

Submission
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Submission on Work Health and Safety Regulations for Western Australia

WorkSafe Western Australia

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by its member companies who are responsible for most of the State's mineral and energy production and are major employers of the resources sector workforce in the State.

In 2014-15, the value of Western Australia's mineral and petroleum production was \$99.5 billion. Iron ore is currently the State's most valuable commodity, accounting for more than half the State's production value at \$54 billion. Petroleum products (including LNG, crude oil and condensate) follow at \$24 billion, with gold third at \$9 billion.

The sector is a major contributor to the state and the Australian economy. The estimated value of royalties the state received from the resources sector composed almost 15 per cent of estimated total state revenue in 2015-16, or around \$3.8 billion.

Recommendations

- CME support the modernisation of Work Health and Safety (WHS) legislation in Western Australia.
- CME recommend WHS legislative reform remains focused on achieving best practice, maximising potential benefits and minimising costs wherever possible.
- CME support the key features of the model WHS legislation which clarify the way in which duties are owed and allow the legislation to keep pace with the changing nature of work.
- CME considers the enactment of modern, risk based WHS laws may assist in achieving further reductions to the incident rate of serious claims in Western Australia.
- CME recommend the key principles of the model WHS legislation be adopted in Western Australia to achieve national consistency in the key features of the legislation.
- CME recommend the results of the Council of Australian Governments (COAG) review of the model WHS legislation which improve safety outcomes and remove unnecessary prescription should be considered in the context of the development of the WHS Regulations for Western Australia.
- CME has previously indicated and repeats here its support for, on an ongoing basis:
 - resources sector representation on the Commission for Occupational Safety and Health as a mechanism to ensure ongoing alignment between general and resources sector safety legislation; and
 - membership of the Safety Legislation Reform Ministerial Advisory Panel (MAP) to include representation from WorkSafe WA (as committed to at the meeting of the MAP on 26 March 2014).
- CME recommend the:
 - Department of Mines and Petroleum (DMP) continue to be a separate regulator to WorkSafe WA, with the DMP inspectorate possessing the skills and experience to appropriately administer the WHS (Resources and Major Hazards) legislation.
 - WHS (Resources and Major Hazards) legislation progresses, regardless of the progress of the WHS legislation.

- CME recommend the final proposed WHS regulations for general industry and for the resources sector be released for a period of public consultation.
- CME recommend to assist in the 'usability' of the WHS Regulations a user friendly version of the regulations be drafted which sets out, in plain English, the key requirements of the regulations.
- CME recommend the status-quo position in the *Occupational Safety and Health Act 1984* (OSH Act) be retained which would allow persons who have met the National Standard for Licensing Persons Performing High Risk Work outside Western Australia, to apply for a high risk work licence in this state.
- CME recommends a detailed review of the dangerous goods legislation be conducted to ensure all unnecessary duplication with the WHS Regulations is removed.
- CME recommend enforceable undertakings be included in the Green Bill and the WHS Regulations.
- CME recommend the definition of 'container' should be limited as per the proposed Victorian definition, which more specifically provides product hazard information to workers on containers likely to be handled.

Context

CME welcomes the opportunity to review and comment on the Discussion Paper for the Work Health and Safety Regulations (WHS Regulations) for Western Australia.

CME has consistently supported the reform of work health and safety (WHS) legislation in Western Australia to move away from prescription and towards best practice risk and outcome-based focused approaches. CME considers (subject to the issues outlined in this submission) the proposed WHS Regulations achieve this aim.

CME support the modernisation of WHS legislation in Western Australia.

While industry supports the broad principles of national harmonisation, CME appreciates the intent of the Western Australian Government's reform program is to modernise and streamline existing WHS legislation while building national consistency where possible.

CME is pleased the modernisation of WHS legislation has been progressed and considers it is critical this reform continues to focus on achieving the best outcomes for Western Australia. CME considers the modernised legislation proposed in the Green Bill and WHS Regulations will allow Western Australia to achieve the best outcomes for health and safety.

CME recommend WHS legislative reform remains focused on achieving best practice, maximising potential benefits and minimising costs wherever possible.

Improving health and safety outcomes

CME considers the primary driver for the adoption of revised safety legislation in Western Australia must be to improve safety outcomes.

CME considers the Green Bill and the WHS Regulations provide an opportunity to implement best practice, risk based legislation in Western Australia.

There are a number of features of the package of proposed WHS legislation for Western Australia which CME considers will improve safety outcomes. Specifically, CME supports the adoption of:

- the concept of a 'person conducting a business' or undertaking, with the primary duty of care being owed to all 'workers'. CME considers these principles address concerns with incomplete coverage and confusion created by the reliance on the 'employment' relationship and provisions deeming persons to be employees for the purposes of the legislation contained in the existing *Occupational Safety and Health Act 1984* (OSH Act);
- the risk based approach set out in chapter 3 of the model WHS Regulations which encourages innovation in the way in which hazards are managed, allowing the proposed WHS legislation to keep pace with changing hazards created by new methods of working; and
- the duty for duty holders to 'consult, cooperate and coordinate' works with one another where more than one duty holder owes the same duty to ensure where there are overlapping duties and concurrent duties, there is a mechanism to ensure parties are clear on their responsibilities.

CME support the key features of the model WHS legislation which clarify the way in which duties are owed and allow the legislation to keep pace with the changing nature of work.

CME's view is the opportunity presented by the proposal to adopt laws based on the model WHS legislation provides an opportunity to modernise the existing laws so Western Australia has best practice, risk based WHS laws which are able to keep pace with the changing

nature of work. It would be a lost opportunity if the key features of the model WHS legislation were not adopted in Western Australia.

The latest comparative statistics show Western Australia has the second lowest (after the Australian Capital Territory) fall in the incidence rate of serious claims from 2009–10 to 2012–13.¹ There is therefore arguably room for improvement for Western Australia to meet the performance of other jurisdictions, which, over the same period, have achieved larger reductions in the rate of serious claims.

