	**1,277**	**2,098**

Note: Benefits are shown as a negative.

Of the 14 changes assessed quantitatively, two changes provide a net cost saving:

- Hazardous Chemicals: Risk Assessment And Record Keeping; and
- Personal Protective Clothing and Equipment (PPE).

Respondents indicated that both of these changes will involve a changeover cost which is then offset by reduced ongoing costs in the future.

In this manner it can be concluded that the remaining 12 changes fail the *cost efficiency gains* test.

Marsden Jacob then considered the *threshold benefit cost test* – comparing the Net Present Value of total costs for injury and illness to the Net Present Value of WHS costs and considered the reduction in injury costs required to "break even". Table 2 compares the percentage reduction in injury costs to respondents' indication of the likely impact on health and safety.

Table 2: Comparison of the break-even point for injury costs relevant to each change to the expected impact on health and safety

Relevant proposed WHS change	Reduction in injury costs required for break even	Respondent's average indication of the impact on health and safety	Indication of likelihood of achieving a net benefit
Construction Projects: Appointment Of A Principal Contractor	0.4%	Little effect (0%) - Slightly makes things worse (up to 5%)	Unclear but possible
Fall Prevention (Using industry figures)	63.2%	Slightly improves things (up to 5%)	Unlikely
Fall Prevention (Using independent figures)	2.3%	Slightly improves things (up to 5%)	Likely
Hazardous Chemicals: Risk Assessment And Record Keeping	-8.6%	Little effect (0%)	Likely
Noise: Audiometric Testing & Noise: Managing Risks	440.7%	Slightly improves things (up to 5%) Slightly improves things (up to 5%)	Not possible
Plant Registration renewals	0.2%	Little effect (0%)	Unclear but possible
HRWL-Boiler	12.2%	NA	Unclear

An alternative approach was used for asbestos as it is not possible to accurately 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. Due to the long latency period for asbestos related diseases (typically 20-50 years) a further sensitivity (0%) was included for this analysis, summarised in Table 3.

Table 3: Threshold analysis of asbestos elements - required lives saved per annum

Asbestos element	Discount Rate				
	0%	2%	4%	7%	10%
Asbestos - Air monitoring and clearance	0.90	2.61	7.14	29.17	107.38
Asbestos - Certified safety management systems	0.10	0.30	0.87	3.85	15.33
Asbestos - Removal - Notifications	0.12	0.36	0.99	4.03	14.86
Asbestos - Training	0.93	2.71	7.44	30.47	112.45
Asbestos - Register	0.32	1.09	3.46	17.25	75.62
Total	**2.37**	**7.08**	**19.90**	**84.77**	**325.65**

Finally Marsden Jacob applied the ALARP test to each of the changes considered in the threshold benefit cost test. The primary duty of care under the model WHS Bill and a number of the regulations refer to *reasonably practicable*. Safe Work Australia's interpretative guideline outlines that a *disproportionate effort* is required to discharge an employer's responsibility. This appears consistent with case law from the United Kingdom, where the UK Health and Safety Executive provide advice on the scale of the *disproportionate factor*. The *disproportionate factor* is the multiple of the likely benefits that should be spent to avoid an injury. Marsden Jacob's analysis sets out the reduction in health costs that would be required under disproportionate factors of 1, 3, 5 and 10.

Based on international literature, this test appears most relevant to asbestos and fall prevention. Using a disproportion factor of 3 for fall prevention, the proposed change appears beneficial whether using the industry or independent costs estimates. Using a disproportion factor of 3 for asbestos, the proposed changes are beneficial if at least 6.6 lives are saved per year. Unfortunately it is not possible to determine whether this saving is likely.

Assessment against other RIS criteria

Once the BCA was completed, Marsden Jacob assessed the outcomes of the consultation and the evaluation of the proposed changes against the RIS criteria. Marsden Jacob analysed the impacts of the WHS model laws and assessed the impacts of the different options going forward. It includes detail of the expected impacts on workplace participants, businesses, and the economy and community as a whole. The Decision RIS includes recommendations as to which option is best suited for Western Australia.

In addition, the impacts on small and regional businesses were examined and reported in detail. The key finding here is that several important proposed changes are "*most unfriendly to small*

business".[3] Specifically, the demands for higher credentials, formally documented Safety Plans and so on will impose substantial costs on business which will threaten the viability of small businesses and businesses located regionally.

Conclusions and recommendations

Broad options

In considering whether to implement WHS harmonisation the West Australian Government has three broad options:

- implement all proposed changes in WHS regulation;
- reject all proposed changes in WHS; or
- implement the proposed changes in part or with amendments. This option allows the West Australian Government to accept a package of improved regulations which will maximise net benefits and avoid unnecessary impacts, particularly to small and regional businesses.

In considering these options, Marsden Jacob has assembled an evidence base consisting of the consultation comments and insights, assessment of the benefits and costs for the State as a whole, impacts on small and regional businesses and impacts on equity and competition.

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

Similarly, we disregarded the notion that the package of proposed changes should be rejected as a whole. Harmonisation and standardisation does have a value and many of the changes impose little or no cost on West Australian businesses and appear likely to achieve benefits through improved health and safety performance.

Between the two extremes of complete rejection or complete acceptance, finer consideration is required.

Implementation and evaluation

Implementation timeframe

The WA Government has previously indicated that it plans to implement the whole package of WHS changes – covering both general industry and mining – simultaneously.

> *The Government has concerns that having a different commencement date for mining laws will create an uncertain regulatory environment which could conceivably have a negative impact on safety standards in this high risk industry.*[4]

[3] *Pers Comms* [Self Insurers] Industry Association.

[4] Frequently asked questions – harmonised OSH laws, accessed 14 December 2012. http://www.commerce.wa.gov.au/worksafe/Content/About_Us/Legislation/National_model_act_FAQs.html

Currently the "core" mining regulations are reportedly near completion. In addition, the "non-core" mining regulations are still being developed by the three main mining States (Western Australia, Queensland and New South Wales).

The implementation timeframe for all elements of the package of WHS changes will become clearer once the "core" mining regulations are published and the WA regulators have had an opportunity to consider them.

Evaluation

All legislative changes agreed by COAG are subject to review to ensure a commitment to establish and maintain effective arrangements for maximising the efficiency of both new and amended legislation. This avoids unnecessary compliance costs and restriction of competition.

Safe Work Australia have developed an evaluation plan (*Evaluation Plan for the Harmonisation of Work Health and Safety in Australia*, 29 July 2011[5]) which would be applicable to the West Australian implementation and evaluation process.

Once the details and timing of the mining specific regulations have been confirmed, WorkSafe WA and the Resources Safety Division of the Department of Mines and Petroleum Resources should identify how the WHS implementation timeframes will align with the planned evaluation timetable. It is noted that implementation in other jurisdictions have already identified a number of changes required to the model WHS regulations (e.g. removal of regulation 217). In addition, COAG agreed in April 2012 to a review to be completed by the end of 2014 which will inevitably result in further changes to the WHS regulations.

Overview: the numbers

Of the estimated 424 proposed changes in WHS regulation, some 39 were identified by WorkSafe WA as potentially significant. The consultation sought to confirm and/or extend this assessment by inviting respondents to identify other changes of material importance. In essence, the few additional items identified were not systematically or strongly supported and insufficient information was provided to allow qualitative or quantitative analysis. The remainder of the total number of proposed changes – 385 – were considered by WorkSafe to lack material significance for West Australian workplaces. *Prima facie*, the great bulk of the proposed changes can be seen as individually contributing to harmonisation and standardisation of WHS regulations across Australia with low cost to Western Australian workplaces and some benefits in terms of improved safety outcomes.

For the 39 potentially significant proposed changes in WHS regulations evaluated in this review, the assembled evidence base is summarised in Table 4. This identifies whether information on the main criteria is available (i.e., information on benefits and costs), and whether there are small business and regional issues or whether the proposed change is likely to raise compliance issues – where some businesses choose not to comply or are unable to comply with the new regulation.

5 http://www.safeworkaustralia.gov.au/sites/SWA/about/who-we-are/Corporateinformation/FOI/Documents/Final-Evaluation-Plan-WHS-Harmonisation.PDF

Table 4: Proposed changes

Proposed Change	Relevant Criteria			Direction
	Benefit Cost Analysis	Small Bus and Regions	Compliance	Accept / Reject
Asbestos				
– Register	? X	●	●	Delay / Clarify
– Naturally occurring asbestos				Accept
– Air monitoring and clearance	? X	●	●	Delay / Clarify
– Analysis of samples			●	Accept
– Certified safety management systems	? ✓	●		Delay / Clarify
– Removal licences		●	●	Accept
– Removal notifications	? ✓	●	●	Delay / Clarify
– Training	? X			Delay / Clarify
Construction projects				
– Appointment of a principal contractor	✓	●		Reject
Diving work				
– Diving work				Accept
Fall prevention				
– Fall prevention	?			Further Consideration
Hazardous chemicals				
– Classification, labels, MSDS and controls				Accept
– Import				Accept
– Restricted haz chems – crystalline silica silicon dioxide				Accept
– Risk assessment and record keeping	✓			Accept
– Therapeutic goods & ag vet chemicals				Accept
Health monitoring				
Reports to the regulator				Delay / Clarify
High risk work licences (HRWL)				
– Boilers (pressure equipment)	? ✓			Accept
– Concrete placing boom				Accept
– Dogging and "slinging techniques"				Accept
– Exemptions				Accept
– Reach stacker				Accept
Incident notification				
– Prescribed serious illnesses	X	●	●	Delay / Clarify
Lead risk work				Accept
Noise				
Audiometric testing	X	●		Reject
Managing risks	X			Reject
Personal protective clothing and equipment (PPE)	✓	●		Accept with additional guidance
Plant				
– Amusement devices		●	●	Reject / Debatable
– Design registration – concrete placement units with delivery booms				Accept
– Design verification: cranes				Accept
– Design verification: pressure vessels				Delay / Clarify
– Import				Accept
– Item of plant registration				Accept
– Item of plant registration – renewals	? ✓			Accept
– Mobile and tower cranes				Accept
– Registration: prefabricated formwork & boom type concrete placement units				Accept
Thermal comfort				Accept
Tilt-up construction, spray painting, welding, abrasive blasting etc				
– Spray painting				Delay / Consider
– Tilt-up construction, welding, abrasive blasting, isocyanates and styrene				Accept

Of the 39 potentially significant proposed changes in the WHS regulations evaluated in this review, the evidence base indicates that 23 can be accepted. From the remainder, 4 can be rejected based on the available evidence and 12 might be rejected, but require careful and considered judgement.

Information on costs was available for 14 specific proposed changes. For the vast majority of these the evidence base suggests that they should be rejected, amended or are matters of fine judgement.

Detailed view: specific recommendations

Recommendations on individual proposed changes are as follows:

Recommendation 1: Other issues and other actions

WorkSafe WA should review the topics raised by respondents such as "tag and test" and the definition of 'construction' (which are additional to the 39 potentially significant changes identified by WorkSafe WA) and issue clarifying instructions / take other actions where necessary

Recommendation 2: Accept

Proposed changes not specifically identified by WorkSafe WA, or by respondents as having material impact on West Australian workplaces should be adopted. In addition, proposed changes listed immediately below should be adopted, viz:

Asbestos - naturally occurring

Asbestos - analysis of samples

Asbestos - removal licenses

Hazardous chemicals - classification, labels etc.

Hazardous chemicals - import

Hazardous chemicals - restricted

Hazardous chemicals - crystalline silica silicon dioxide

Hazardous chemicals - risk assessment and record keeping

Hazardous chemicals - therapeutic goods and ag vet chemicals

High risk work licenses - boilers (pressure equipment)

High risk work licenses - concrete placing boom

High risk work licenses - dogging and slinging techniques

High risk work licenses - exemptions

High risk work licenses - reach stacker

Lead risk work

Plant - design registration for concrete placement units with delivery boom

Plant - design verification cranes

Plant - design verification pressure vessels

Plant - import

Plant - item of plant registration

Plant - item of plant registration renewals

Plant - mobile and tower cranes

Plant - registration: prefabrication formwork and boom type placement units

Tilt up construction welding, abrasiveness blasting, isocyanates and styrene[6]

Recommendation 3: Asbestos Register

Proposed changes relating to register of buildings containing asbestos should be delayed pending clarification 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.[7]

Recommendation 4: Asbestos air monitoring and clearance, removal notifications and asbestos training

Proposed changes in regulations relating to asbestos air monitoring and clearance, removal notifications and 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.[8]

Recommendation 5: Asbestos – certified safety management systems

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

[6] NB from this collective group we have removed Spray Painting.

[7] http://deewr.gov.au/asbestos-management-review

[8] http://deewr.gov.au/asbestos-management-review

be given to improving safety management of asbestos removal without threatening small business viability.

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.[9]

Recommendation 6: Construction projects – appointment of a principal contractor

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.

Recommendation 7: Diving work

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.

Recommendation 8: Fall prevention

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.

Recommendation 9: Health monitoring – reports to the regulator by PCBU

The regulation change should be delayed pending clarification of the:

a) issues raised surrounding worker confidentiality; and

b) costs of the compliance burden and efficiency of administrative processes compared to the potential benefits of the change.

Recommendation 10: Incident notification – prescribed serious illnesses

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.

Recommendation 11: Personal protective clothing and equipment (PPE)

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

[9] http://deewr.gov.au/asbestos-management-review

change. However, further consideration around additional guidance may be necessary, especially for small business.

Recommendation 12: Noise: audiometric testing

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.

Recommendation 13: Noise: managing risk

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.

Recommendation 14: Plant: amusement devices

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.

Recommendation 15: Design verification – pressure vessels

The proposed change should be delayed pending clarification of the definition of "a competent person" and the provision of further guidance on this matter.

Recommendation 16: Spray painting

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.

Detailed view: generic recommendations

Recommendation 17

The adverse and pervasive impacts of the proposed changes in WHS regulation on small and regional businesses and more generally on the State of Western Australia should be recognised explicitly.

- Special attention should be directed to implementation of proposed changes affecting small business and regional businesses as well as volunteer organisations so that the objectives of improved health and safety in their workplaces can be achieved at low cost to small and regional businesses.
- The options for more tailored treatments of small and regional businesses as well as volunteer organisations to achieve improved health and safety outcomes cost effectively should be explored subject to no diminution of their responsibilities and duty of care. Such

options will include measures successfully applied in overseas jurisdictions, including specific information/education programs for small business and volunteer groups, and relief from extensive requirements for documentation of procedures and plans.

Recommendation 18: Regulator resourcing

Recognise the principle that new regulation should not be enacted unless it can be well resourced.

The extent and timing of the adoption of the recommendations may need to be linked to budget setting.

As noted through the cost efficiency test under the Benefit Cost Analysis, the implementation of a number of the regulatory changes will result in increased costs. Some of these costs will be borne by the regulator – primarily WorkSafe WA, but also Resources Safety Division of the Department of Mines and Petroleum.

The successful implementation of WHS will depend on the regulators being adequately resourced to respond to its altered role. In its submission WorkSafe WA estimated that:

> *the implementation of WHS will impact on its budgetary requirements by $8.5 million for initial set-up costs and ongoing annual costs of $3.4 million which can be anticipated as increasing annually as the cost of labour rises.*

In addition to this estimate WorkSafe WA identified other changes where there would be a resourcing impact – but this could not be estimated at this time.