CME considers the enactment of modern, risk based WHS laws may assist in achieving further reductions to the incident rate of serious claims in Western Australia.

National consistency

It was recognised in first report (dated October 2008) of the National Review into Model Occupational Health and Safety Laws the implementation of model WHS laws would improve WHS outcomes, as business would be able to spend the time and resources focusing on developing better prevention strategies which they may otherwise have spent on researching and complying with different WHS laws.

CME has consistently supported the broad principles of harmonisation. CME considers where the principles contained in the model WHS legislation represent best practice and will achieve positive safety outcomes, these principles should be adopted in Western Australia.

CME recommend the key principles of the model WHS legislation be adopted in Western Australia to achieve national consistency in the key features of the legislation.

Adoption of best practice elements of COAG review and continued focus on improvement

CME understands the version of the Model Work Health and Safety Regulations used to develop the recommendations in the discussion paper on the WHS Regulations incorporates amendments as at 9 January 2014. A review of the model WHS legislation was announced on 30 June 2014, with ministers responsible for WHS from all Australian governments agreeing to release an Issues Paper and Consultation regulation impact statement (RIS) examining improvements to the model WHS laws.

CME recommend the results of the Council of Australian Governments (COAG) review of the model WHS legislation which improve safety outcomes and remove unnecessary prescription should be considered in the context of the development of the WHS Regulations for Western Australia.

This is imperative to ensure there is a continual focus on removing unnecessary prescription and legislation adopted in Western Australia is best practice and suits the specific operating environment here.

Alignment to, and consistency with resources safety legislation

CME has consistently supported the modernisation of two separate yet strongly aligned pieces of legislation in Western Australia:

- a bill to modernise the existing OSH Act to apply to general industry; and

¹ See Safe Work Australia, Comparative Performance Monitoring Report, 17th Edition, October 2015, <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/941/cpm-17-edition.pdf>

- a bill to modernise the *Mines Safety and Inspection Act 1994* and to apply to mining, petroleum and major hazard facilities.

It has long been the resources sector's view separate legislation is required to:

- address sector specific hazards;
- provide dedicated risk management processes; and
- provide adequate support from a dedicated regulator.

However, because the replacement legislation to the OSH Act will apply to a number of activities performed by CME's members such as office environments, it is important for key areas of the legislation which apply to general industry and to the resources sector are consistent.

CME acknowledges the process to develop the WHS Regulations and the regulations to support the WHS (Resources) Bill are being progressed as separate work streams. As the work to develop both Bills and the regulations develops, the level of alignment should be kept under constant review to ensure the separate pieces of legislation do not become misaligned as changes occur over time.

CME has previously indicated and repeats here its support for, on an ongoing basis:

- **resources sector representation on the Commission for Occupational Safety and Health as a mechanism to ensure ongoing alignment between general and resources sector safety legislation; and**
- **membership of the Safety Legislation Reform Ministerial Advisory Panel to include representation from WorkSafe WA (as committed to at the meeting of the MAP on 26 March 2014).**

Notwithstanding the above, CME has also previously indicated its support for a separate, well-resourced regulator and regulatory regime that understands the hazards associated with the resources and major hazard facilities industries. CME considers the WHS legislation for the resources sector can continue to progress, even if the WHS legislation is delayed.

CME recommend the:

- **Department of Mines and Petroleum (DMP) continue to be a separate regulator to WorkSafe WA, with the DMP inspectorate possessing the skills and experience to appropriately administer the WHS (Resources and Major Hazards) legislation.**
- **WHS (Resources and Major Hazards) legislation progresses, regardless of the progress of the WHS legislation.**

Process followed to date in the review of WHS legislation for Western Australia

The process and the level of consultation which has occurred on the proposed WHS legislation for general industry and the resources sector in Western Australia to date is supported by industry. There has been a high level of engagement with industry, with a release of materials and workshops held where industry has had an opportunity to discuss the proposed changes.

CME supports the consultation process of the WHS Regulations. However, it is concerned there will not be an opportunity to comment on:

- the full 'as drafted' WHS regulations as opposed to discussion paper; and
- the regulations which support the WHS (Resources) Act.

It is critical the general industry and resources industry legislation can be reviewed as a complete package to ensure the way in which the legislation interacts is clear and to ascertain what the impact on the resources industry is.

CME recommend the final proposed WHS regulations for general industry and for the resources sector be released for a period of public consultation.

The WHS Regulations

CME supports the vast majority of the provisions proposed in the WHS Regulations. A table detailing each of the changes identified in the discussion paper and CME's comments on the proposed changes is set out at Appendix I. However, there are a number of areas that present specific concern. These are discussed in the sections below.

User friendliness

It was identified by Robin Stewart-Crompton in his review of the operation of the Work Health and Safety Act 2012 (SA)² that regulations based on the model WHS regulations are 'unwieldy'. Stewart-Crompton proposes this issue can be addressed by:

- publishing the regulations in two volumes; and
- producing a 'user friendly' version of the regulations.

CME shares the concerns voiced by Stewart-Crompton that the WHS Regulations are lengthy.

CME recommend to assist in the 'usability' of the WHS Regulations a user friendly version of the regulations be drafted which sets out, in plain English, the key requirements of the regulations.

High risk work licences

Recommendation 52 of the discussion paper is to replace the residential requirement for high risk work licences with the requirement the applicant be assessed in Western Australia.

CME is concerned the approach favoured by WorkSafe WA is unduly restrictive. CME's member companies often employ persons from interstate. The existing arrangements in the OSH Act allows permit workers that have been assessed interstate by an accredited assessor to apply for a high risk work licence. This facilitates the ability for workers to move interstate and to obtain a high risk work licence after being assessed outside of Western Australia.