While the Resources Safety Division did not make a formal submission it appears likely that the implementation of WHS would also impact on its resourcing.

It appears likely that failure to resource the regulators adequately could result in impacts such as delays in implementation, increased costs for businesses and/or low levels of compliance.

Recommendation 19: Resourcing for other Government departments

Recognise that the implementation of WHS will impose costs on both State and local Government activities.

Based on responses provided it appears likely that at a State Government level these costs will be particularly apparent in the following areas:

- emergency services;
- health and education departments; and
- utilities which often operate as Government Trading Enterprises.

Recommendation 20: Sharper prioritisation of WorkSafe inspections and other activities

Government and stakeholders should anticipate reprioritisation of WorkSafe activities.

Given the broad range of new roles and implementation costs, WorkSafe WA and the Resources Safety Division will need to plan and prioritise their resourcing for investigation and enforcement for a number of years in the future.

This may be best done by developing and consulting on an investigation and enforcement policy. The development of this policy would allow both community and industry input and

this to be balanced against resource constraints. In addition it would provide further guidance to industry on the key topics that the regulators planned to focus on, both now and in the future.

Recommendation 21: Monitoring other consequences

Other consequences arising from of the implementation of WHS will need to be identified and monitored as part of the evaluation strategy.

As set out in section 5.5, the implementation of WHS may result in other consequences that are counterproductive to the overall objective of worker safety. Potential other consequences of the regulations highlighted by respondents include increased use of exemptions and increased non-compliance.

1. Introduction

Marsden Jacob Associates (Marsden Jacob) has been contracted by WorkSafe WA to:

- undertake consultation to identify the impacts that are likely to be experienced as a result of implementing the model WHS regulations; and
- identify the qualitative and quantitative impacts (benefits and costs), of the WHS regulations and first stage Codes of Practice on Western Australian business, community and government sectors.

Following discussions between WorkSafe WA and the Regulatory Gatekeeping Unit, this review was extended to become a formal Decision RIS and accordingly, subject to the Regulatory Impact Assessment process.

1.1 Background

On 3 July 2008, the Council of Australian Governments (COAG) formalised its commitment to the national harmonisation of occupational safety and health laws by means of the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety ('the IGA').

The objectives of the legislative change is summarised in the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety which states:

> *The fundamental objective of the reform covered by this Agreement is to produce the optimal model for a national approach to OHS regulation and operation which will:*
>
> - *enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;*
> - *address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;*
> - *create efficiencies for governments in the provision of OHS regulatory and support services; and*
> - *achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.*

The IGA committed each State and Territory to the development by the Commonwealth of national model WHS legislation, supported by model WHS regulations and model Codes of Practice.

1.2 Previous Regulatory Impact Statements

The model WHS regulations and the first stage model Codes of Practice were published in November 2011. Also published at that time was the Decision Regulatory Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice (the National Decision RIS) prepared by the Commonwealth Government.

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

The Commonwealth Government's National Decision RIS also assessed the overall implementation costs and impacts on Australian Governments, industry and the community. It provided a national focus, rather than separate detailed assessments for each state and territory which may have taken into account specific geographic or industrial differences. Both Victoria and South Australia have since published their own RISs on this basis.

1.3 Need for a separate West Australian review

The national Decision RIS was considered inadequate for Western Australia as it includes little Western Australian specific detail. This lack of detail meant the Decision RIS did not enable the Western Australian Government to fully assess:

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

As a result of this lack of detail, the Western Australian Government decided to undertake a separate West Australian assessment of those important issues in order to understand the benefits, costs and other effects on Western Australian business, community and government sectors. The assessment was intended to incorporate wide-reaching consultation with small business and regional areas. Marsden Jacob has now conducted this consultation.

As there is an existing National Decision RIS, the objective of the current impact statement is to supplement the National Decision RIS; however, for simplicity we refer to this impact statement as a RIS throughout this document.

1.4 Scope of the Decision RIS

This RIS provides an overview of the extensive RIS consultation process, the resulting information collated and the assessment of the benefits, costs and other impacts of adopting the model WHS regulations and the first stage model Codes of Practice.

It does not:

- include legislation (i.e., the model Work Health and Safety Act); or
- cover the application of the new mining-specific laws for the mining industry, which are still under development.

The impact of the mining-specific content is planned to be addressed as part of a separate exercise conducted by the Resources Safety Division of the Western Australian Department of Mines and Petroleum.

The RIS is accompanied by appendices which are provided separately as well as a companion volume which summarises the consultation responses.

1.5 Background on harmonisation

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

1.5.1 The Model Work Health and Safety Legislation

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

In Western Australia a mirror version of the model Act for general industry has been drafted (model WA WHS Act). The Western Australian Government is awaiting the corresponding mining version together with all the supporting regulations and Codes of Practice.

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

The model WA WHS Act is intended to apply to all workplaces and includes specific reference to workplace participants such as persons conducting a business or undertaking (PCBU), public authorities, unions, volunteers, workers, importers, manufacturers, suppliers, employer organisations, health and safety representatives, local authorities and officers. While this RIS refers to **business/workplace(s)** in many places, the term is used for ease of reading. In fact, all workplace participants regardless of whether they worked or engaged in an undertaking were encouraged to make submissions.

1.5.2 The model WHS regulations

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

As with the model WA WHS Act, the intention is that mirror versions of the model WHS regulations will be drafted for implementation in Western Australia. Those new regulations would replace the existing *Occupational Safety and Health Regulations1996 (OSH Regulations)* and the mining industry specific regulations in *Mines Safety and Inspection Regulations 1995*.

1.5.3 The model Codes of Practice

The first stage model Codes of Practice are intended to provide practical guidance for businesses on how to implement and comply with the provisions contained in the model WHS Act and the accompanying model WHS regulations.

The model Codes of Practice are being developed in stages according to priority. At the current time, a total of 19 Codes of Practice have been finalised and published by the Commonwealth Government over the period November 2011 to July 2012. They are referred to as first and second stage Codes of Practice respectively. Subsequent Codes of Practice are under development and will be published by the Commonwealth Government in due course.

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

1.6 WA's position on harmonisation

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

- the exclusion of four areas that it would not be adopting as law in this State;
- WorkSafe WA retaining the exclusive responsibility within the Government in Western Australia to bring prosecutions for offences against WHS legislation and regulation;
- the need to ensure that the harmonisation in WA of WHS regulation for mining (both the core and non-core mining regulations) and general industry is maintained; and
- the assessment of its impacts, benefits, and costs to the State – in particular changes from the existing WA framework - all of which will guide the Government on the adoption of particular regulations.

Harmonisation Issues not applicable for WA

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

- penalty levels – the proposed penalty levels are significantly higher than the current levels and could be unreasonably punitive, particularly for small business operators;
- union right of entry – right of entry for the purposes of occupational health and safety is already provided for under the *Industrial Relations Act 1979*. The proposed change is considered to create duplication risking confusion and inconsistencies;
- health and safety representatives' capacity to direct the cessation of work – The Western Australian Government (WA) is of the view that this decision should remain with the individual worker and not be placed upon a health and safety representative; and
- reverse onus of proof in discrimination matters – WA considers that its inclusion is contrary to one of the issues that initiated harmonisation (reverse onus of proof associated with prosecutions, which currently exists in Queensland and New South Wales). Consistent with the relevant jurisdictional note, WA has also decided it will not adopt provisions providing for the Director of Public Prosecutions to review decisions made by WorkSafe WA not to prosecute.

2. Regulatory Impact Statement consultation process

The process Marsden Jacob used in preparing the RIS follows the guidance and advice of the Regulatory Gatekeeping Unit within the WA Department of Treasury. This section summarises the process used and refers to subsequent sections for additional detail.

2.1 The Information and Issues Paper

Marsden Jacob (with input from WorkSafe WA) prepared the 'Information and Issues Paper which provided an overview of harmonisation, as well as the RIS process, and called for submissions. The Information and Issues Paper, constitutes a Consultation Regulatory Impact Statement for the purposes of the Regulatory Impact Assessment process.

The purpose of the Information and Issues Paper was to:

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

Importantly the Information and Issues Paper sought input on the following topics:

- overall perceptions of WHS harmonisation;
- 39 specific changes in the regulations identified by WorkSafe WA;
- any other changes identified by respondents;
- first stage Codes of Practice; and
- transitional arrangements that would minimise changeover costs when implementing the regulations.

The Information and Issues paper was prepared on the basis of the approved model WHS Regulations[10]. When the paper was being drafted, Marsden Jacob was aware that potential modifications to the model WHS Regulations where under contemplation, however, as those modifications where yet to be finalised and receive the appropriate approvals it was decided to prepare the paper based on the approved version.

[10] Model WHS regulations dated November 2011 as currently available on the Safe Work Australia website.

2.2 Consultation process used in this RIS

The RIS consultation process ran for an eight week period from 17 August to close of business on 12 October 2012. Together with WorkSafe WA, Marsden Jacob requested submissions through the following methods:

- completing the online survey;
- making a written submission; and/or
- attending a consultation session in a regional centre in Western Australia or in Perth.

Appendix 1 sets out the consultation process undertaken in detail. The objectives of the consultation were to achieve as wide as possible range of inputs – in particular from those directly affected by the proposed changes. To this end, a broad range of approaches were made using alternative methods and mediums. Appendix 2 provides an indicative (but not complete) list of contacts made.

Online survey

Two survey versions were made available online to workplace participants to collect information from all sectors of industry on the costs and benefits of the proposed changes to regulations and codes. The two versions of the surveys were made up of a comprehensive survey (aimed at businesses with more than 20 employees) and a shorter survey for small businesses.

The surveys asked for information about specific changes in the regulations that WorkSafe WA identified as well as the likely impact the whole package of changes would have on their business or industry. In addition, the survey allowed respondents to identify other areas of concern.

Written submission

Workplace participants were also provided with the option to provide a written submission. This provided respondents with the opportunity to comment both generally and specifically on how the implementation of the model WHS regulations and first stage model Codes of Practice will impact on themselves, work colleagues and/or business/workplace.

Consultation sessions

As part of the consultation process, 12 consultation sessions were conducted which allowed workplace participants to attend in person and discuss questions and issues they had about the proposed WHS laws. Regional forums covered specific industries throughout the day, whereas the Perth forums were focused on particular industries.

The consultation sessions included:

- seven (7) regional forums (Port Hedland, Broome, Geraldton, Albany, Bunbury, Kalgoorlie, and Merredin);
- four (4) Perth based forums (Small Business, Volunteer and Not For Profit, Mining and Asbestos); and
- one (1) information briefing open to all industry.

2.3 Examination of available information on proposed changes

At the conclusion of the consultation period, all data and information collected through the various methods of public input (online survey, written submissions, and consultation sessions) were collated and analysed.

2.3.1 Consultation responses

There were approximately 3,500 downloads of the Information and Issues Paper, the Comparison Table for definitions under the WHS Act, and the Written Submission Cover Sheet. This reflects the level of interest by the public in providing comment about the WHS model laws.

Altogether there were 196 attendees to the Perth forums, 60 attendees to the regional forums, 44 written submissions, and 115 survey responses. The 115 survey responses were comprised of 89 who responded to the full survey and 26 who responded to the small business survey. Among the survey respondents, approximately three quarters of those that answered the full survey and less than half that answered the small business survey provided sufficient data to conduct a BCA. Overall, there were a total of over 350 contributions.

Once all data and information were collated, Marsden Jacob then proceeded to analyse each of the individual elements to extract underlying trends in how different industries were impacted by each of the proposed changes. In addition to providing estimates of current and anticipated compliance costs and expected benefits and costs associated with the proposed changes, respondents were also asked their overall opinion of WHS harmonisation and their thoughts on transitional provisions.

The outcomes of the consultation process are discussed in detail in Section 3.

3. Collation of consultation responses

3.1 Summary of data collected

During the preparation of the Information and Issues Paper, WorkSafe WA identified 39 specific changes where the adoption of the model WHS regulations would result in changes to work practices (WorkSafe's methodology for identifying these changes is summarised in Appendix 3). Through the consultation process, respondents were asked to identify the impact of these changes (such as whether the changes would lead to benefits and/or costs). Appendix 4 provides a comparison of consultation respondent profiles to the broader Western Australian industry profile to consider the validity of the responses as a representative sample of West Australian businesses.

It is important to note that while the WHS regulations introduce a large number of textual changes, not all of these changes alter the effect of the regulations.

In addition to these changes, respondents were able to provide comment on:

- any other changes in regulation they had identified;
- key definitions used in the Act (workers, workplace; and a Person Conducting an Undertaking or Business); and
- the first stage Codes of Practice.

Table 5 lists the 39 specific changes that underpin the model WHS regulations, along with their corresponding sections within the report.

3.1.1 Total numbers of submissions

There are a total of over 350 contributions – these include written submissions, attendance at a forum or workshop and survey responses (an example of a workshop survey used in the consultation process is provided in Appendix 6).

This total does include some double counting – where someone attended a meeting, provided a written submission and responded to a survey. However, often these were different individuals within the one organisation, e.g., BHP representatives attending in Port Hedland, BHP attending the mining workshop, and BHP providing a written submission.

There are a few occasions where the same person participated in two or three elements – but these are limited in number and are estimated to make up a total of around 20 contributions.

Table 5: Total numbers of submissions

Submission format	Number of submissions
Written Submissions	53
Online Survey (Full)	89
Online Survey (Small Business)	26
Regional Forums	
Port Hedland	8
Broome	3
Geraldton	6
Albany	7
Bunbury	18
Kalgoorlie	7
Merredin	11
Workshops	
Small Business	40
Volunteer & Not for Profit	60
Mining	24
Asbestos	7
Total input provided	**359**

3.1.2 Frequency of comment on different topics

As previously mentioned, comments were sought on each of the 39 items. More contentious issues attracted more frequent comment. Among individual items, fall prevention attracted the most frequent comment followed by audiometric testing and the appointment of a principal contractor ($250,000 threshold) in construction.

Table 6 shows the frequency of responses across the 39 items identified by WorkSafe WA. These are grouped under the main headings attracting most comment – asbestos, hazardous chemicals, noise, plant and definitions in the model Act. Definitions in the model Act attracted a relatively high volume of comments, despite comments not being sought on this area. The next most frequent groupings were construction, high risk work and personal protective clothing.

Table 6: Frequency of responses for each change identified

Times identified	Proposed change
35	Asbestos – air monitoring and clearance
20	Asbestos – analysis of samples
20	Asbestos – certified safety management systems
7	Asbestos – naturally occurring asbestos
29	Asbestos – register
15	Asbestos – removal licences
26	Asbestos – removal notifications
31	Asbestos – training
39	Construction projects – appointment of a principal contractor
12	Diving work
52	Fall prevention
18	Hazardous chemicals – classification, labels, MSDS and controls
12	Hazardous chemicals – import
4	Hazardous chemicals – "restricted hazardous chemicals" – crystalline silica silicon dioxide
31	Hazardous chemicals – risk assessment and record keeping
8	Hazardous chemicals – therapeutic goods and agricultural veterinary (agvet) chemicals
11	Health monitoring – reports to the regulator
9	High risk work licences (HRWL) – boilers (pressure equipment)
6	High risk work licences (HRWL) – concrete placing boom
15	High risk work licences (HRWL) – dogging and "slinging techniques"
5	High risk work licences (HRWL) – exemptions
6	High risk work licences (HRWL) – reach stacker
29	Incident notification – prescribed serious illnesses
6	Lead risk work
44	Noise – audiometric testing
24	Noise – managing risks
36	Personal protective clothing and equipment (PPE)
5	Plant – amusement devices
2	Plant – design registration – Concrete placement units with delivery booms
5	Plant – design verification – cranes
5	Plant – design verification –pressure vessels
5	Plant – import
11	Plant – item of plant registration
19	Plant – item of plant registration – renewals
5	Plant – mobile and tower cranes
5	Plant – registration – prefabricated formwork and boom type concrete placement units
11	Spray painting, welding, abrasive blasting, isocyanates and styrene
18	Thermal comfort
46	Definitions in the Act
14	Other (specified by the respondent)

NB. For this analysis we have counted all topics raised in written submissions as they tended not to identify the top three changes for benefits and costs but instead often raised a large number of topics. In addition, we have not included comments provided at the regional forums due to their descriptive nature.