CME recommend the status-quo position in the OSH Act be retained which would allow persons who have met the National Standard for Licensing Persons Performing High Risk Work outside Western Australia, to apply for a high risk work licence in this state.

Removal of unnecessary duplication between WHS Regulations and Dangerous Goods Safety Act 2004

Recommendation 112 of the discussion paper is to remove provisions that are more appropriately regulated under the *Dangerous Goods Safety Act 2004*.

² Stewart-Crompton, R, Review of the operation of Work Health and Safety Act 2012, November 2014, <https://www.parliament.sa.gov.au/HouseofAssembly/BusinessoftheAssembly/RecordsandPapers/TabledPaperandPetitions/Pages/TabledPapersandPetitions.aspx?TPSelectedView=1&TPProperties=W&TPParliamentSession=53%2c2>

CME welcomes the removal of unnecessary duplication between WHS and DG requirements. However, CME considers there is the potential to simplify the two regimes further, by ensuring there is no unnecessary overlap. As examples:

- the obligation under clause 344 of the Model WHS Regulations (the duty of a person conducting a business or undertaking (PCBU) to obtain safety data sheets) appears to be a very similar requirement to clause 77(2) of the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007 (WA)* (DG Storage and Handling Regulations); and
- the obligation under clause 359 of the Model WHS Regulations (fire protection and fire fighting equipment) ensures fire fighting equipment and protection provided by PCBUs dealing with hazardous chemicals are compatible with those used by emergency respondents. CME is concerned this will result in duplication of the requirements of clause 53 (Fire protection – general) of the DG Storage and Handling Regulations.

CME recommends a detailed review of the dangerous goods legislation be conducted to ensure all unnecessary duplication with the WHS Regulations is removed.

Enforceable undertakings

Recommendation 20 of the discussion paper proposes references to enforceable undertakings be removed from the model WHS regulations. This recommendation is consistent with the position taken in the Green Bill to remove the chapter dealing with enforceable undertakings.

CME has previously indicated its opposition to the proposed deletion in Western Australia of part 11 of the Model WHS Act. CME repeats its opposition to the removal of enforceable undertakings as an enforcement option in lieu of prosecution and considers important these provisions are included in the legislation.

The removal of enforceable undertakings from the Green Bill and the WHS Regulations ignores the finding of the second report (dated January 2009) of the National Review into Model Occupational Health and Safety Laws that “*there is no evidence that they have frustrated the objectives of OHS regulation*” and “*the available evidence suggests their use has also been successful in other regulatory fields*”³

CME notes the review of the WHS legislation in South Australia by Stewart-Crompton did not identify any adverse issues with enforceable undertakings. Rather, a recommendation was made that the South Australian regulator, SafeWork SA, raise awareness of the option for enforceable undertakings instead of prosecutions, including by consulting industry associations and the legal profession about the views on the most useful information and materials for this purpose.

CME recommend enforceable undertakings be included in the Green Bill and the WHS Regulations.

Definition of ‘container’

It is proposed the WHS Regulations will adopt the definition of ‘container’, unamended from the Model WHS Regulations.

Container is defined as *‘in relation to a hazardous chemical, means anything in or by which a hazardous chemical is, or has been, wholly or partly covered, enclosed or packed, including anything necessary for the container to perform its function as a container’*.

³ Stewart-Crompton, R, Mayman, S and Sherriff, B, National Review into Model Occupational Health and Safety Laws, Second Report, January 2009.

CME is concerned this definition is very wide. The definition is used in the Hazardous Chemical section (Part 7.1). Part 7.1 Regulation 342 of the Model WHS Regulations requires all 'containers' to have Global Harmonisation System (GHS) labelling. Hence, items such as tanks, hoppers, silos, pipelines, etc. must have GHS labels. However, large 'containers' / storage units also require other warning labelling, being a placard, under Part 7.1.

As an example, a tank of acid would be required to have a GHS label and a Dangerous Goods Placard. Both requirements are contained in Part 7.1. CME is concerned there is an unnecessary duplication of requirements, imposing GHS labelling on 'containers' and requiring other warning labels such as placarding.

Victoria has recognised this and has proposed to limit the definition of 'container' (in the proposed OHS Regulations 2017), so that 'container' is defined as:

'anything in or by which a hazardous substance is or has been wholly or partly encased, covered, enclosed, contained or packed (whether empty, partially full or full), but does not include—

(a) the fuel tank of a vehicle; or

(b) a container of dangerous goods with a capacity exceeding 500 litres or net mass of more than 500 kilograms'

CME understands Victoria's approach means GHS labelling is focused on smaller containers which are more likely to be routinely handled (moved, decanted from, used, etc.) by staff, and hence, provides the warnings to staff on the product hazards. This is more appropriately targeted hazard information. For large 'containers' placarding applies above a certain quantity and therefore the main hazards identified through placarding.


CME recommend the definition of 'container' should be limited as per the proposed Victorian definition, which more specifically provides product hazard information to workers on containers likely to be handled.

Conclusion

In conclusion, CME supports in principle the adoption of the WHS Regulations which are closely aligned to the model WHS regulations, but which are tailored for Western Australia. However, it is important the focus of reforms continue to be on achieving improved safety outcomes. Alignment and consistency with resources safety legislation is important where possible, as is maintaining a range of enforcement options.

CME looks forward to continuing to work closely with WorkSafe WA and other stakeholders to progress these important reforms.

If you have any further queries regarding the above matters, please contact Nicole Roocke on (08) 9220 8500 or n.roocke@cmewa.com.