3.1.3 Summary of analysis

The Benefit Costs tests applied

An important component of the RIS is the Benefit Cost Analysis (BCA). The BCA provides an assessment of the benefits and costs associated with the WHS model laws and provides an indication of how this will affect workplace participants, their workplaces, as well as the Western Australian Government and the community as a whole.

To conduct a BCA, Marsden Jacob assessed the package of changes as a whole to determine if any trend had emerged from the responses.

Three separate comparisons of benefit and costs are employed in this RIS. These are:

1. **Cost efficiency gains**: Is the regulatory change likely to reduce the costs of compliance (sufficient to offset the transitional costs) without any reduction in health and safety outcomes? That is, is the change worthwhile even without any improvement in safety?
2. **Threshold benefit cost test:** Does consideration of the potential benefits (based on the size of the costs of relevant injuries and deaths) and plausible, modest reductions in incidents, suggest that the benefits are likely to exceed the threshold set by the measured costs?
3. **As Low As Reasonable Practicable (ALARP) threshold:** Reflecting the duty of care held by employers and other PCBUs, are the measured costs disproportionate to plausible, modest benefits? The rationale for this third test of benefits and costs is that it is desirable that compliance with the regulations is sufficient to prevent separate external litigation for tort liability.

The suite of three tests recognises the challenges associated with measuring the costs and benefits of changes in WHS legislation and codes.

Consistent with the guidelines on the conduct of RISs, these tests are applied over a ten year period and over a twenty year period. Consistent with benefit cost analysis, the timing of the benefits and costs is important since our community prefers benefits upfront and costs as far away as possible.

The degree of time preference is, however, a matter of debate, with different discount rates suggested for different decisions by different groups. We employ a discount rate of 4% as our base case. In addition we report the results for a 2%, 7% and 10% discount rate over twenty years. These sensitivity analyses are applicable to assess the costs and benefits over an extended period. In considering asbestos, which may result in impacts in thirty years as a result of actions now, an additional sensitivity of 0% was added so as to not discount the costs excessively simply because the worker's illness and possible death occurs thirty years later.

Qualitative and quantitative analysis

The model WHS regulations contain approximately 424 changes when compared to the existing regulations. When preparing the Information and Issues Paper, WorkSafe WA identified 39 changes that may potentially have a significant impact upon workplace participants. These 39 changes were a point of focus when submissions were sought on the likely impact of the model WHS regulations on workplace participants, industry, and the economy and community as a whole.

Qualitative impact information was collected for all 39 topics through the consultation process; however 25 changes were unable to be quantified due to insufficient data to include in the benefit cost framework (this is in addition to several other topics identified by respondents as

having an impact[11]). Therefore, due to the limited quantifiable data available, a full benefit cost analysis was unable to be conducted.

However, the remaining 14 out of the 39 changes were able to be quantified and included in the benefit cost analysis. Among the 14 changes that were able to be quantified, two were based on the *cost efficiency gains* method, while 12 were based on both the *threshold benefit cost test* and the *ALARP threshold* method which are explained in section 4.3.2 (Appendix 5 provides a detailed explanation of how regulation impact costs are calculated). The latter 12 changes utilise injury and illness data from WorkCover to assess the cost to the economy.

In assessing the impact of each of the changes, the costs associated with the change (implementation/changeover and ongoing costs) are compared to the anticipated result in health and safety (e.g. the number of lives saved).

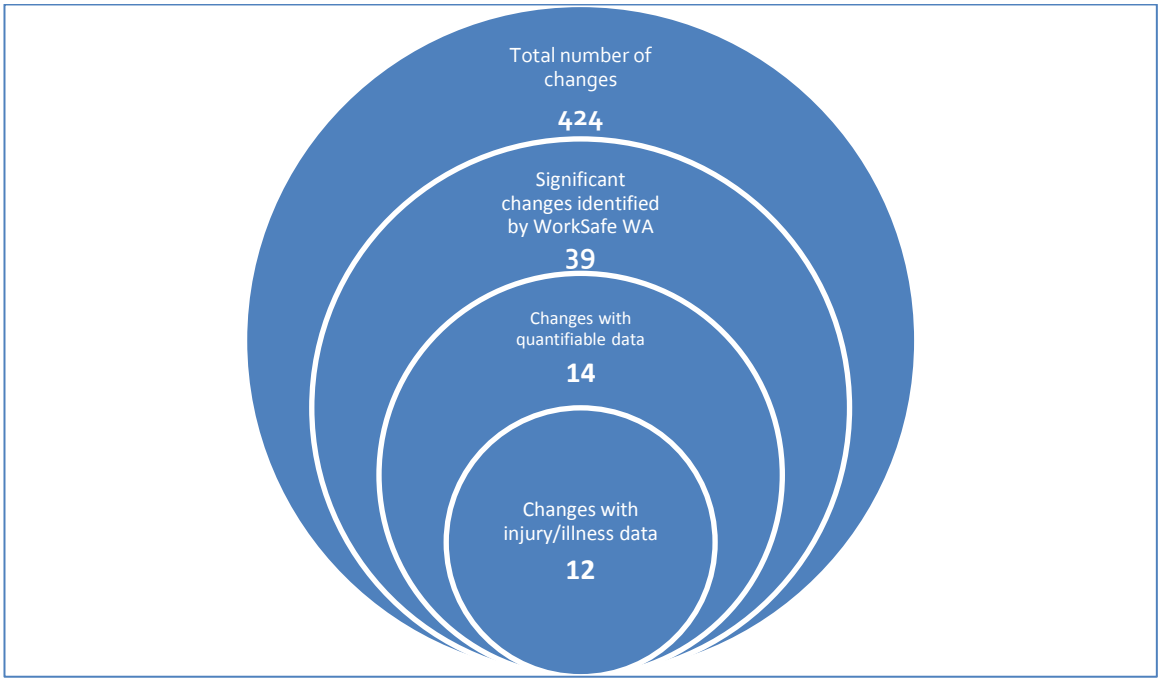
As an example, *Fall Prevention* is estimated – based on cost estimates provided by the industry – to cost industry $2.2 billion (Present Value) to implement and comply on an ongoing basis. Based on WorkCover data, the cost of injuries over the same period is $3.5 billion (Present Value). As the cost of WHS compliance is approximately 65 per cent of total injury costs, unless injuries are reduced by an equivalent 65 per cent or more, on the basis of the industry's cost estimates it would not be economically beneficial to Western Australia for this change to proceed. As it is difficult to determine the impact to injuries before the laws have been implemented, survey respondents' expectations of the impact were assessed to determine if this was a net benefit to the economy.

For *Fall Prevention*, 44 per cent of respondents believe the change will lead to a significant improvement in safety (more than 20 per cent), while another 44 per cent believe there will be between 0 and 5 per cent improvement. Additional information is provided by the comparison of WA falls rates with other jurisdictions: the WA rate is approximately double the Victorian rate from where the proposed regulations have been in operation for some years. A 50% reduction in the WA incident rate for falls would not be quite sufficient to produce net benefits if costs are accurately indicated by the industry submission.

In this case, it is difficult to ascertain whether the cost of implementing the new change will be offset by the safety outcomes. In some cases, the final recommendation will require a subjective assessment by WorkSafe WA.

[11] Refer to the companion to the RIS for discussion of other topics raised by respondents. Please note that due to the nature of the responses provided, qualitative and quantitative analysis of these topics not possible.

Figure 2: Assessment of changes undertaken



Box 2: Assessment of the importance of each change

Through discussions with respondents and WorkSafe WA, Marsden Jacob identified three possible reasons some changes received a low numbers of responses - which in turn prevents a quantitative analysis and in some cases limits the level of qualitative analysis possible. The three reasons identified were:

1. the low level of response is indicative of a gap in the consultation process;
2. the change impacts a small industry (possibly significantly); or
3. the change results in minimal benefits and costs – making it a low priority for respondents.

As set out in section 3.1 and Appendix 4, a comparison of consultation respondent profiles to the broader Western Australian industry profile indicates that the responses garnered are a representative sample of West Australian businesses. As such, reason 1 outlined above was considered unlikely.

It was identified that some changes would impact on small industries (specifically Plant – amusement devices and High Risk Worker Licences for boiler operators). However, beyond these examples it was considered that changes which received a low number or responses were likely to be low priority for respondents as they result in minimal benefits and costs.

4. Assessment against RIS criteria

4.1 RIS criteria

As set out in section 2, the Regulatory Impact Statement requires an assessment of a) whether the legislative and/or regulatory change will meet its objective, b) whether it will be a net benefit to the economy, and c) whether the regulatory change will have an impact on:

- the environment;
- social justice;
- health;
- equity; and
- other relevant areas.

In addition, the RIS examines the impact in terms of:

- parity of treatment across the sectors and WHS risks;
- administrative feasibility and efficiency; and
- market disruption and regional and small business effects.

If the proposed legislative changes compare favourably against these criteria then the appropriate implementation strategy can be considered – particularly the use of transitional provisions to minimise changeover costs.

4.2 Achievement of legislative objectives

As set out in section 1, the objective of the legislative change is to introduce a harmonised system for Occupational Health and Safety Legislation in Australia - *a national approach to OHS regulation and operation*.

At the time of publication, Victoria was the only State that indicated that it does not intend to introduce WHS Harmonisation. All other States either have introduced harmonisation for general industry or have stated an intention to introduce it.

In this manner the legislation appears likely to meet its "fundamental objective". It is noteworthy that some states (such as South Australia and Queensland) have amended the legislation and regulations or have announced their intention to make amendments. As outlined in section 1.6, WA has already indicated that it will not include four amendments in the WHS legislation.

It appears that the introduction of amendments is likely to reduce the overall level of harmonisation and the associated benefits that will be achieved.

4.2.1 Respondent views on WHS as a whole

Through the surveys and workshops, respondents were asked their views of the impact of WHS as a whole. These are considered in turn below.

The first question asked was:

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

As summarised in Table 7, the most common response (44%) was that there would be *negligible or no change in health and safety*. However, substantially more people thought that there would be an improvement than thought there would be a reduction in health and safety (38% compared to 9%).

Table 7: Expected changes in health and safety from WHS

Thinking about the whole package of changes, will they lead to any changes in health and safety at your workplace?	Response rate %
Overall, the changes will lead to an improvement in health and safety	38
Overall, there will be negligible or no change in health and safety	44
Overall, there will be a reduction in health and safety	9
Don't know / Blank	9

The second question asked:

- **Thinking about the whole package, will the changes provide other benefits, such as efficiencies in the way you do work?**

As set out in Table 8, the most common response (47%) was that there would not be other benefits.

Table 8: Expected other benefits from WHS

Thinking about the whole package, will the changes provide other benefits, such as efficiencies in the way you do work?	Response rate %
Yes	35
No	47
Don't know / Unsure / Blank	18

The final question asked:

- **Do you believe additional compliance or other costs will arise for your business as a consequence of the additional or new requirements in the whole package of changes?**

As set out in Table 9 the vast majority of respondents (71%) indicated that additional costs would arise.

Table 9: Expected impact on compliance costs from WHS

Do you believe additional compliance or other costs will arise for your business as a consequence of the additional or new requirements in the whole package of changes?	Response rate %
Yes	71
No	14.5
Don't know / Blank	14.5

In summary, taken as a whole the package of proposed regulatory changes is seen by the WA businesses surveyed by Marsden Jacob as resulting in:

- reasonable improvements in health and safety; however with
- definite increases in compliance and other costs.

4.3 Analysis of benefits and costs

4.3.1 Expected costs and benefits

Proposed changes in WHS regulations will result in a variety of benefits and costs including changes in:

- health and safety outcomes;
- the costs to businesses operating across jurisdictions have to deal with multiple requirements;
- compliance burden on duty holders generally;
- systems of work and management and consequent transitional costs;
- licensing accreditation;
- training costs;
- levels and complexity of documentation;
- the need for specialist advice;
- the variability and sustainability of small businesses and regional business; and
- the threat of competitive entry/exit and thus profit margins and costs; and
- levels of responsibility imposed on WorkSafe WA to license, accredit, etc.

Based on responses provided to the surveys, workshops and in written submissions Marsden Jacob developed a BCA of the proposed changes in regulations that would occur with the introduction of WHS.

4.3.2 Issues in the comparison of current and proposed requirements

Through the consultation process and preparation of the BCA three key difficulties were identified in accurately estimating the benefits and costs of the proposed regulations and Codes

of Practice. From Marsden Jacob's discussions with stakeholders it is likely that these difficulties both reduced the number of respondents who provided quantitative estimates and the quality of their estimates. We discuss each of these issues in turn below.

Definition of the alternative scenarios

In undertaking a Benefit Cost Analysis it is important to define the alternative scenarios – which in this instance could be referred to as the *with change* and *without change* scenarios.

It is important to note that the *without change* (or do nothing) scenario is still likely to involve a cost and may not involve maintaining the status quo in the future. As one respondent noted:

> *The {Victorian RIS}…cost of $3.4B (the basis for not proceeding) was done in a very basic way and did not mention the cost to small business to NOT implement the Hazardous Chemicals part of the WHS Regulations. Particularly in a couple of years when their ability to sell chemicals interstate may be restricted by not having come up to speed with GHS SDS and Labels at the same time as businesses in other States. This is unlikely to affect big chemical businesses, or subscribers to these Note, as they will more quickly realise this, and act sooner.*

It was decided in consultation with WorkSafe WA that it was not feasible to develop a "do nothing" scenario beyond the maintenance of the status quo and the continuation of current benefits and costs. This then allowed the changed scenario to be compared to the current situation and the benefits and costs to be identified accordingly. It is noteworthy that since the finalisation of the Information and Issues Paper, there have been several changes in other jurisdictions that impact on the harmonisation process. These include:

- Victoria announced in August 2012 that it *will not adopt the national model workplace health and safety laws in their current form;*[12]
- Queensland announced the outcome of a roundtable review of WHS on 23 October 2012;[13] and
- South Australia passed the WHS Act on 1 November 2012 and announced the legislation will take effect on 1 January 2013[14]

Estimation of current and future costs

Through the consultation process a broad range of stakeholders noted that the information requested through the survey and workshop processes was often not easily obtained for the current requirements and could only be estimated for the future requirements. In particular, some of the proposed requirements are not yet fully scoped. For example in order to estimate the cost of a requirement for notification it is necessary to consider the time required to complete each notification. However, the nature and length of these notifications is often yet to be determined by WorkSafe WA. Examples given to Marsden Jacob during the consultation were of notifications (specifically asbestos removal, incident notification, lead risk work and plant re-registration). Furthermore it was identified that one training course (high risk work

[12] http://www.worksafe.vic.gov.au/laws-and-regulations/occupational-health-and-safety/national-work-health-and-safety-reform

[13] http://www.deir.qld.gov.au/workplace/publications/safe/construction/sep12/whslaws/index.htm

[14] http://www.safework.sa.gov.au/whs/

licences (HRWL) – boilers (pressure equipment)) has not yet been finalised and so could only be estimated in length.