Authorised by	Position	Date	Signed
Nicole Roocke	Deputy Chief Executive	02/09/2016	
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Appendices

Appendix I – Table of proposed changes to the model WHS regulations

Recommendations		Provisions affected	CME comment
Amend the model WHS regulations to			
1:	Remove the requirement for a record to be retained after the completion of the work or notifiable incident.	77(2); 85(4); 162; 303(2); 304(6)(a).	CME supports the proposed amendment.
2:	Remove the requirement for training records to be retained after employment has ceased.	445(3)(b); 461(1)(b)	CME supports the proposed amendment.
3:	Require that health monitoring records for lead, asbestos and hazardous chemicals are provided to the worker on cessation of employment.	378(1)(b); 388(3); 418(1)(b); 444(1)(b).	CME supports the proposed amendment, with the qualification: <ul style="list-style-type: none"> if the practices of the PCBU are to provide the results of the worker at the time the record is created; or the WHS Regulations otherwise require the results are provided to the worker at the time the record is created (eg clause 441 of the Model WHS Regulations), it is not necessary to provide a further copy to the worker on cession of employment.
4:	Require that results of monitoring for airborne contaminants are provided to the worker as soon as they are available.	50.	CME supports the proposed amendment.
5:	Remove the requirement for a record related to plant with presence sensing equipment to be retained for five years.	226(2)(a).	CME supports the proposed amendment.
6:	Delete the requirement for persons to keep specified documentation available for inspection.	94; 124; 226(3); 230; 237(4); 262; 303(4); 304(5); 313(4); 445(4); 465(3)(b); 505.	CME supports the proposed amendment.
7:	Replace the placeholder phrase 'external review body' with the defined term the Tribunal.	105(5)(b), 519(5)(b) and 683(1) and 683(2)(b)	CME supports the proposed amendment.

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
8:	Clarify that spent convictions are not required to be declared.	87(2)(h) 90(a), 107(2)(a), 116(2)(f), 119(a), 135(2)(a), 492(2)(f)(i) and 492(2)(f)(iii) 500(1)(a) and 500(1)(b), 521(2)(a).	CME supports the proposed amendment.
9:	Refer to the Environmental Protection Act 1986.	419(3)(e); 492(f)(iii), 500(b).	CME supports the proposed amendment.
10:	Remove the regulator from the definition of accredited assessor.	Definition of accredited assessor.	CME supports the proposed amendment.
11:	Remove the exception permitted if the accredited assessor is the regulator.	114(5).	CME supports the proposed amendment.
12:	Replace the defined term electricity supply authority with the defined term network operator from regulation 4 of the Electricity (Network Safety) Regulations 2015.	Definition of electricity supply authority	CME supports the proposed amendment.
13:	Replace the definitions of electrical equipment, electrical installation and electrical work in the model WHS to incorporate or reference the definitions provided in the Electricity (Licensing) Regulations 1991.	144; 145; 146.	CME supports the proposed amendment.
14:	Alter the exclusion provided in the definition of pressure piping so that it applies to a pipeline to which any other written law applies.	Definition of pressure piping clause (c)(ii).	CME supports the proposed amendment.
15:	Insert 'the department of the Public Service principally assisting in the administration of the Fire and Emergency Services Act 1998' as the definition of	Definition of primary service organisation.	CME supports the proposed amendment.

Recommendations		Provisions affected	CME comment
Amend the model WHS regulations to			
	primary emergency service organisation.		
16:	Replace the term strata title body corporate with the term strata company, and change the reference to, or replicate the definition of, strata company in section 3(1) of the Strata Titles Act 1985.	7	CME supports the proposed amendment.
17:	Incorporate the approach to working near overhead power lines from the OSH regulations, including specification of safe distances and control measures.	166	CME supports the proposed amendment, subject to the clarification the clause should continue to address work in proximity to underground power lines (as well as adopting the specific measures proposed in relation to overhead power lines).
18:	To insert a period of 7 days as the timeframe to make an application for an external review of a decision	701	CME supports the proposed amendment.
19:	Include a list of laws prescribed for the purpose of section 271(3)(c)(ii) of the WHS Bill 2014 for the purpose of providing information that is necessary or convenient for the administration or enforcement of another Act.	702.	CME supports the proposed amendment subject to ensuring the exchange of information is focused on supporting the enforcement of another Act, particularly in ensuring safety outcomes.
20:	Remove references to enforceable undertakings from the model WHS regulations.	87(2)(j), 87(2)(k), 90(c), 107(2)(c), 116(2)(h), 116(2)(i), 119(b), 135(2)(b), 492(2)(f)(v), 492(2)(f)(vi) 500(1)(c), 521(2)(b).	CME does not support this amendment. CME recommends enforceable undertakings be included in the Green Bill and the WHS Regulations to provide for an appropriate range of enforcement options.
21:	Remove Part 2.4 (Workplace Entry by WHS Entry Permit Holders).	Part 2.4.	CME supports the proposed amendment.
22:	Use the general definition of competent person provided in clause (g) as the default for all competent persons.	Definition of competent person.	CME supports the proposed amendment. However, CME is concerned the definition of competent person doesn't provide clarity for operators on who determines the training, qualification, experience, knowledge and skills in appropriate.

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
23:	Add the requirement that a competent person for work on energised electrical installations must be authorised to carry out electrical work under the Electricity (Licensing) Regulations 1991.	Definition of competent person.	CME supports the proposed amendment.
24:	Add the competency requirements for testing and tagging for the purpose of regulation 163.	Definition of competent person.	CME supports the proposed amendment.
25:	Replace the requirement for a professional engineer to conduct major inspections of cranes and amusement devices with a competent person.	235(4) and 235(5); 241(5) and 241(6).	CME supports the proposed amendment.
26:	Require a competent person instead of specifying a geotechnical engineer to ensure the sides of a trench are safe from collapse.	306(4)	CME supports the proposed amendment.
27:	Remove all references to specific courses in the definition of specified VET course with the exception of those for HRWLs.	Definition of specified VET course.	CME supports the proposed amendment.
28:	Include a new definition of approved training course as a course approved by the regulator.	Definition of approved training course.	CME supports the proposed amendment.
29:	Replace the requirement for a specified VET course for all purposes other than HRWL with a requirement to complete the approved training course.	460; 494; 498(a)(ii)(A); 499(b)i); 518.	CME supports the proposed amendment.
30:	Remove generic requirements for information, training and instruction in relation to general workplace management and confined spaces.	39; 76.	CME supports the proposed amendment.