In addition there are some regulations where WorkSafe WA have the ability to approve a competent person (Plant - amusement devices and Plant - mobile and tower cranes), approve a process (Asbestos - certified safety management systems) or a laboratory (Asbestos - analysis of samples).

Informally, WorkSafe WA has indicated that they do not intend to make use of these provisions – but this position has not been formally adopted yet and could potentially alter the costs and benefits of each change.

Separation of mining specific regulations

An additional difficulty noted by groups involved in the mining industry is the incomplete nature of the regulations under consideration. Chapter 10 of the regulations (dealing with mining specific activities) are excluded from consultation as they were not complete at the time.

At the commencement of the consultation process it was agreed by WorkSafe WA, the Resources Safety Division of the Department of Mines and Petroleum (the mining safety regulator) and industry representatives that the mining industry would respond to respond to the relevant sections of the current regulations. If necessary, the mining specific regulations (both core and non-core regulations) could be addressed in a separate Regulation Impact Statement. This process would mirror the national approach – where the mining regulations are the subject of a separate National Regulation Impact Statement (still under preparation at the time of drafting).

Current over and under compliance

The Information and Issues Paper summarises the current and proposed minimum requirements for each of the proposed changes in regulation. However, it is recognised that some firms do not meet the current legislative requirements, and in contrast others may perform above the current minimum requirement.

In each of these cases, firms appear likely to compare the proposed requirements with their current level of performance. This results in the following errors:

- firms that are not complying with the current minimum standard to overestimate both the benefits and costs of the change;
- firms that are currently performing above the minimum standard tend to underestimate both the benefits and costs of the change.

4.3.3 Analysis undertaken

Marsden Jacob used the data provided through consultations to apply three separate comparisons of benefit and costs are employed in this RIS:

1. **Cost efficiency gains**: Is the regulatory change likely to reduce the costs of compliance (sufficient to offset the transitional costs) without any reduction in health and safety outcomes? That is, is the change worthwhile even without any improvement in safety?
2. **Threshold benefit cost test**: Does consideration of the potential benefits (based on the size of the costs of relevant injuries and deaths) and plausible, modest reductions in

incidents, suggest that the benefits are likely to exceed the threshold set by the measured costs?

3. **ALARP threshold**: Reflecting the duty of care held by employers and other PCBUs, are the measured costs disproportionate to plausible, modest benefits? The rationale for this third test of benefits and costs is that it is desirable that compliance with the regulations is sufficient to prevent separate external litigation for Tort liability.

4.4 BCA assessment of changes as a whole

Of the 39 changes in regulation that were consulted on, sufficient responses with quantitative estimates of benefits and costs were only provided for a total of 14 changes.[15] For this reason, the Benefit Cost Analysis is restricted to the following 14 proposed changes in regulation:

- Asbestos - Register
- Asbestos - Air monitoring and clearance
- Asbestos - Certified safety management systems
- Asbestos - Removal - Notifications
- Asbestos - Training
- Fall Prevention
- Plant Registration renewals
- High Risk Worker Licence - Boiler
- Construction Projects: Appointment Of A Principal Contractor
- Hazardous Chemicals: Risk Assessment And Record Keeping
- Incident Notification - Prescribed Serious Illnesses
- Noise: Audiometric Testing
- Noise: Managing Risks
- Personal Protective Clothing And Equipment (PPE)

Given that only 14 of the changes were assessed quantitatively, it is not possible to estimate the total benefit and cost of harmonisation with the information collated. However, as discussed in Box 2, changes which received the most comments are likely to be the changes generating the largest benefits and costs.

With the information available Marsden Jacob considered it appropriate to only apply the cost efficiency analysis of benefits and costs to the assessment of changes as a whole. This is because it is not possible to consider the impact of all changes on the health and safety, preventing a threshold analysis.

Table 10 summarises the changeover and ongoing costs for each change as well as the Present Value of the costs at $5,805 million[16] for the 14 changes over the 20 year period. As shown in the table, there is a large range in the Present Value cost of individual items, ranging from a net

[15] Depending on the scale of the change and the likely numbers of industries involved Marsden Jacob considered whether quantitative analysis could be undertaken for all changes with two or more detailed responses.

[16] Based on a discount rate of 4% and over 20 years.

benefit of $48 million for Hazardous Chemicals: Risk Assessment And Record Keeping to a net cost of $3,600 million for fall prevention. Each of the individual items are discussed in greater detail in section 4.5.

Table 10: Summary of the cost efficiency assessment for each change

Regulation change	Changeover cost impact (1 year)	Ongoing cost impact (per annum)	PV costs (at 7% and over 10 years)	PV costs (at 4% and over 20 years)
	$ millions	$ millions	$ millions	$ millions
Asbestos - Air monitoring and clearance	0.0	6.1	45.5	86
Asbestos - Certified safety management systems	3.5	0.5	7.2	10
Asbestos -Removal – Notifications	0.0	0.8	6.3	12
Asbestos – Training	0.8	6.2	47.8	89
Asbestos - Register	36.8	0.3	39.3	41
Fall Prevention (using Industry figures)	146.9	247.8	2,009.5	3,650
Fall Prevention (using Independent figures)	146.9	-1.2	130.5	138.2
Plant Registration renewals	7.3	0.7	12.7	17
HRWL-Boiler	0.7	0.7	5.6	10
Construction Projects: Appointment Of A Principal Contractor	26.6	0.6	31.1	35
Hazardous Chemicals: Risk Assessment And Record Keeping	0.2	-3.4	-25.7	-49
Incident Notification – Prescribed Serious Illnesses	1.2	45.4	342.6	643
Noise: Audiometric Testing	9.3	12.7	104.5	188
Noise: Managing Risks	106.8	57.3	537.1	916
Personal Protective Clothing And Equipment (PPE)	4.5	-2.7	-15.4	-33
Total (using industry figures for falls)	**344.6**	**373.0**	**3,148.1**	**5,617**
Total (using independent figures for falls)	**344.6**	**124.0**	**2,097.5**	**1,276.8**

Note: Benefits are shown as a negative.

Table 10 demonstrates that there is wide discrepancy on the Fall Prevention estimates of costs between the industry view and independent work which has a profound effect on the outcomes. This is discussed in detail in the next section.

Fall Prevention – largest costs?

The largest cost in terms of a single regulatory change relates to the change in fall prevention regulation from the current requirement for scaffolding for work above 3 metres to one of 2 metres.

Based on industry estimates of the additional cost, the impact on residential housing alone is $4,452 million in present value terms. These industry-based estimates account for over 60% of the total sum of costs associated with the 14 regulatory changes for which cost estimates could be reasonably derived.

As discussed in the relevant section in the companion to this report, the figure is based on estimates provided by the building industry of an additional $25,000 for a single story house and $17,000 for a double story house.

Estimates of similar magnitude had been submitted to the SA Government, which commissioned an independent review of the levels and basis of the costs estimates submitted. This review suggested that:

- the submitted costings reflected more than the incremental cost of the proposed change and included a range of other costs including the costs of meeting existing regulations, and
- based on comparisons across different Australian jurisdictions and local South Australian costings, the incremental cost of moving from a three to a two metre standard was estimated to be between $1,000 and $2,000 per single storey dwelling and $3,000 - $6,800 for a double storey home[17].[18] The South Australian Government then commissioned a review of that report which in turn found that:

  > *…a detailed review and a re-estimation would not enable one to challenge the overall conclusion of the report that 'the adoption of the National Standard is unlikely to have major impacts on construction costs (in the residential housing sector) and related housing affordability levels.*[19]

The reviewer also noted that further consultation with industry would allay industry concerns and conservative interpretation of the costs.

Accordingly, the figures shown in Table 10 show a $3.4 billion difference depending on whether the industry estimates are relied upon or the substantiated work of the South Australian Government. Subject to closely involving the building industry in a similar way in WA, the lower estimates appear to be the more realistic and preferred. Acceptance or rejection of this point is of material consequence to the entire assessment of the impact of the package of changes taken as a whole.

4.4.1 Sensitivity analysis

The sensitivity analysis considers the impact of altering the discount rate and the period over which the assessment is undertaken.

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17 Marsden Jacob used the upper estimates in all calculations.

18 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 See generally pp. 25-26.

19 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.

In considering the impact of the proposed changes Marsden Jacob used alternative discount rates of 2, 4, 7, and 10 percent as well as alternative periods for the assessment of 5, 10 and 20 years.

Table 11: Sensitivity analysis (using industry figures for falls) - Net Present Value costs ($ millions)

		Discount rate			
		2%	4%	7%	10%
Years	5	2,138	2,072	1,981	1,900
	10	3,762	3,491	3,148	2,866
	20	6,566	5,617	4,573	3,838

It is noted that the national RIS for the regulations used 10 years and 7% as the base case, this is comparable with the net cost of $3,148 million in Table 11.

4.5 BCA assessment of individual changes

The cost assessment summarised in Table 10 can be used to consider the *cost efficiency gains* of individual changes. Note that this assessment is based on information provided to WorkSafe WA and Marsden Jacob by industry participants in submissions and workshops. These base estimates accept the parameters provided/suggested by the industry as accurate.

Net benefits

Of the 14 changes assessed in the BCA, two changes provide a net benefit:

- Hazardous Chemicals: Risk Assessment And Record Keeping; and
- Personal Protective Clothing And Equipment (PPE).

Respondents indicated that both of these changes will involve a changeover cost which is then offset by reduced ongoing costs in the future.

In this manner it can be concluded that the remaining 12 changes fail the *cost efficiency gains* test.

4.5.1 Sensitivity analysis

As in section 4.4.1, Marsden Jacob used alternative discount rates of 2, 4, 7, and 10 percent as well as alternative periods for the assessment of 5, 10 and 20 years as summarised in Table 12.

Table 12: Sensitivity analysis of the *cost efficiency gains* of individual changes

	NPV Costs (at 4% and over 5 Years)	NPV Costs (at 2% and over 10 Years)	NPV Costs (at 7% and over 10 Years)	NPV Costs (at 4% and over 20 Years)	NPV Costs (at 10% and over 20 Years)
	$ m	$ m	$ m	$ m	$ m
Asbestos - Air monitoring and clearance	28	55	45	86	57
Asbestos - Certified safety management systems	6	8	$7	10	8
Asbestos - Removal - Notifications	4	8	$6	12	8
Asbestos - Training	30	58	48	89	59
Asbestos - Register	38	40	39	41	40
Fall Prevention (Using industry figures)	1,294	2,418	2,009	3,650	2,468
Fall Prevention (Using independent figures)	142	136	138	131	136
Plant Registration renewals	11	14	13	17	14
HRWL-Boiler	4	7	6	10	7
Construction Projects: Appointment Of A Principal Contractor	29	32	31	35	32
Hazardous Chemicals: Risk Assessment And Record Keeping	-16	-31	-26	-49	-32
Incident Notification - Prescribed Serious Illnesses	212	417	343	643	427
Noise: Audiometric Testing	68	125	105	188	128
Noise: Managing Risks	372	631	537	916	643
Personal Protective Clothing And Equipment (PPE)	-8	-20	-15	-33	-20
Total (using industry figures for falls)	**2,072**	**3,762**	**3,148**	**5,617**	**3,838**
Total (using independent figures for falls)	**919**	**1,481**	**1,277**	**2,098**	**1,506**

As shown in Table 12, the differing discount rates and duration in years alters the scale of the benefit or cost for each element. However, it does not alter any of the changes from a benefit to a cost or vice – versa. Under all the sensitivities, the two identified changes remain as a net benefit with the remaining changes delivering a net cost.

4.6 Consideration of potential safety impacts on likely benefits and costs

The second test undertaken in assessing the benefits and costs was the *threshold benefit cost test* which considered the change in health and safety costs that would be necessary to offset the benefits and costs of implementing the WHS regulations.

In order to complete the *threshold benefit cost test*, Marsden Jacob considered the survey responses on the likely impacts of the proposed changes on health and safety and also compiled current health, safety and compensation data for Western Australia.

4.6.1 Survey response on the impact of the proposed changes on health and safety

Through the surveys and workshops respondents were asked:

> *What will be the impact of this change in your workplace on: - Likelihood of injury, death or illness in your workplace?*

Respondents were provided a seven point scale ranging from *significant improvement* to *little effect* and to *significantly makes things worse* as well as well as an "opt out" answer (*I am unsure*).

Responses to this question for each of thirteen of the changes are summarised in Table 13. For one change (High Risk Work Licences for boiler operation) interviewees indicated that there was likely to be a safety benefit but they were not able to estimate the scale.

As can be seen from the table some of the changes produce a spread of responses – such as *Asbestos - certified safety management systems*, whereas others produce a reasonably tight grouping – such as *Hazardous chemicals - risk assessment and record keeping*.

Table 13: Summary of workshop and survey responses on the likely safety impact of each of the changes

	Significant improvement (more than 20%)	Somewhat improves things (between 5 and 20%)	Slightly improves things (up to 5%)	Little effect (0%)	Slightly makes things worse (up to 5%)	Somewhat makes things worse (between 5 and 20%)	Significantly makes things worse (more than 20%)	I am unsure what effect it will have
Asbestos – air monitoring and clearance	-	-	38%	50%	-	-	13%	-
Asbestos – certified safety management systems	25%	-	-	50%	-	-	25%	-
Asbestos – register	25%	-	25%	50%	-	-	-	-
Asbestos – removal – notifications	-	-	25%	50%	-	-	25%	-
Asbestos – training	14%	14%	57%	-	-	-	-	14%
Construction projects – appointment of a principal contractor	-	-	-	75%	-	25%	-	-
Fall prevention	44%	-	22%	22%	11%	-	-	-
Hazardous chemicals – risk assessment and record keeping	-	-	22%	56%	22%	-	-	-
Incident notification – prescribed serious illnesses	50%	-	-	25%	-	-	-	25%
Noise – audiometric testing	18%	9%	36%	36%	-	-	-	-
Noise – managing risks	33%	-	33%	33%	-	-	-	-
Personal protective clothing and equipment (PPE)	17%	-	-	33%	-	33%	17%	-
Plant – item of plant registration – renewals	-	40%	-	40%	-	-	20%	-

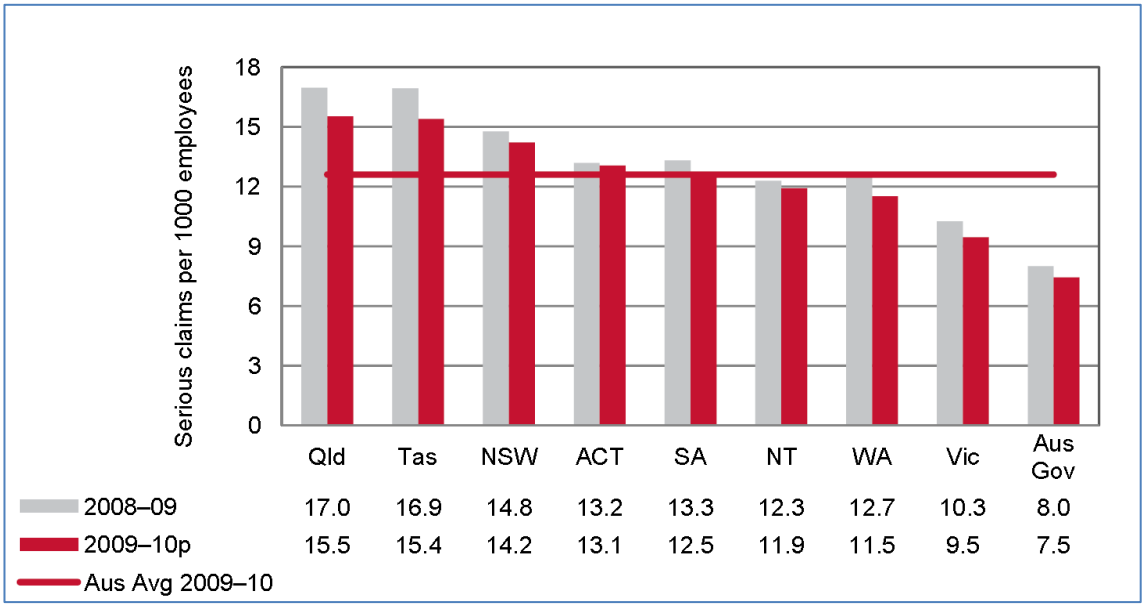
4.6.2 Safety data

Marsden Jacob considered both safety data for WA as a whole and for individual changes where a quantified estimate of the benefits and costs had been provided by industry.

Whole of WA injury data

As shown in Figure 3, WA performs well against most other states on an incidence rate for serious claims.

Figure 3: Incidence of serious claims: jurisdiction by year



Source: Safe Work Australia, Key Work Health and Safety Statistics, Australia 2012.

A breakdown of the total actual payments of WorkCover over the period from 2000/01 to 2010/11 (preliminary data) is provided in Table 14. The table shows a downward trend in injury/disease incidences over the period whereas total actual payments have increased over the same period.

Table 14: Total work-related injury and disease incidences (or claims), days lost and costs in WA

	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
Total injury/disease incidences*	46,047	41,866	41,214	41,745	42,518	40,865	40,336	40,949	39,469	36,665	37,847
Total days lost**	1,043,356	1,006,711	987,259	1,026,596	1,055,682	1,039,933	1,071,591	1,211,760	1,252,277	1,197,161	-
Actual Costs	$	$	$	$	$	$	$	$	$	$	$
Direct compensation payments					**288,552,907**	**280,572,816**	**295,426,407**	**355,529,267**	**358,574,672**	**286,363,317**	-
Income payment					144,880,941	154,296,010	169,961,173	206,010,558	218,588,596	194,900,582	-
Lump sum - excl common law		Cost breakdown not available			77,561,335	75,677,672	82,766,554	95,117,644	95,961,581	63,170,002	-
Common law payment					66,110,631	50,599,134	42,698,680	54,401,065	44,024,495	28,292,733	-
Service payments					**154,386,330**	**154,667,002**	**162,236,258**	**185,425,538**	**194,108,759**	**181,243,030**	-
Medical & hospital					40,763,113	41,448,839	42,776,903	48,835,434	53,284,163	51,197,225	-
Allied health & vocational rehabilitation		Cost breakdown not available			45,610,656	41,968,246	42,192,927	49,518,374	49,047,406	43,442,402	-
Legal & miscellaneous payment					40,763,113	41,448,839	42,776,903	48,835,434	53,284,163	51,197,225	-
Total actual payments	**380,154,975**	**353,507,036**	**367,104,856**	**417,918,873**	**442,939,237**	**435,239,818**	**457,662,665**	**540,954,804**	**552,683,432**	**467,606,346**	-

Source: WorkSafe WA.

Notes:

**includes compensated fatalities, lost time claims and no lost time claims.*

***relates only to those injury/disease claims (or LTI/Ds) where one day/shift or more has been lost from work as a result of the incident.*

Estimation of total cost of workplace injuries and illnesses

Reliable data on the total cost of workplace injuries and illnesses for Western Australia is not available for each year, or by category. However, reasonable estimates can be derived by comparing the annual value of WorkCover payments with the total estimated cost of injury and illness reported by Safe Work Australia in *The cost of work-related injury and illness for Australian employers, workers, and the community, 2008–09*. Safe Work Australia estimates that the total cost of work-related injury and illness in Western Australia was $5,690 million with a breakdown by each economic agent, conceptual category and severity are set out in Table 15.

Table 15: Cost of work-related injury and illness, by economic agent, conceptual cost category and severity category (2008/09 $ million)

Category		Western Australia $ m
Total		**5,690**
Economic agent	Employers	310
	Workers	3,720
	Society	1,660
Conceptual category	Production disturbance	490
	Human capital	4,830
	Medical	170
	Administration	160
	Transfer	40
	Other Costs	20
Severity category	Short absence	140
	Long absence	580
	Partial incapacity	3,650
	Full incapacity	1,100
	Fatality	250

Source: Extracted from The cost of work-related injury and illness for Australian employers, workers, and the community, 2008–09, p. 41.

This analysis allows the actual workers compensation payments for 2008/09 ($552.68 million, see Table 14) to be compared to the estimated cost of work-related injury and illness for Western Australia over the same period ($5,690 million). This indicates that across all injuries on average the total cost of injury and illness is 10.3 times the compensation paid.

4.6.3 Analysis of individual changes

In estimating the total cost of workplace injuries relevant to each of the individual changes Marsden Jacob used published workers compensation data[20] and then adjusted these figures using the multiplier (10.3) set out in the previous section.

Linking injury and death data to individual changes in the WHS regulations

In order to assess the impact of individual changes in regulation on changes in health and safety costs it is necessary to link each change to a suitable injury classification.

Injury classifications

Injury data is broadly classified at the highest level by industry, occupation, and by injury and disease classification.

Table 16: Injury data classifications

Classification	Details
Industry classification	The industry classification codes are in accordance with the Australian and New Zealand Standard Industrial Classification (ANZSIC) published by the Australian Bureau of Statistics. The classification codes are based on a hierarchal structure consisting of one digit codes (broadest level) down to four digit codes (finest level).
Occupation classifications	The occupation classifications are in accordance with the Australian Standard Classification of Occupations 2nd Edition (ASCO), for data reported up to and including the year 2008-09, and the Australian and New Zealand Standard Classification of Occupations First Edition (ANZSCO), for data reported from the year 2009-10 onward.
Injury and disease classification	The injury and disease classification groupings and descriptions are the standard terms taken from the National Occupational Health & Safety Commission publication: Type of Occurrence Classification System (TOOCS). The following four classifications are used to describe the type of injury or disease sustained by the worker and the way in which it was inflicted: Nature of Injury/Disease; Bodily Location of Injury/Disease; Mechanism of Injury/Disease; and Agency.

Of the 39 changes in regulation that were considered in detail through the consultation and RIS process, Table 17 summarises the traumatic work-related fatalities and WorkCover actual payments for changes that were agreed in discussions with WorkSafe WA as aligning well with available injury data.[21] Two of the proposed regulation changes that were assessed quantitatively cannot be readily linked to injury data (Incident notification – prescribed serious illnesses and Personal protective clothing and equipment). In addition, it is necessary to group all the asbestos related items and compare them collectively to asbestos related diseases.

[20] Lodged in accordance with the *Workers' Compensation and Injury Management Act*, 1981.

[21] Health and safety data is available for some changes where responses to the consultation did not support a quantitative analysis – such as for Dive work and Spray painting.

Similarly Noise: audiometric testing and Noise: managing risks are grouped and then compared to data on single exposure and long-term exposure to sound and deafness.

Table 17: Alignment of injury data with proposed relevant change

Work related injury	Relevant proposed change	Value of WorkCover claims (2009/10 actual payments) $	Estimated total value of injury and illness (per annum) $
Asbestos	Air monitoring and clearance Certified safety management systems Removal Notifications Training Register	3,640,585	Discussed below
Construction industry	Construction Projects: Appointment Of A Principal Contractor	65,284,169	672,115,175
Fall from a height	Fall prevention	39,711,633	408,840,176
Hazardous chemicals - chemicals & chemical products	Hazardous Chemicals: Risk Assessment And Record Keeping	3,858,201	39,721,045
Noise - single exposure and long-term exposure to sound and deafness	Noise: Audiometric Testing / Managing Risks	1,722,159	17,730,013
Plant	Plant Registration renewals	73,932,648	761,153,208
Boilers	High Risk Worker Licence - Boiler	562,561	5,791,692

Source: Value of WorkCover claims provided by WorkSafe sourced from WorkSafe records.

Estimation of the total impact of asbestos related diseases

For asbestos related diseases, WorkCover is not the only source of funds for compensation[22], indicating that the total value of injury and illness cannot be estimated based on WorkCover payments alone. For this reason an alternative approach was used.

The Office of Best Practice Regulation have indicated that it considers the appropriate value of a statistical life year to be $151,000 in 2007 dollars[23] which, when indexed to September 2012 is $175,277.[24] Based on conversations with industry representatives and an actuarial firm, Marsden Jacob estimated it to be $2.533 million[25] per life. It is noted that this is slightly over half of the Office of Best Practice Regulation estimate of the Value of Statistical Life which,

22 *Pers Comms*, Workcover WA, 20 November 2012.

23 Office of Best Practice Regulation The *Best Practice Regulation Guidance Note - Value of Statistical Life*.

24 Using the Reserve Bank of Australia, inflation calculator for the period from June 2007 to September 2012.

25 A suitable example was taken to be a 20 year old male who is exposed to asbestos and develops an asbestos related disease 35 years after exposure. Given a male life expectancy of 77, this would shorten their life by 22 years equating to a present value (at the time of their diagnosis of $2.533 million.

when indexed to September 2012 is $4.1 million.[26] [27] However, as asbestos related diseases will not manifest themselves for around 35 years, the Office of Best Practice Regulation guidelines indicated that this value should be discounted to reflect this delay, giving a current value of $641,888 per incident.

There were a total of 60 incidents reported in 2009/10 – but as the typical mesothelioma latency period is reportedly 20 to 50 years[28], new cases reported in 2012 do not reflect current work practices and are likely to be due to exposure that occurred in the period between the years of 1962 and 1992.

4.6.4 Health and safety benefits

Marsden Jacob's approach has been to use a *threshold analysis* to compare the health and safety benefit that would be required to offset the estimated residual costs (once other benefits are taken in to account).

Where possible these costs are compared against the current estimated total cost of injury and disease, as summarised in Table 18. The table sets out the category or source of injury or illness and then the estimated total cost of these related injury and illnesses both on a per annum and Present Value basis. This value can be compared to the relevant proposed WHS change and its Present Value costs. Based on these two values, we can calculate the reduction in injury costs required for the benefits to exactly match the costs (provided in final column). If illnesses and injuries rates are reduced by more than the proportion identified, then the economic benefits would be deemed to outweigh the cost.

From Table 18 it can be seen that the estimated cost of implementing Noise: audiometric testing and Noise: managing risks is more than 5 times the estimated total cost of employment related deafness arising from exposure to sound. Therefore it would not be possible for the economic benefits to outweigh the cost, regardless of how much the incidence of injury was reduced.

Table 58 then compares the threshold change in injuries and illness and compares this to the average[29] of responses provided for the survey question:

> *What will be the impact of this change in your workplace on: - Likelihood of injury, death or illness in your workplace*

This comparison of the threshold analysis to the survey results provides an indication of whether the change is likely to result in a net benefit.

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[26] Office of Best Practice Regulation The *Best Practice Regulation Guidance Note - Value of Statistical Life*.

[27] Using the Reserve Bank of Australia, inflation calculator for the period from June 2007 to September 2012.

[28] Safety and Compensation Policy Branch, Department of Education, Employment and Workplace Relations *Asbestos Management Review Report*, June 2012.

[29] Responses were allocated a numerical score from -3 for Significantly worse to -3 for Significant improvement.

Table 18: Identification of the reduction in injuries and illness to offset the cost of WHS changes

Category/source of Injury or Illness	Estimated total cost of work related injury and illness (per annum)	Net Present Value cost of injuries (at 4% and over 20 Years)	Relevant proposed WHS change	Net Present Value WHS costs (millions at 4% and over 20 Years)	Reduction in injury costs required for break even
	$ millions	$ millions		$ millions	%
Construction industry	672.1	9,499.6	Construction Projects: Appointment of a Principal Contractor	35.1	0.4
Fall Prevention (using industry figures)	408.8	5,778.5	Fall Prevention (using industry figures)	3,649.9	63.2
Fall Prevention (using independent figures)	408.8	5,778.5	Fall Prevention (using SA figures)	131	2.3
Hazardous chemicals - Chemicals and chemical products	39.7	561.4	Hazardous chemicals: Risk Assessment and Record Keeping	-48.5	-8.6
Noise - single exposure and long-term exposure to sound and deafness	17.7	250.6	Noise: Audiometric Testing and Noise: Managing risks	1,104.4	440.7
Plant	761.2	10,758.1	Plant Registration renewals	17.5	0.2
Boilers	5.8	81.9	HRWL- Boiler	10.0	12.2

Table 19: Likelihood of achieving a net benefit

Category/source of Injury or Illness	Relevant proposed WHS change	Reduction in injury costs required for break even	Average response	Indication of likelihood of achieving a net benefit
Construction industry	Construction projects: Appointment of a Principal Contractor	0.4%	Little effect (0%) - Slightly makes things worse (up to 5%)	Unclear but possible
Fall from a height	Fall Prevention (using industry figures)	63.2%	Slightly improves things (up to 5%)	Unlikely
Fall from a height	Fall Prevention (using independent figures)	2.3%	Slightly improves things (up to 5%)	Likely
Hazardous chemicals – Chemicals & chemical products	Hazardous Chemicals: Risk Assessment And Record Keeping	-8.6%	Little effect (0%)	Likely
Noise - single exposure and long-term exposure to sound and deafness	Noise: Audiometric testing and Noise: Managing Risks	440.7%	Slightly improves things (up to 5%) Slightly improves things (up to 5%)	Not possible
Plant incidents	Plant registration renewals	0.2%	Little effect (0%)	Unclear but possible
Boilers incidents	HRWL-Boiler	12.2%	n.a.	Unclear

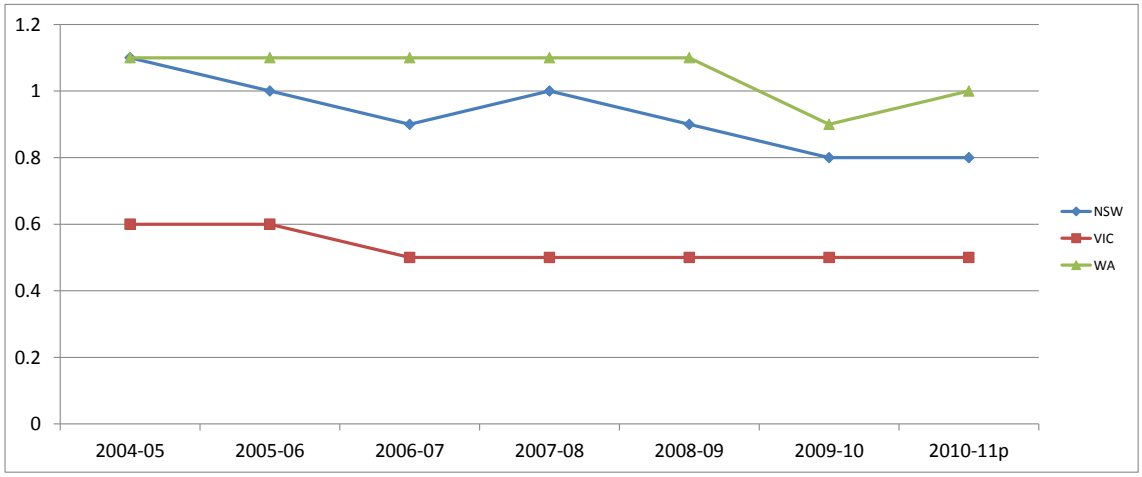
Benefits of fall prevention

The potential benefits from the reduced costs resulting from reduced falls from heights are suggested by the following:

- Falls are over-represented in the construction industry and high falls (i.e. over two metres) represent 40-50% of all falls in the construction industry and are most likely to result in death[30].
- The fact that the incident rates for falls in WA is approximately double the rate of falls in Victoria where the three metre scaffolding requirement has been in place for around five years.