Recommendations		Provisions affected	CME comment
Amend the model WHS regulations to			
31:	Implement the approach to construction induction training in Division 11 of Part 3 of the OSH regulations, while retaining mutual recognition of CIT cards.	Part 6.5 and related definitions.	CME supports the proposed amendment subject to the qualification WorkSafe should have the ability to cancel a CIT card in accordance with clause 323 of the Model WHS Regulations.
32:	Replace the requirements for HSR training with the equivalent of regulation 2.2 of the OSH regulations, but remove the phrase “..during the first year of holding office...”.	21.	CME supports the proposed amendment.
33:	Correct the definition of rigging work by replacing the phrase ‘load using’ with the phrase ‘load including’.	Definition of rigging work.	CME supports the proposed amendment.
34:	Limit the requirement for an HRWL for concrete placing booms to mobile concrete placing booms.	Schedule 3 Item 22; Schedule 4 Items 22.	CME supports the proposed amendment.
35:	Exclude boilers of 500kw output or less from the definition of boiler.	Definition of boiler.	CME supports the proposed amendment.
36:	Permit the current holders of HRWLs for the basic and intermediate pressure equipment operation to be able to renew their HRWLs under the WHS regulations.	Schedule 3 new items.	CME supports the proposed amendment.
37:	Transition existing holders of the HRWL class for advance pressure equipment operation to advanced boiler operation.	Transitional provisions.	CME supports the proposed amendment.
38:	Remove the separate HRWL class for reach stackers.	Schedule 3 item 23; Schedule 4 item 23.	CME supports the proposed amendment providing the skills required to operate a non-slewing mobile crane adequately equips a licence holder for those required for the operation of reach stackers.
39:	Permit the holder of an HRWL to operate a non-slewing mobile crane to operate a reach stacker.	Schedule 3 item 14.	CME supports the proposed amendment.

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
40:	Require the provision of a 'recently issued' certification for a high risk work licence.	87(2)(f)(ii).	CME considers the definition of 'recently issued' should be clarified given the regulations will not specify 60 days.
41:	Incorporate the power for the regulator provided in regulation 6.17(1) of the OSH regulations in relation to reassessment of competency.	95.	CME supports the proposed amendment.
42:	Clarify that an applicant for an HRWL can be asked for a reassessment of competency.	95	CME recognises there may be instances where this is required and supports the proposed amendment. However, WorkSafe should clarify under which circumstances an applicant for an HRWL can be asked for a reassessment of competency.
43:	Include compliance with amended regulation 95 as a matter to be taken into account when granting an HRWL.	90.	CME supports the proposed amendment.
44:	Permit an HRWL to be cancelled or suspended if a licence holder does not comply with a request made under regulation 95.	106.	CME supports the proposed amendment.
45:	Include an English language requirement as part of the requirements for the conduct of a competency assessment.	114(2).	CME is concerned an English language requirements may be too restrictive. However, CME recognises this approach is consistent with the National Standard for Licensing Persons Performing High Risk Work.
46:	Replace the requirement that an accredited assessor is qualified to conduct an assessment if their skills, knowledge and experience are in accordance with the Standards for NVR Registered Training Organisations 2011, with a requirement the person has acquired, through training and work experience, the skills necessary to	118(6)(a).	CME does not support the proposed amendment. CME is concerned the proposed approach may result in a dilution of safety standards, if appropriately objective criteria which accredited assessors must meet are not used. CME considers the minimum requirements for an accredited assessor should be: <ul style="list-style-type: none"> • A current training and assessment qualification (Certificate IV in Training and Assessment TAE, or the recognised assessor skill set from the Cert IV TAE); • Vocational competencies at the level being delivered (hold a

Recommendations		Provisions affected	CME comment
Amend the model WHS regulations to			
	assess a person's competency to do high risk work of that class.		HRWL to the grade they are assessing or above); and <ul style="list-style-type: none"> Industry skills, acquired over the past 5 years, current and directly relevant to the assessment being undertaken.
47:	Include a condition of accreditation for HRWL assessors to cooperate with audits of their activities.	112(2).	CME supports the proposed amendment.
48:	Permit the regulator to consider all accreditations where an assessor has been convicted of an offence related to authorisations.	134(1); 135(2).	CME supports the proposed amendment.
49:	Remove the exception provided for the requirement of direct supervision of a worker carrying out work in the course of HRWL training.	84(2).	CME supports the proposed amendment.
50:	Implement the grace period provided in regulation 6.9(1) of the OSH regulations for renewal of an HRWL.	101(4); 102; 103.	CME does not support the proposed amendment. CME considers 6 months is an appropriate period in which to renew a HRWL and, if this time is not met, there should be some flexibility, as provided by clause 103(b) of the Model WHS Regulations.
51:	Include the requirements of regulation 6.32 of the OSH regulations requiring RTOs to retain records.	New provision.	CME supports the proposed amendment.
52:	Replace the residential requirement for high risk work licences with the requirement that the applicant was assessed in Western Australia.	89(2)(c)	CME does not support this amendment. CME recommends the status-quo position in the OSH Act be retained which would allow persons to apply for a HRWL after being assessed outside of Western Australia. In particular, CME is concerned the proposed amendment will reduce the flexibility of employers to recruit workers from interstate and will unnecessarily add costs, by requiring the person to be reassessed in Western Australia.
53:	Remove the residential requirement for registration of plant design and asbestos removal licences.	256(2)(d); 497(2)(d).	497(2)(c); CME supports the proposed amendment.