Figure 4 shows the incidence rate for falls from a height for all industries. Over this period the incidence rate for falls across all industries in Victoria is consistently 50% of the falls rate in Western Australia. For construction industry the Victorian incidence rate is on average 55% of the West Australian rate. This comparison implies that (all other things being equal) the introduction of these fall prevention regulations could result in a 50% reduction in the cost of falls from a height. While this is a substantial decrease it is still short of the 63% reduction specified in the threshold analysis where the industry costings are accepted. However, if the costing results of the independent reviews from South Australia (see section 4.4) are more indicative of the actual cost than industry provided figures, then there would be a substantial net benefit from adopting the fall prevention provisions. Using these costs, net benefits are achieved even if the WA incidence decreases by only 2.3%.

Figure 4: Incidence rate (claims per 1000 employees) of falls from a height in all industries by selected jurisdictions, 2004-05 to 2010-11



Source: Data provided by Safe Work Australia.

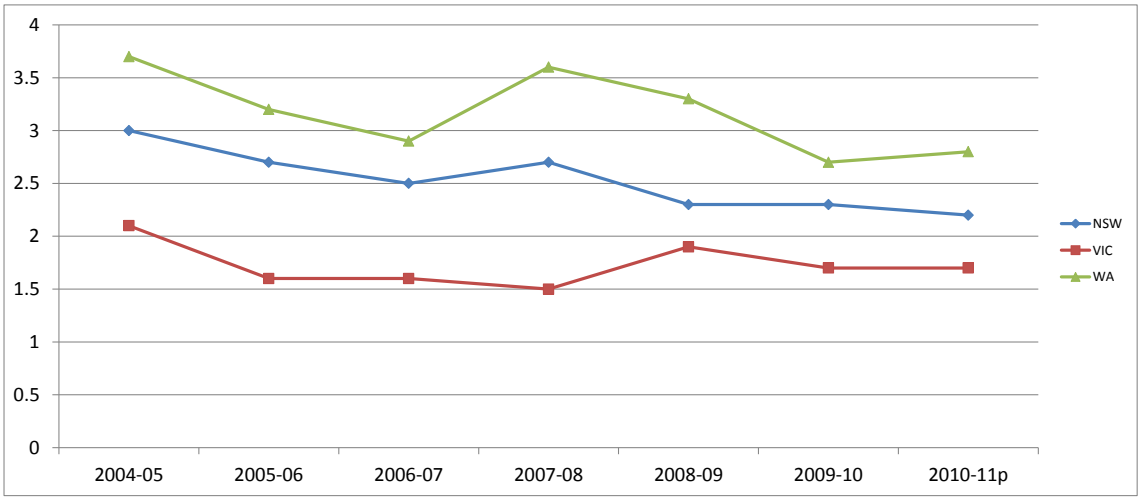
Fall prevention within the construction industry

Finally, Marsden Jacob considered whether the substantial size of the (industry) cost estimate for introducing fall prevention to residential construction means this industry should be excluded from the requirements (such as through an exemption)[31].

[30] 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 See generally pp 42.

Figure 5 shows incidence rate of falls from a height for the construction industry.

Figure 5: Incidence rate (claims per 1000 employees) of falls from a height in the construction industry by selected jurisdictions, 2004-05 to 2010-11



Over the period from 2004/05 to 2010/11 construction[32] makes up 23% of claims under falls from height which is likely to equate to around 23% of the total cost of falls from height (calculated to be $94 million in 2009/10). This total for all falls from height claims in the construction industry is significantly less than the industry estimates of the cost increase for residential housing ($315 million[33]). Using the higher figures from the independent estimate (commissioned by South Australia) the cost of implementation is $66 million per annum and so would require a 70% reduction in the costs of falls injuries to break even. This appears unlikely given that meeting the Victorian incidence rates would result in a 45% reduction in costs. This analysis indicates that for the residential house construction industry the estimated costs of implementing falls from height provisions (as estimated by the industry) are substantially greater than the total costs of injury from falls from height.

4.6.5 Threshold analysis of asbestos changes

As set out in section 4.6.3 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.

It should be noted that with a latency period of 20 to 50 years, asbestos related diseases are likely to fall outside the scope of a benefit cost analysis taken over a 20 year period. However, due to the importance of these diseases, it was considered appropriate to include these likely future costs within the analysis.

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31 As noted in section 4.4, the government may wish to review the estimated cost increases provided by the housing industry.

32 Marsden Jacob used the incidence rate for all construction as it was advised that the breakdown of incidence by domestic house construction was unreliable.

33 Assumes 20,000 houses per annum, and even split of single and double storey housing and that 25% of houses already use scaffolding.

It is possible to undertake a threshold analysis to identify the number of lives that would need to be saved per annum to match the cost of the proposed regulatory changes relating to asbestos[34]. The outputs of this analysis are summarised in Table 20.

The analysis demonstrates that the total requisite number of lives saved is 19.9 (using a 4% discount rate) per annum and this is made up substantively of three elements (in order of decreasing importance):

1. Asbestos - Training.
2. Asbestos - Air monitoring and clearance.
3. Asbestos - Register.

The long latency period for asbestos related diseases means that the threshold analysis is substantially altered by the discount rate used. Given the short term nature of business costs and the long term nature of the human cost, an additional sensitivity (0%) was included for this analysis. 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 20010/11). 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.

Table 20: Threshold analysis of Asbestos elements - required lives saved per annum

Asbestos element	Discount Rate				
	0%	2%	4%	7%	10%
Asbestos - Air monitoring and clearance	0.90	2.61	7.14	29.17	107.38
Asbestos - Certified safety management systems	0.10	0.30	0.87	3.85	15.33
Asbestos – Removal - Notifications	0.12	0.36	0.99	4.03	14.86
Asbestos - Training	0.93	2.71	7.44	30.47	112.45
Asbestos - Register	0.32	1.09	3.46	17.25	75.62
Total	**2.37**	**7.08**	**19.90**	**84.77**	**325.65**

4.6.6 ALARP Threshold analysis

The primary duty of care under the model WHS Bill and a number of the regulations refer to "reasonably practicable". The interpretative guideline provided by Safe Work Australia states:

> *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.*

This guidance appears consistent with case law from the United Kingdom, and the UK Health and Safety Executive provide further advice on the scale of the "disproportionate factor" which they use as the multiple of the likely benefits that should be spent to avoid an injury. It appears

[34] Based on a 20 year Net Present Value at various discount rates.

that the disproportionate factor is not a set number and varies depending on the risks varying upwards from 1 and some literature suggests an upper limit of 10.

Box 3: As Low As Reasonably Practical (ALARP) threshold

The concept of reducing risks to workers and others affected by the failure of facilities to "as low as reasonably practical" is referred to as the ALARP concept. ALARP which is directed to the avoidance of liability as is obvious from the decision of the UK Court of Appeal in Edwards vs the National Coal Board, 1949:

> *"Reasonably practicable" is a narrower term than "physically possible" and seems to me to imply that a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed on the other, and that if it be shown that there is a gross disproportion between them - the risk being insignificant in relation to the sacrifice - the defendants discharge the onus on them.*

The ALARP criterion is a statutory requirement in several states of Australia examples are Occupational Health and Safety Act NSW, Major Hazards Facilities Regulation Victoria, and Dangerous Goods Act Queensland).

This ALARP criterion has potential implications for the assessment of benefits and costs of regulatory proposals.

The benefit-cost criteria for ALARP involve more than the simple one of benefits exceeding costs, which would be consistent with the economic objective of efficiency. The ALARP principle is applied in a weighted or leveraged form, by inserting 'factors of disproportionality' into the benefit-cost analysis to skew the outcome in favour of health and safety, in order to afford the employer or facilities owner a measure of protection against tort liability. This principle of disproportionality derives from the same British case law (the case of Edwards v. The National Coal Board 1949, cited earlier).

> *".....in every case, it is the risk that has to be weighed against the measures necessary to eliminate the risk. The greater the risk, no doubt, the less will be the weight to be given to the factor of cost."*

Australian courts have tended to follow the same logic with Maxwell recommending explicit guidance on the disproportionality required to be demonstrated in order to discharge the obligation of duty of care.

The UK Health and Safety Executive (HSE) has provided explicit guidance on the level of disproportionality required to acquit the duty of care. These provide a basis for the graduated assessment of benefits and costs reported in this RIS.

> *For risks to the public the factor would depend on the level of risk, and where the risks were low (consequence and likelihood) a factor of about 2 is suggested, whereas for higher risks the factor would be about 10 times.*
>
> *For our purposes, it is suggested that a factor of less than 10 in the vicinity of the intolerable [unacceptable] region is unlikely to be acceptable and, for hazards that can cause large consequences, the factor may need to be larger still.* [word in brackets added].

Thresholds of around A$3-4 million per statistical life saved are set by transportation authorities in both Australia and the United States. Above this threshold the road transportation authorities will not consider proposals to reduce deaths. The situation with health services, particularly Australia's Pharmaceutical Benefits Scheme is similar. Industry specific guidelines on risk and duty of care such as the ANCOLD Guidelines for Dam Safety typically show higher thresholds.

The sharp difference between these thresholds is consistent with the general absence of tort liability for the infrastructure owner in the case of road deaths compared with the presence of both criminal and tort liability in the case of occupational health and safety and tort liability in dam safety. It may also reflect an abundance of cost-effective (i.e., low cost per statistical life saved) opportunities to reduce fatalities elsewhere.

Source: Marsden, J.S., Jacob, P.H., Nathan, R, Davidson, R.A., and McDonald, L.A, "Dam safety, risk and cost-sharing: review of the dam safety program for Western Australia's south-west irrigation dams", ANCOLD 2005.

Table 21 sets out the reduction in health costs that would be required and Table 22 sets out the required lives saved from asbestos, with both tables using alternative disproportion factors of 1 (baseline/no change), 3, 5 and 10. As explained above, there is limited guidance as to the appropriate factor that should be used, as this is more of a subjective view of the level of risk associated with each particular issue.

Table 21: Threshold analysis of required reduction in health costs using alternative disproportion factors

	Required reduction in health costs (%)			
Disproportion Factor	**1**	**3**	**5**	**10**
Construction Projects: Appointment Of A Principal Contractor	0.4	0.1	0.1	0.0
Fall Prevention	63.2	21.1	12.6	6.3
Hazardous Chemicals: Risk Assessment And Record Keeping	-8.6	-2.9	-1.7	-0.9
Noise: Audiometric Testing & Noise: Managing Risks	440.7	146.9	88.1	44.1
Plant Registration renewals	0.2	0.1	0.0	0.0
HRWL-Boiler	12.2	4.1	2.4	1.2

Table 22: Threshold analysis of required lives saved from asbestos using alternative disproportion factors

	Required lives saved from asbestos (number)			
Disproportion Factor	**1**	**3**	**5**	**10**
Asbestos - Air monitoring and clearance	7.14	2.38	1.43	0.71
Asbestos - Certified safety management systems	0.87	0.29	0.17	0.09
Asbestos - Removal - Notifications	0.99	0.33	0.20	0.10
Asbestos - Training	7.44	2.48	1.49	0.74
Asbestos - Register	3.46	1.15	0.69	0.35
Total	**19.90**	**6.63**	**3.98**	**1.99**

Based on international literature on the use of disproportion factors it appears most appropriate to apply the ALARP threshold to Asbestos and to falls from height. This is because both of these types of injuries and illness have a reasonable chance of resulting in death. In addition, incidents involving the poor handling of asbestos can have "societal impacts" where residents in neighbouring areas can be exposed resulting in injury. For this reason we consider asbestos and falls separately from Construction Projects, Hazardous Chemicals, Plant Registration Renewals, and HRWL – Boiler.

Construction Projects, Hazardous Chemicals, Plant Registration Renewals, and HRWL- Boiler

Table 21 shows that for Construction Projects, Hazardous Chemicals, Plant Registration Renewals, and HRWL- Boiler, there is little change in the required reduction in health costs as

the disproportion factor increases from 3 to 10. For the Noise category, the results indicate that based on a disproportionate factor of 3, related health costs would be required to be reduced by at least 146.9% to lead to a net benefit for society and even under a disproportion factor of 10 a 44% reduction is required. As it is not possible to completely eliminate health costs associated with Noise, this result does not appear to be practicable. However, even with a maximum disproportion factor of 10, the analysis indicates that health costs would need to be reduced by at least 44.1% to be feasible. As this is almost half of current health costs related to Noise, it does not appear that this is practicable either. Therefore, it is unlikely that it would be viable for these proposed regulations to go ahead based on their expected impact on health and safety.

Asbestos and falls

However, based on evidence from the UK and Australia, and the results above in Table 21 and Table 22, it appears that it may be worthwhile applying a disproportionate factor for fall prevention and asbestos. These two categories have a clear linkage with death, and thereby their risk to public health and safety is greater. The fall prevention results in Table 21 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 4.6.4this threshold appears reasonable, it may be worthwhile proceeding with this change.

Likewise for the asbestos category in Table 22, if a disproportion factor of 3 is applied, the results suggest that a minimum of 6.63 lives would need to be saved from asbestos related illnesses/deaths to ensure that proceeding with the proposed change is beneficial to society. This threshold appears to be practicable; however a complication with asbestos related illnesses is the long latency period associated with it, in that it can take anywhere between 20 to 50 years for it to become apparent in an individual's body. Therefore this makes it difficult to estimate the lives saved from asbestos each year. Once again this is most readily compared to the current number of claims (60 in 2009/10 and 73 in 2010/11).

4.7 Cost to Government

As noted through the cost efficiency test under the Benefit Cost Analysis, the implementation of a number of the regulatory changes will result in increased costs. Some of these costs will be borne by the regulator – primarily WorkSafe WA, but also Resources Safety Division of the Department of Mines and Petroleum.

The successful implementation of WHS will depend on the regulators being adequately resourced to respond the its altered role. In its submission WorkSafe WA estimated that:

> *the implementation of WHS will impact on its budgetary requirements by $8.5 million for initial set-up costs and ongoing annual costs of $3.4 million which can be anticipated as increasing annually as the cost of labour rises.*

In addition to this estimate WorkSafe WA identified other changes where there would be a resourcing impact – but this could not be estimated at that time.

While Resources Safety Division did not make a formal submission it appears likely that the implementation of WHS would also impact on its resourcing. Estimating the cost to government is also complicated as Resources Safety Division is funded in part through a levy

on mine sites.[35] How the levy would be impacted expanded role of the Resources Safety Division has not been determined at this point.

It appears likely that failure to resource the regulators adequately could result in impacts such as delays in implementation, increased costs for businesses and/or low levels of compliance.

[35] Under the *Mines Safety and Inspection Levy Regulations 2010*.

5. Small business, regions and other impacts

In commissioning a separate WA RIS the WA Government sought to focus on the impacts on small business and regional remote businesses. It was felt that these sectors are of particular importance to WA and were not dealt with adequately in the national Decision RIS.

5.1 The challenge for Regulatory Impact Assessment

The model Act proposes broad definitions for PCBUs, workers and workplaces similar to those in existing WA legislation. Subject to four important exclusions (noted in section 1.6 above) the WA Government has agreed to adopt the model Act. At the level of the Act there is little change. The material changes relate to the harmonisation of the regulations and codes – which is the focus of this RIS.

The benefits and costs of harmonisation will differ across types of business:

- **small businesses** will, in general, operate solely within WA and are therefore little affected by differences in WHS legislation, regulation and codes across Australian states and territories. The benefits of harmonisation *per se* are therefore often not directly relevant to small businesses which operate the 96 per cent of workplaces and account for 49 per cent of employment across WA. However, changes in the nature and form of regulation are of particular importance to small businesses because a) they respond to regulation and regulatory activity in different ways to larger businesses and b) the owner-managers must address multiple demands and lack the capacity to adjust easily;
- **medium sized businesses** often operate in more than one jurisdiction. Moreover, contractors working for multiple businesses appear to incur costs from working with large businesses (which may have harmonised their practices in different ways) and smaller businesses which follow the legislation and regulation of the jurisdiction in which they operate. For medium sized businesses and major contractors, the benefits of harmonisation *per* se may be potentially important. However, the capacity of medium-sized businesses to adjust to changes in the nature and form of regulation is less than the capacity of larger businesses; and
- **large businesses** operating in workplaces nationally and/or internationally have, in general, already harmonised their management of OH&S. Harmonisation as such may be of low benefit and relevance for many of these larger businesses. Larger businesses, in general, have substantial capacity to innovate and adjust to changes, whether in their operating environment or in the nature and form of regulation;

The benefits to WA of harmonisation *per se* will accrue primarily to medium sized businesses but the costs may fall heavily on small business. Indeed, the *prima facie* distribution of benefits and costs is:

Small business	➔	High costs	➔	Low benefit
Medium business	➔	Medium costs	➔	High benefit
Large business	➔	Low costs	➔	Low benefit

Note that any decision by other states and territories to reject the model legislation, regulation and codes will reduce the potential benefits of harmonisation as such.

Nature of proposed changes

The model regulations involve some 424 changes to WA regulations, of which 39 have been identified by WorkSafe WA as potentially significant changes. Some of the significant proposed changes involve a simple change in standard. For example requiring crystalline silicon dioxide contained in abrasive materials to be no more than 0.1% rather than 2.0% as currently.

However, the majority of the 39 significant proposed changes are more systemic in nature. Specifically:

- as with existing West Australian legislation the model Act endorses high level objectives and principles, and clarifies the definitions of PCBUs, workers, and workplaces;
- the proposed regulations are often less prescriptive and less directive in terms of what must practically be done at a workplace by a responsible employer. However, they are more demanding in terms of:
  - development of formal risk management plans,
  - documentation of safety procedures and plans,
  - greater responsibility and obligations on OHA authorities/regulators including mandatory reviews and investigations, formal qualifications, licensing and independence rather than reliance on competent persons, and
  - bookended processes whereby plans are made prior to the conduct of regulated activities and then reviewed upon completion.
- the codes of practice will provide the concrete detail for businesses and others seeking explicit guidance. These codes have been (or will be) developed by industry experts and incumbent practitioners.

Impacts on small business

Changes in standards can be simply described and are relatively simple to evaluate in terms of benefits, costs and other impacts. However, changes in the nature and form of regulation pose a more difficult challenge for regulatory impact assessment since indirect and intangible benefits and costs may be material. For instance:

- compliance costs for small business may rise disproportionately even though large businesses located in capital cities may incur little or no additional cost.

  > *Small business, which represents a large proportion of this State's employers, would be forced to use already stretched resources to meet compliance paperwork at the cost of actual time on site and on the shop floor directly supervising workplace environments for the best safety outcomes*[36]

- industry codes of practice may perfectly capture best practice in terms of better WHS outcomes at low cost, but also potentially allow regulatory capture and rent seeking.[37] In addition to transitional costs there may be increased risk of higher credentialism and

[36] Manufacturing company comment in Marsden Jacob consultations, September 2012.

[37] Kreuger, A. O., *the Political Economy of the Rent Seeking Economy*, pp. 38- 39, American Economic Review.

licensing becoming barriers to entry and competition with consequent increases in costs and prices; and

- higher costs and prices may have the unintended consequences of reducing willingness and ability to pay for regulated services, possibly increasing illegal activity (such as renovating home owners dumping asbestos they themselves have removed), loss of competitiveness and viability:

  There is no question that these additional requirements will have an effect on any contract/tender pricing and internal profit margins. For small operations there is the potential for the additional costs to become cost prohibitive and make running a small business no longer a viable option.[38]

  The reality is if there are cost increases which are not re-compensated…then small business will not be able to survive financially.[39]

More fundamentally:

> *The introduction of a completely new scheme requires review, analysis and updating of existing business infrastructure and OSH related activities and the roll out of new or altered items.*
>
> *The costs of doing this are likely to be significant for small and medium employers when the human resource costs, lost productivity and related costs are included.*[40]

Moreover, changes in the nature and form of legislation/regulation may be expected to require greater attention to matters beyond the comparison of direct and immediate benefits and costs, i.e., greater attention is likely to be required to the "*other RIS criteria*" such as market disruption in the transitional period, impacts on competition and freedom of entry; equity across different types of businesses operating in different localities and environments; and the achievement of wider objectives such as health and safety outside the workplace.[41]

5.2 Different responses to same regulatory package

There is substantial literature which outlines that varying sized businesses respond differently to the same regulation. The Australian evidence suggests:

> *Overall, ... business behaviour vis-a-vis regulatory law and enforcement is complex and multi-faceted ...*
>
> *plants differ in their responsiveness to enforcement activity and these differences are related to firm as well as to plant characteristics. Plants owned by larger firms* [*are*] *less responsive to inspections and more responsive to other enforcement actions.*[42]

and indicated by research:

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38 Electrical company comment in Marsden Jacob consultations, September 2012.

39 Construction company comment in Marsden Jacob consultations, September 2012.

40 WA Chamber of Commerce & Industry submission, October 2012.

41 For example; reduced deaths from asbestos related diseases amongst asbestos removalists and their clients is a definite benefit but must be weighed against the risk of increased deaths amongst the general public from illegal dumping.

42 Gunningham, N., Thornton, and Kagan, R.A,

> *... deterrence (general, specific, or implicit) is far more important to small and medium-sized enterprises than it was too large, reputation-sensitive corporations. Relatedly, large companies generally were proactive and innovative in seeking least cost ways of mitigating the costs of regulatory compliance and identifying 'win-win' outcomes, while small companies were almost entirely reactive and rarely took advantage of such opportunities.*
>
> *where the outcome of sustained inspection and enforcement activity is to inculcate a 'culture of compliance' in which it was the regulations themselves rather than enforcement action that had a direct impact on compliance behaviour.*[43]

The research evidence in the UK and Europe is similar:

> *Legislation may sometimes be the most feasible option to encourage SMEs to make improvements in OSH…it is important to note that some SMEs may respond only to legislation.*[44]
>
> *HSE's [Health and Safety Executive's] view is that guidance to small firms can be simplified and made explicit, and many such guidance documents now exist. Beyond this, however, HSE argues that no company however small can be excused from the duty of taking its own common sense view of the hazards in its establishment and considering necessary precautions; and that no guidance can deal with all situations.*[45]
>
> *It would appear that as businesses grow, they develop the opportunity, and are more likely to allocate time to health & safety matters. It should be borne in mind, however, that the legislative position, with regard to health & safety documentation, is less proscriptive for organisations with less than five staff. These businesses have no statutory requirement to produce health & safety documentation.*[46]

As a result, some obligations on SMEs for health and safety documentation and plans in the UK and Europe are less.

In summary, research evidence is that the best form of WHS regulation and regulatory activity for large businesses is not the best for small business unless there is significant and effective expenditure on both education and compliance. This involves advertising and the presence of inspectors.

In the light of this literature we can make the following observations.

- Small business is not well catered to in a *light touch* regulatory design because small business will best respond in terms of safety to explicit education and direction about what is required. The design of the Model Regulation is also different to the WA OHS

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43 Gunningham, N., Kagan, R.A., *Regulation and Business Behaviour*, Berkeley Law 27 Law & Pol'y 212 See http://scholarhsip.law.berkeley.edu.facpubs

44 European Agency for Health and Safety at Work 2009, *Occupational safety and health and economic performance in small and medium-sized enterprises: a review*, Working Paper, p. 24.

45 Rimington, J., McQuaid, J., and Trbojevic, V. 2003, *Application of Risk Based Strategies to Workers Health and Safety Protection: UK Experience*, Report prepared for The Ministry of Social Affairs and Employment, p. iii.

46 Health and Safety Executive 2007, *Health and safety in the small to medium sized enterprise: Psychosocial opportunities for intervention*, p. 54.

Regulations in that detail is deferred to codes of practice and industry standards (in most cases – in others standards are removed altogether).

- The Model Regulations create barriers to the educative role of the regulations by passing the relevant detail to codes of practice and priced materials (i.e., the Standards) that have to be paid for to be put in place.
- Successful regulation creates a 'culture of compliance' engendered by 'sustained inspections and enforcement activity' and by making the 'regulations themselves' the educative tool. Larger businesses have the resources to ensure these Standards are applied by their own employees and contractors; and have union involvement available as an additional compliance element in the workplace. For small business, the regulator must deliver on the deterrence role and in the absence of easily available education attempt to fill the gap.
- While suitable for large businesses with training resources and capacity to innovate and evolve codes of practice and standards, this regulatory approach is much more likely to fail smaller businesses potentially leading to a decrease in safety. Small businesses may contract professional safety compliance services, however must be satisfied that the cost is justified.
- Our further observation is that the additional activities may be seen as unnecessary unless the case for safety can be made. This is particularly so if the additional activities are seen to be 'consistently out of touch', 'unreasonable', or 'unfair'.[47] The difficulty for the regulator is that if this perception prevails then the regulator's credibility together with that of the regulation is likely to be undermined so lessening the impact of other legitimate safety initiatives.

Nonetheless, (based on the 39 potentially significant changes examined) the proposed model regulations and codes do not distinguish between different workplaces or different businesses and apply equally to big and small, to inner city through to remote locations.

Similar to the original Robens reforms,[48] they are best suited to large, well-resourced and unionised PCBUs rather than to small businesses and other small PCBUs with a non-unionised workforce and limited and under-resourced management.[49]

That is, the Model regulations arguably reflect a situation which is applicable to around 13 percent only of the Australian workforce rather than the situation of small businesses which, in WA, account for 96% of workplaces and around half of total employment.

5.3 Equity: small business and regions

A key RIS criteria is whether the proposed legislation is equitable in its imposition of both benefits and costs. Through the consultation process Marsden Jacob identified several specific changes in regulation which may impose inequitable costs for some businesses. These include

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47 Comments by respondents from the construction industry at Marsden Jacob consultations, September 2012.

48 Lord Robens chaired a committee in the UK reviewing health and safety legislation. The outcome of the review was to reform the legislation to focus on the objective of protecting workers from injury and illness. This objective based approach is captured in both the existing WA legislation and the model WHS Bill in the employer's duty of care.

49 *"…the small business sector, non-trades-unionised [was] largely excluded from the Robens concept, which has been honed in the years of the big corporations."* (Rimington, R. *Health and Safety – Past, Present and Future*, The Alan St John Holt Memorial Lecture, October 9, 2008).

asbestos licensing, audio metric testing, the threshold for the appointment of a principal contactor; and the greater requirement for certification and training.

Asbestos licensing and operations

As noted above, six of the potentially significant changes relating to asbestos focus on the asbestos removal industry with a) replacement by competent person with independent licensed assessors and trained certified persons, and b) new requirements for documentation and notification. These requirements will impose heavier relative costs on small business than on larger businesses and the notification requirements will cause particular issues in regional and remote areas of Western Australia in the asbestos removal industry, and to their commercial and private clients. These costs have not been quantified but a well understood and reported.

> *I have a small building company that specializes in renovations up to about $400,000. There are only two people involved directly in the work and as such we wear many hats in carrying out the works, from director to floor sweeper. In other words we do almost everything. As a rule we only do one or two contracts per year. We have a restricted asbestos removal license. The purpose of this license is to remove sheet asbestos ourselves should we find any during a renovation. As such we use the license as a convenience and do not partake or intend to partake in the removal of asbestos for commercial purposes.*
>
> *Given the way that we operate my concern with the model WHS regulations is with regards to the 5 Day notification period. In our operation, we would have to cease work for that period of time, which as you can appreciate is a cost to all involved.*

Noise – Audiometric testing

The proposed change requiring audiometric testing of workers at specified frequencies applies equally to all PCBUs.

Queensland authorities indicate that in their experience audiometric testing imposes inequitable costs - particularly for small and medium size businesses in regional and remote areas. Queensland Authorities report that mobile audiometric testing facilities currently operate in regional areas of their state – but that these are fully booked by large businesses and so "leave town" before smaller businesses are able to use the facilities. This leaves smaller businesses with the option of transporting their staff to permanent facilities in regional centres (imposing both time and transport costs) or not complying with the legislation.

Construction projects – appointment of a principal contractor

The proposed change for appointment of a principal contractor for projects costing $250,000 or more is likely to impose costs for projects in regional locations due to the increased construction costs in some regions.

This will result in projects in some regional areas falling within the scope of the regulation, where the same project would be below the threshold in Perth.

For example the regional loading for Exmouth is estimated to be around 70%. Commercial architects advise that a 'rule of thumb' regional loading for construction in many WA locations is over 50%. 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.

The WA Chamber of Commerce and Industry (CCI) stated:

> *The $250,000 project cost that determines a 'Construction Project' 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 that, in other States, would be far less for comparable works.*
>
> *Government need to reconsider this particular criterion to ensure it is not going to pose unintended consequences on home renovators and other small businesses operating in remote or regional locations where the costs associated with minor works could exceed the $250,000 project cost.*[50]

In sum, the shift in the form of the threshold from the existing "*five workers on site*" to the $250,000 project value threshold raises obvious inequities across building and construction businesses around Australia and particularly in Western Australia.

Training cost and availability

A frequent feature of the new regulations is the shift from the requirement for competent persons to persons who are formally trained, certified and licensed. These increased requirements can be observed in approximately one-third of the 39 potentially significant proposals for regulatory change examined in this review.