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
54:	Facilitate online lodgement of authorisations.	Various.	CME supports the proposed amendment.
55:	Remove the requirement for a control measure to be reviewed at the request of an HSR.	38(2)(e); 38(4); 401(1)(g); 401(3).	CME supports the proposed amendment.
56:	Remove the requirement for an asbestos management control plan to be reviewed at the request of an HSR.	430(1)(d); 430(2).	CME supports the proposed amendment.
57:	Remove the power of inspectors to immediately suspend an authorisation.	110; 138; 524.	CME supports the proposed amendment.
58:	Remove the requirement for the regulator to advise of a decision within 14 days and rely on section 63 of the Interpretation Act 1984.	89(4), 91(2)(c), 98(6), 109(1), 112, 118(4), 120(2)(c), 127(6), 137(1), 140, 256(4), 257(2)(c), 283(3)(c), 284(3)(c), 286, 288(6), 288C(2)(c), 393(3), 407(4), 497(4), 501(2)(c), 508(3)(c), 509(3)(c), 511, 513(6), 523(1), 526; 680(1); 681; 694; 696(1); 698(1).	CME does not support this amendment. CME considers the timeframes set provide certainty for an applicant and should be retained.
59:	Remove the provision for a different start date for residual current devices in hostile operating environments.	2	CME supports the proposed amendment.
60:	Remove the term 'flyings' from the definition of combustible dust.	Definition of combustible dust.	CME supports the proposed amendment.
61:	Remove the definition of combustible liquid.	Definition of combustible liquid.	CME supports the proposed amendment.
62:	Replace the definition of excavation with the phrase '...means an open face, hole,	Definition of excavation.	CME supports the proposed amendment.

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
	or cavity created as a result of using tools, machinery or explosives...'		
63:	Remove the reference to 'mines' in the exceptions to the definition of excavation.	Definition of excavation.	CME supports the proposed amendment.
64:	Insert the Water Services Act 2012 in reference to a bore in the exceptions to the definition of excavation.	Definition of excavation.	CME supports the proposed amendment.
65:	Remove the redundant clarification that risk assessments may be applied to a class of hazards, tasks, circumstances or things.	12	CME does not support this proposed amendment. CME considers the clarification is important because it makes it clear a risk assessment is not required for every hazard, where a class of hazards can be addressed in a single risk assessment.
66:	Remove the matters prescribed for the determination of work groups.	16; 17.	CME supports the proposed amendment.
67:	Remove the minimal procedural requirements for the election of health and safety representatives.	18.	CME supports the proposed amendment.
68:	Require that a PCBU provides facilities and training to ensure effective first aid so far as is reasonably practicable.	42.	CME supports the proposed amendment.
69:	Require PCBUs to prepare procedures to effectively respond to an emergency.	43.	CME supports the proposed amendment. In particular, CME supports the fact the proposed amendment removes unnecessary prescriptive requirements, which may otherwise unnecessarily impose cost on a PCBU.
70:	Remove the duplicated duty for the provision of PPE to other persons at the workplace.	45.	CME supports the proposed amendment.
71:	Remove the regulations for hazardous atmospheres and ignition sources.	51; 52.	CME supports the proposed amendment.

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
72:	Remove the regulations in relation to flammable and combustible materials.	53.	CME supports the proposed amendment.
73:	Remove the regulations providing control measures in relation to falling objects.	54; 55.	CME supports the proposed amendment.
74:	Include the OSH regulations for protection from tobacco smoke with the exception of the power for an inspector to require a tobacco product be extinguished (3.44I), the requirement for signs (3.44D) and the defence for smoking in a private vehicle or residence (3.44G).	New division.	CME supports this proposed amendment, subject to ensuring, where permitted by an employer, a person may smoke in designed areas of accommodation provided by the PCBU for which the worker works.
75:	Modify the requirement to ensure the noise exposure standard is not exceeded so far as is reasonably practicable.	57.	CME supports the proposed amendment.
76:	Remove the requirements for audiometric testing.	58.	CME supports the proposed amendment.
77:	Remove the duplicate duties of designers, manufacturers, importers and suppliers of plant in regulations related to noise, manual tasks and confined space.	59; 61; 64.	CME supports the proposed amendment.
78:	Remove the regulations for confined spaces relating to connected plant and services, emergency procedures and PPE.	70.	CME supports the proposed amendment.
79:	Include the demolition licensing requirements of the OSH regulations.	New provision.	CME is concerned the definition of demolition work includes “ <i>the complete or partial dismantling of a building or structure by pre-planned and controlled methods or procedure</i> ”. Under this definition, there may be instances where maintenance activities in a refinery/processing plant (which may be considered partial

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
			demolition) would trigger a licence which is currently not a requirement. If a Class 1 licence is triggered, this could result in a licenced demolition supervisor being required on site for maintenance activities which is a significant impost for industry. CME considers the definition of demolition should be clarified to ensure maintenance activities are not captured.
80:	Add demolition licensing to the definition of class.	Definition of class.	Refer to comments for 79 (above).
81:	Remove the requirement for the regulator to be notified prior to the commencement of demolition work.	142.	Refer to comments for 79 (above).
82:	Clarify that a Class 1 demolition licence may be issued for one or more of the types of work to be conducted.	New provision.	Refer to comments for 79 (above).
83:	Not include OSH regulations that refer to Australian Standard AS 2601 – Demolition of Structures for licensed demolition work.	New provision.	Refer to comments for 79 (above).
84:	Include a new provision setting out the minimum experience and training requirements for supervisors of demolition work.	New provision.	Refer to comments for 79 (above).
85:	Remove the redundant requirement for unsafe electrical equipment to be disconnected or isolated.	149.	CME supports the proposed amendment.
86:	Remove the requirements of regulations 161 and 162 in relation to control measures and record keeping for work on energised electrical equipment.	161; 162.	CME supports the proposed amendment.
87:	Remove the requirement for records to	150(3); 150(4).	CME supports the proposed amendment. However, CME considers