As a specific example, for High Risk Worker Licences for operating a boiler between 150 – 500 kilowatts there are currently no training requirements. Under the proposed regulations training will be required with the new course is estimated to be 5 days duration. A second example is the asbestos removalists. The current course is four hours long and the envisaged new courses will be two days for bonded asbestos and an additional two days for friable asbestos.

Small businesses will be more acutely affected by the need to provide time off for training since they have very few operators. The introduction of these training requirements may result in increased wages for staff that have the requisite training in these fields.

The demand for training poses particular issues for businesses located in WA's regional and remote areas.

> *...because we are in the country our costs will be much higher if our workers have to go to Perth for training.*
>
> *We would just like to know that doing all the extra training will this give our company an edge over our competitors who do these 2 hour asbestos training courses or will this just put our costs up even further so they have more of a reason to do these course to remove their own asbestos?*[51]
>
> *Training and the associated costs is my biggest concern for all the small to medium businesses…will often entail employees having to fly down to Perth and be accommodated. These are not costs that a small business can sustain and yet are not chargeable back to the main contractor.*[52]

A number of attendees at regional forums commented on the disadvantage of regional location, with a lack of availability of both training facilities and specialist services. This results in

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50 WA Chamber of Commerce & Industry submission, October 2012.

51 Comment by Kalgoorlie business at Marsden Jacob consultations, September 2012.

52 Comment by respondent from the construction industry at Marsden Jacob consultations, September 2012.

increased costs for regional businesses to send their staff to training. Regional and small businesses will be disadvantaged in their competition with larger businesses. The quantification of the extent of this disadvantage is beyond the scope of this review.

5.4 Potential competition issues

The new requirements for training, certification and licenses plus the greater demands for formal documentation of safety management plans, procedures and notification will impose higher relative costs on smaller businesses than on larger businesses and on regional and remote businesses compared with metropolitan businesses, especially in the lager capitals. These relatively higher costs will disadvantage small business in the competitive environment it faces with medium and larger sized businesses. The evidence supporting this conclusion is based on comments received during both the regional and Perth consultations and workshops, the written submissions received and the responses to the online surveys conducted by Marsden Jacob.

5.4.1 Survey responses

Through the surveys and workshops, respondents were asked a specific question on the competition impacts that would arise from the whole package of WHS changes:

> *Will the additional or new requirements in the whole package of changes have any market or competition impacts for your business?*

The findings of the competition question are summarised in Table 23 and it can be seen that 40% of the respondents indicated that market or competition impacts would result for their business.

Table 23: Responses on market and competition impacts

Will the additional or new requirements in the whole package of changes have any market or competition impacts for your business?	Response Rate (%)
Yes	40
No	47
Don't know / Blank	13

Source: Marsden Jacob online survey.

Respondents were also asked to identify the nature of the competition and market impacts that would arise. The responses can be grouped into the following headings:

- reduced international competitiveness;
- competitive advantage;
- increased compliance costs;
- costs offset by safety gains;
- impacts on small business; and
- impacts on volunteer / not for profit sector.

Some example quotes are provided for each of these topics Table 24.

Examples of the anti-competitive impacts of the effect of the proposed regulations are outlined in the individual sections in of the companion to this report. Pertinent examples include, however, the case of asbestos removal and an increased incentive for non-compliance generally. Any increase in non-compliance could also be described as an unintended consequence of the proposed changes.

Table 24: Respondents' perceptions of competition impacts arising from the proposed changes

Topic	Example comments
Reduced international competitiveness	As an export/trade exposed company, it may add more financial pressures to the existing high manufacturing costs of operating in Australia. Increased costs making our product more expensive bearing in mind that over 50% of our product relies on sales overseas
Increased compliance costs	Changes that increase the cost structure of business or reduce its efficiency will reduce its competitive ability in the market place. It will make us less competitive because time, money and effort will have to be put into implementing and maintaining the new requirements, instead of being put into the actual business. It will also drive up costs with no business benefit and no/very little improvement in safety.
Costs offset by safety gains	Not significant - offset against risk of injury Increased compliance can increase costs but improved safety can reduce negative impacts
Competitive Advantage	As an early adoptee of the WHS changes I have a market advantage over my competitors and so get a "preferred supplier' status. Will assist in making our business more competitive with others in the market.
Impacts on small business	…as a cooperative, we are mindful of the knock on consequences and costs that may be incurred by our members - farmers - in so far as their 'on farm' responsibilities are concerned. We expect farmers to have to either spend more time on compliance issues (personal cost in time) or to bring in external assessors in some instances (additional cost in $). … For small operations there is the potential for the additional costs to become cost prohibitive and make running a small business no longer a viable option
Impacts on volunteer / not for profit sector	The (aged care) industry is absolutely reliant on the goodwill and commitment of volunteers. They undertake a myriad of important tasks as part of the day to day operations of aged care and are integral to the industry's future. Therefore its essential that requirements surrounding volunteers are not onerous to either the volunteer or the aged care provider. Funding diverted from not for profit purpose to government tick box

Source: Marsden Jacob workshops/survey, 2012.

5.4.2 Asbestos removal

The combination of increased requirements for asbestos removal risks creating barriers to entry within the market. In particular the additional training and requirements for Certified Safety Management Systems for a Class A removal licence may reduce the threat of new entry into the market. The market for the removal of friable asbestos is currently small (14 licensed operators)

and it is estimated that there are less than 50 jobs per year. It is unclear whether the imposition of additional requirements under WHS would cause some current licensees to withdraw from the market – which would increase levels of concentration.

Irrespective of any possible competition issues the increased requirements for asbestos removal is likely to increase the costs for operators in the industry – which will then be passed on to customers.

5.4.3 Cost advantage of non-compliance

In addition to increased use of exemptions, some PCBUs may choose to not comply with some or all parts of the OSH requirements. This is likely to result in a cost advantage to those who choose not to comply.

> *My issue with all of these proposed and existing OH&S changes are that it is not implemented across the board. For any of these to work and be implemented completely - it has to be compulsory to all businesses involved. This makes it very uneven for small businesses to implement these when some are doing it and some aren't.*[53]

In addition this may impose additional costs on WorkSafe WA. In its submission WorkSafe WA included an increased number of staff (29 Full Time Equivalents) for some elements such as plant re-registration to ensure compliance.

5.5 Potential unintended consequences of the regulations

Potential unintended consequences of the regulations highlighted by respondents include increased use of exemptions and increased non-compliance. WorkSafe observed that an increase in non-compliance of this kind would be likely to be a mixture of behaviours arising from those that cannot viably comply with the regulations and others that choose not to comply.

5.5.1 Increased use of exemptions

The regulations include or retain a number of exemptions – below which the regulations do not apply. Three examples are:

- $250,000 in the definition for construction projects – appointment of a principal contractor;
- 10 square metre rule for asbestos removal to require a licensed removalist; and
- boilers below 150 kilowatts are exempt from requiring a High Risk Workers Licence.

It is likely that these size exemptions will result in an increased level of activity below that threshold level.

[53] Comment in Marsden Jacob online small business survey, September 2012.

6. Implementation issues

The final section discusses the implementation timeframe and potential issues to consider in the implementation of WHS.

6.1 Implementation timeframe

The WA Government has previously indicated that it plans to implement the whole package of WHS changes – covering both general industry and mining – simultaneously.

> *The Government has concerns that having a different commencement date for mining laws will create an uncertain regulatory environment which could conceivably have a negative impact on safety standards in this high risk industry*[54]

Currently the "core" mining regulations are reportedly near completion. In addition, the "non-core" mining regulations are still being developed by the three main mining states (Western Australia, Queensland and New South Wales).

The implementation timeframe for all elements of the package of WHS changes will become clearer once the "core" mining regulations are published and the WA regulators have had an opportunity to consider them.

6.2 Government resourcing

6.2.1 Regulator resourcing

As noted in Section 4.7, the successful implementation of WHS will depend in part on adequate resourcing of the regulators. To this end, the extent and timing of the adoption of the recommendations may need to be linked to budget setting.

As noted through the cost efficiency test under the Benefit Cost Analysis, the implementation of a number of the regulatory changes will result in increased costs. Some of these costs will be borne by the regulator – primarily WorkSafe WA, but also Resources Safety Division of the Department of Mines and Petroleum.

The successful implementation of WHS will depend on the regulators being adequately resourced to respond to their altered roles. In its submission WorkSafe WA estimated that:

> *the implementation of WHS will impact on its budgetary requirements by $8.5 million for initial set-up costs and ongoing annual costs of $3.4 million which can be anticipated as increasing annually as the cost of labour rises.*

In addition to this estimate WorkSafe WA identified other changes where there would be a resourcing impact – but this could not be estimated at that time.

While the Resources Safety Division did not make a formal submission it appears likely that the implementation of WHS would also impact on its resourcing.

It appears likely that failure to resource the regulators adequately could result in impacts such as delays in implementation, increased costs for businesses and/or low levels of compliance.

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[54] Frequently asked questions – harmonised OSH laws, accessed 14 December 2012 http://www.commerce.wa.gov.au/worksafe/Content/About_Us/Legislation/National_model_act_FAQs.html

6.2.2 Resourcing for other government departments

The implementation of WHS will also impose costs on both state and local government activities. Based on responses provided it appears likely that at a state government level these costs will be particularly apparent in the following areas:

- emergency services;
- health and education departments; and
- utilities which often operate as Government Trading Enterprises.

6.3 Transitional provisions

The final element of the RIS assessment is to consider the implementation strategy.

WorkSafe's submission suggests extended transition periods may be necessary for the following proposed regulation changes:

- High Risk Worker Licences;
- notification requirements;
- asbestos register;
- audiometric testing; and
- plant –re-registration.

The most common suggestions were:

- delaying implementation (by either 1-2, 3-5 or more than 5 years);
- having a 'staggered start'; and
- preparation of additional guidance or documentation.

The responses and comments received in consultations and workshops on transitional issues and provisions are summarised in Table 25 below.

It is also clear from the examples give above and from the over-representation of small business in WA that considerable resources will need to be applied to educating small business. The table below shows the proportion of small business in WA compared to other jurisdictions.

It can be seen that the impost on the Regulator in WA will be greater by a factor than the other states, (given that adequate safety cases can be made for the 39 examined regulations and the other approximate 350 unexamined changes).

Table 25: Responses provided on transitional provisions

Proposed Change	Transitional recommendation
Asbestos	
– Register	It would appear that a lengthy transitional period would be necessary (e.g. 3-5 years).
– Naturally occurring asbestos	It would appear that a transitional period would be necessary; however, the default transitional period of 12 months may be sufficient.
– Air monitoring and clearance	It would appear that a lengthy transitional period would be necessary (e.g. 3-5 years).
– Analysis of samples	A respondent indicated that an appropriate transitional provision would be delaying implementation by 1-2 years.
– Certified safety management systems	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.
– Removal licences	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.
– Removal notifications	It would appear that a short transitional period would be necessary (e.g. 1 year).
– Training	It would appear that a lengthy transitional period would be necessary (e.g. 3 – 5 years) to allow time for training courses to become established and staff to be trained.
Construction projects	
– Appointment of a principal contractor	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".
Diving work	
– Diving work	It would appear that a reasonable transitional period would be necessary (e.g. 1-2 years).
Fall prevention	
– Fall prevention	Should be delayed pending clarification and better understanding of likely costs to construction and building industry and their final customers. 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.
Hazardous chemicals	
– Classification, labels, MSDS and controls	It was suggested that the date for complying with the provisions for GHS Classification and Labelling be amended to 31 December 2016 rather than 2017. This date is five years after the adoption of the laws by five jurisdictions and will ensure a consistent implementation date across Australia. Further clarity around date of implementation was requested.
– Import	No major transitional issues were identified.
– Restricted haz chems – crystalline silica silicon dioxide	No major transitional issues were identified.
– Risk assessment and record keeping	No major transitional issues were identified.
– Therapeutic goods & ag vet chemicals	No major transitional issues were identified.
Health monitoring Reports to the regulator	No major transitional issues were identified.
High risk work licences (HRWL)	
– Boilers (pressure equipment)	Transitional issues identified both in setting up of training courses allowing sufficient time for workers to qualify and the apparent need to run a five license category scheme will transitioning from 3 to 2 categories.
– Concrete placing boom	Some transitional issues identified.
– Dogging and "slinging techniques"	No major transitional issues identified.
– Exemptions	No major transitional issues identified.
– Reach stacker	A transitional period will be required to allow implementation by WorkSafe and workplaces.

Incident notification – Prescribed serious illnesses	No major transitional issues identified.
Lead risk work	No major transitional issues identified.
Noise	
Audiometric testing	It would appear that a lengthy transitional period would be necessary (e.g. 3-5 years); that additional guidance or Codes of Practice is prepared; and a 'staggered start' is available.
Managing risks	It would appear that a reasonable transitional period would be necessary (e.g. 1-2 years); and that additional guidance or Codes of Practice is prepared prior to implementation.
Personal protective clothing and equipment (PPE)	It was suggested that additional guidance or Codes of Practice be prepared for transitional provisions prior to implementation.
Plant	
– Amusement devices	It would appear that a lengthy transitional period would be necessary (e.g. 3-5 years).
– Design registration – concrete placement units with delivery booms	It would appear that the default transitional period (1 year) would be sufficient.
– Design verification: cranes	It would appear that a lengthy transitional period would be necessary (e.g. 3 years).
– Design verification: pressure vessels	It would appear that a transitional period of 1 to 2 years would be necessary.
– Import	It would appear that a transitional period of 1 to 2 years would be necessary.
– Item of plant registration	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.
– Item of plant registration – renewals	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 this implementation of the change to regulation. It would appear that a lengthy transitional period would be necessary (e.g. 3-5 years).
– Mobile and tower cranes	It would appear that a transitional period of 1 to 2 years would be necessary.
– Registration: prefabricated formwork & boom type concrete placement units	It was suggested a transitional arrangement be put in place and to not apply the requirement retrospectively.
Thermal comfort	It was suggested that there be preparation of additional guidance or Codes of Practice for transitional provisions prior to implementation.
Tilt-up construction, spray painting, welding, abrasive blasting etc – Spray painting	No transitional issues were identified.
– Tilt-up construction, welding, abrasive blasting, isocyanates and styrene	WorkSafe WA had previously advised that if there were no national Codes of Practice that they may construct their own guidance material.

6.4 Evaluation of WHS after implementation

All legislative changes agreed by COAG are subject to review to ensure a commitment to establish and maintain effective arrangements for maximising the efficiency of both new and amended legislation. This avoids unnecessary compliance costs and restriction of competition.

Safe Work Australia have developed an evaluation plan (*Evaluation Plan for the Harmonisation of Work Health and Safety in Australia*, 29 July 2011[55]) which would be applicable to the West Australian implementation and evaluation process.

Once the details and timing of the mining specific regulations WorkSafe and Resources Safety Division of the Department of Mines and Petroleum Resources should identify how the WHS implementation timeframes will align with the planned evaluation timetable. It is noted that implementation in other jurisdictions have already identified a number of changes required to the model WHS regulations (e.g. removal of regulation 217). In addition, COAG agreed in April 2012 to a review to be completed by the end of 2014 which will inevitably result in further changes to the WHS regulations.

55 http://www.safeworkaustralia.gov.au/sites/SWA/about/who-we-are/Corporateinformation/FOI/Documents/Final-Evaluation-Plan-WHS-Harmonisation.PDF