Recommendations		Provisions affected	CME comment
Amend the model WHS regulations to			
	be kept in relation to the testing of electrical equipment.		guidance should be provided that if testing is performed in order to comply with the requirements of AS3000, those records should be retained, so the person performing the testing can demonstrate the tests were performed.
88:	Ensure the tag attached when testing and tagging electrical equipment includes the electrical worker's licence or permit number.	163.	CME supports the proposed amendment. CME notes the proposed position corresponds with the requirements set out in AS3760.
89:	Include a requirement similar to regulation 3.62 of the OSH regulations specifying when electricity is to be connected to a construction site.	New provision.	CME supports the principle of the proposed amendment. However, it is not clear what the drafting of this amendment is. Clause 3.62 of the OSH Regulations does not refer to the connection of electricity to a construction site. This regulation deals with requirements of portable electrical equipment. CME assumes the reference should be to clause 3.65 of the OSH Regulations.
90:	Include a requirement similar to regulation 3.63 of the OSH regulations requiring a person bringing equipment onto a construction site to provide evidence it has been tested.	New provision.	CME supports the proposed amendment.
91:	Include a provision requiring the main switch is de-energised before a worker enters a roof space.	New provision.	CME supports the principle of the proposed amended to improve safety outcomes. However, CME is unable to support this provision without seeing the final drafting. CME is concerned any new provision may create uncertainty. In particular, CME is concerned the term 'roof space' may be open to interpretation. For example, it is unclear if the provision is intended to relate only to domestic dwellings, or if the prohibition is intended to extend to other situations such as within underground electrical spaces. Further, there are means of protecting workers in roof spaces set out in the requirements of AS3000 and AS4836.
92:	Require compliance with the Australian New Zealand Standard AS/NZS	Part 4.8.	CME supports the proposed amendment, subject to any findings of the COAG review of the WHS legislation which represent best practice and

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
	2299.1:2007 Occupational Diving Operations - Standard Operational Practice for construction diving work, consistent with the approach in the OSH regulations.		improve safety outcomes being adopted in Western Australia.
93:	Include a new part that replicates the requirements of Division 10 of Part 3 of the OSH Regulations – Driving commercial vehicles.	New provisions.	CME supports the proposed amendment subject to ensuring if similar provisions are adopted in the regulations supporting the WHS (Resources) Act, these provisions do not have unintended consequences which would unduly restrict the operation of equipment on resources projects. However, more broadly, CME questions whether these provisions would not be more appropriate to include in the road transport legislation.
94:	Remove the requirement for individual items of plant to be registered with the regulator.	227; 246, 247, 264 to 281, 282(3), 288A(b); 288B.	CME supports the proposed amendment. CME notes from the consultation RIS on the proposed Work Health and Safety (Resources and Major Hazards) Regulations it is proposed the requirements in the WHS Regulations and the WHS (Resources and Major Hazards) Regulations will be aligned. CME supports this approach.
95:	Remove the exception permitting tree loppers to be suspended from a crane (not in a workbox).	221.	CME supports the proposed amendment.
96:	Remove the duplicate requirement for storage of amusement devices in regulation 239.	239.	CME supports the proposed amendment.
97:	Replace the monetary threshold for a construction project with the 5 person threshold provided in regulation 3.142 of the OSH regulations.	292.	CME supports the proposed amendment. In particular, CME supports not using a monetary threshold, which is not necessarily representative of the complexity of the project. However, CME notes there is some benefit in a nationally consistent position and recommends consideration be given to whether any recommendations from the COAG review of the WHS legislation which might improve safety outcomes are applicable to this recommendation.
98:	Remove the duplicate requirement to	306(1) and 306(2).	CME supports the proposed amendment.

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
	prevent unauthorised access to an area where a trench is to be dug.		
99:	Incorporate the competency requirements for tilt-up construction work from the OSH regulations.	New provision.	CME supports the proposed amendment.
100:	Modify the incorporated requirements in relation to training for supervisors for panels manufactured at workplaces other than a construction site.	New provision.	CME supports the proposed amendment.
101:	Include the equivalent of regulation 2.10 of the OSH regulations requiring local government to notify the Commissioner of permits for construction work.	New provision.	CME supports the proposed amendment.
102:	Remove references to divisions that have been removed by other amendments.	314.	CME supports the proposed amendment, subject to the comments above.
103:	Remove the requirement for the provision of safety signs in relation to hazardous chemicals.	353.	CME supports the proposed amendment.
104:	Remove the redundant provisions for hazardous chemicals in relation to the requirements for emergency and safety equipment.	360; 362.	CME supports the proposed amendment.
105:	Remove the duplicated requirement for supervision in relation to hazardous chemicals.	379.	CME supports the proposed amendment.
106:	Modify the requirement to provide changing and washing facilities to minimise lead contamination by practicability.	399(1).	CME supports the proposed amendment.

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
107:	Change the trigger for health monitoring where there is risk of exposure to a hazardous chemical/asbestos to also require a significant risk to health.	368(b); 435(1)(b).	CME supports the proposed amendment.
108:	Provide duty holders with an alternative approach to assess the biological exposure standard for hazardous chemicals.	368(b)(ii).	CME supports the proposed amendment.
109:	Change the duty holder for provision of the health monitoring report to the regulator from the PCBU to the medical practitioner.	376; 413; 442.	CME supports the proposed amendment.
110:	Remove the ability of PCBUs to provide a health monitoring report to PCBUs with a corresponding duty.	377; 414; 443.	CME supports the proposed amendment.
111:	Remove the specified requirement to commence health monitoring prior to a worker commencing asbestos removal work.	435(2).	CME supports the proposed amendment.
112:	Remove provisions that are more appropriately regulated under the Dangerous Goods Safety Act 2004.	334, 336, 347, 348, 349, 350, 354, 356, 358, 361, 363 to 367 and 389 to 391 and related definitions and schedules.	Subject to the specific comments in the body of the submission, CME supports the proposed amendment.
113:	Replace the term Class A in relation to asbestos removal licences with the term unrestricted.	459, 473 Part 8.8 Part 8.10 Related definitions.	CME supports the proposed amendment.
114:	Replace the term Class B in relation to asbestos removal licences with the term	459, 473	CME supports the proposed amendment.

Recommendations		Provisions affected	CME comment
Amend the model WHS regulations to			
	restricted.	Part 8.8 Part 8.10 Related definitions.	
115:	Remove the definition of certified safety management system.	Definition of certified safety management system; 6.	CME supports the proposed amendment.
116:	Replace references to a certified safety management system with reference to an asbestos removal work procedures manual.	493(1)(e), 498(b), 520(1)(e).	CME supports the proposed amendment.
117:	To replace the requirement for a licenced asbestos assessor to conduct clearances with a competent person.	For removal: 489, 490, 491(2), 492(2)(i), 495, 528 For amendment: 492(1), 497(1), 502(1), 503, 504(1), 506(1), 508(1), 509(1), 511, 512, 513, 515, 516(1), 517(3), 517(4), 520(1), 522, 523(1). For amendment require a competent person or an independent competent person 466(4)(c), 473(2)(a), 474(2), 474(3), 474(4), 475(1), 475(2), 475(6), 477(1)(d), 477(1)(e), 477(4)(a), 477(6), and the note to 473. The table in Part 11.1 (Reviewable decisions) Related definitions	CME supports the proposed amendment.

Recommendations Amend the model WHS regulations to		Provisions affected	CME comment
118:	Remove the reference to 'equivalent' licence.	488.	CME supports the proposed amendment.
119:	Replace the specified date of 31 December 2003 with 31 December 1990.	425(6)(a); 447.	CME supports the proposed amendment.
120:	Require that access to the asbestos register is provided to the PCBU carrying out demolition or refurbishment work.	449; 450.	CME supports the proposed amendment.
121:	Modify the requirement for decontamination facilities by practicability.	471; 483.	CME supports the proposed amendment.
122:	Remove the exception for the prohibition on asbestos work for soil containing trace amounts of visible friable asbestos.	419(5)(a)(ii).	CME supports the proposed amendment.
123:	Require a National Association of Testing Authorities accredited laboratory to test samples for asbestos.	423; 479(2)(b); 479(2)(c).	CME supports the proposed amendment.
124:	Remove the generic training duties in relation to naturally occurring asbestos.	434.	CME supports the proposed amendment.
125:	Include clarification that a separate asbestos removal control plan is not required if there is a compliant safe work method statement.	464.	CME supports the proposed amendment.
126:	Require notification to the regulator 7 days prior to the commencement of Unrestricted asbestos removal work.	466(1).	CME supports the proposed amendment.
127:	Require the notice is provided in the manner and form approved by the	466(1).	CME supports the proposed amendment.

Recommendations		Provisions affected	CME comment
Amend the model WHS regulations to			
	regulator		
128:	Change the threshold to notify the regulator if specified respirable asbestos fibre levels exceed 0.05fibres/mL.	476(b)(ii).	CME supports the proposed amendment.
129:	Remove the requirement that work is not resumed until the recorded respirable fibre level drops below 0.01fibres/mL as it is made redundant by regulation 476(1).	476(2).	CME supports the proposed amendment.
130:	Remove the requirement to notify persons occupying premises in the immediate vicinity (that are not PCBUs).	468(3)(b).	CME supports the proposed amendment.
131:	Clarify that an Inspector cannot be prevented from entering a workplace where licensed asbestos removal work is being conducted.	470(3).	CME supports the proposed amendment.
132:	Require that containers with asbestos waste are labelled in accordance with schedule 9 (hazardous chemicals).	472; 484.	CME supports the proposed amendment.
133:	Remove Chapter 9, Major Hazard Facilities, and all associated definitions and schedules.	Major hazard facilities to be regulated by the DMP. Regulations 530 to 608 inclusive. Regulations 688 and 698 (in relation to exemptions). Schedule 15 Schedule 16 Schedule 17 Schedule 18 Related definitions: • determined major hazard	CME supports the proposed amendment.

Recommendations Amend the model WHS regulations to	Provisions affected	CME comment	
		<ul style="list-style-type: none"> facility • facility • licensed major hazard facility • local community • local authority • local community • major hazard facility • major hazard facility licence • major incident • major incident hazard • modification • proposed facility • proposed major hazard facility • schedule 15 chemical • surrounding area • threshold quantity <p>Items 46 to 62 inclusive in the table under regulation 676 (reviewable decisions). Related notes.</p>	
134:	Insert a note that mine safety is regulated under the Mines Safety and Inspection Act 1994 and that regulations 609 to 705 are not required.	Chapter 10.	CME supports the proposed amendment.
135:	Remove items in the table at regulation 676 that refer to regulations that have	676.	CME supports the proposed amendment.

Recommendations		Provisions affected	CME comment
Amend the model WHS regulations to			
	been deleted.		
136:	Remove the RTO as a valid applicant for review of a decision related to an accredited assessor.	676 - Items 8 to 16.	CME supports the proposed amendment.
137:	Remove the person with management or control of an item of plant as a valid applicant for review of a decision related to design registration of plant.	676 - Items 25 to 27A.	CME supports the proposed amendment.
138:	Remove the requirement for class exemptions to be published in the Government Gazette.	695(2).	CME supports the proposed amendment.