

**The Australian Manufacturing Workers' Union –
WA Branch**



Work Health and Safety Regulations for Western Australia

10 December 2019

1. FOREWORD

The AMWU represents over 6,000 members in Western Australia. We cover workers across a diverse range of industries, including construction, mining, print and design, engineering and every form of manufacturing. It is our unfortunate experience that when safety is not properly observed and followed in these industries that the consequences are significant or fatal for our members.

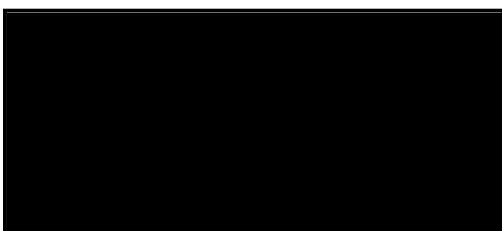
Our submission is informed by our representation of our members over many years. Our submission is also made on behalf of our OSH delegates who work tirelessly on the ground to improve safety outcomes at their workplaces to ensure their workmates go home safe and intact.

We welcome the opportunity to participate in the public consultation process on the proposed adoption of the national model WHS regulation. The AMWU has had the opportunity to view the submission from UnionsWA and we endorse their comments and recommendations. We similarly adopt recommendations from the CFMEU and ETU submissions.

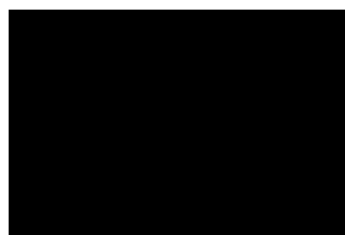
Broadly speaking, the AMWU supports the introduction of the model WHS regulations. This submission covers the AMWU's position on the following:

1. The Commission for Occupational Safety and Health recommendations;
2. Amendments regarding the use of "so far as reasonably practicable";
3. Areas where the OSH Regulations are superior to the WHS Regulations; and
4. Areas that are not covered by the OSH or WHS Regulations.

Yours sincerely,



Steve McCartney
State Secretary
Australian Manufacturing Workers' Union
West Australian Branch



Glenn McLaren
Assistant State Secretary
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2. GLOSSARY

Commission for Occupational Safety and Health	COSH
Department of Mines, Industry Regulation and Safety	DMIRS
Differences between the National Model Work Health and Safety Regulations 2019 and the Occupational Safety and Health Regulations 1996 ¹	Comparison Document
Health and Safety Representative	HSR
<i>Model Work Health and Safety Regulations</i> as at 15 January 2019	WHS
<i>Occupational Safety and Health Regulations (WA) 1996</i>	OSH
Western Australian Work Health and Safety regulations	WA WHS

¹ As provided by DMIRS as part of the consultation process,
<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/002991.safety.comm_.docx> .

3. COSH RECOMMENDATIONS

The AMWU refers to the seven suggestions endorsed by COSH² and provides our views as follows:

1. Confined space definition (r. 5). The definition in the model WHS regulations excludes “a mine shaft or the workings of a mine” from the definition of confined space. Stakeholder comment is requested as to whether it is appropriate to limit the exclusion to “underground mines”.

The AMWU agrees with excluding underground mines or mine shafts from the definition of confined space. However, we have concerns as to what is included in the “workings of a mine”. We refer to a scenario where a worker is directed to perform work inside a tank (a confined space) that is located within an underground mine (potential non-confined space).

The AMWU does not support a definition whereby other spaces that are classified as a confined space could be excluded from the definition just by being in an underground mine or defined as part of the “workings of a mine”.

Recommendation 1: That the definition of “confined space” in r. 5 be amended to clarify that spaces that fit the definition outlined in (a) – (c) will still be classified as a confined space even if that space is inside an underground mine.

2. In relation to tree lopping, r. 221 of the model WHS regulations provides an exception for a person in a harness to be placed in a tree. This procedure is not currently permitted under r. 4.53(2) of the OSH regulations. Should r. 221 of the model WHS regulations be adopted in Western Australia?

The AMWU supports the adoption of r. 221.

3. R. 244(3) of the model WHS regulations exempts tower and gantry cranes from design registration if the cranes are moved to a new location. R. 4.2 of the OSH regulations currently requires the registration of the cranes and their supporting structure if moved to a new location. Should r. 4.2 of the OSH regulations be adopted?

The AMWU supports the adoption of OSH r. 4.2.

4. R. 376 of the model WHS regulations places a duty on the PCBU to provide a copy of the health monitoring report to the regulator. Under, r. 5.24 of the OSH regulations, the duty to provide the health monitoring report to the WorkSafe Western Australia Commission is on the appointed medical practitioner who prepared the report, if the results indicate exposure. Should r. 5.24 of the OSH regulations be adopted?

² “5. Commission for Occupational Safety and Health”, <<https://www.commerce.wa.gov.au/worksafe/review-process-summary-develop-work-health-and-safety-regulations-western-australia>>

The AMWU supports the adoption of regulation 5.24 of the OSH Regulations.

5. R. 320 of the model WHS regulations prescribe the content of the general construction induction training (CIT) card. Should there be a requirement that photographic identification is required on the CIT card?

The AMWU supports a requirement for photographic identification on the CIT card.

6. R. 425 of the model WHS regulations requires a person with management or control of a workplace to ensure that an asbestos register is prepared and kept at the workplace. Should the WHS regulations for Western Australia prescribe that an asbestos register is created by a competent person?

The AMWU supports a requirement that an asbestos register should be created by a competent person.

The AMWU also refers to its comments regarding the definition of “competent person” included further down in this submission.

7. The model WHS regulations, Chapter 8 in particular, include requirements relating to the management of asbestos. Should the WHS regulations for Western Australia prescribe specific competencies for asbestos related tasks?

The AMWU supports the prescription of specific competencies for asbestos related tasks.

The AMWU notes page 6 of the Comparison Document and COSH’s recommendations regarding the inclusion of OSH regulations on commercial driver fatigue and protection from tobacco smoke. The AMWU agrees with these recommendations generally but endorses UnionsWA’s comments regarding amendments to the regulations on tobacco smoke.

The AMWU supports the CFMEU’s position regarding demolition licensing.

4. “SO FAR AS REASONABLY PRACTICABLE”³

The model WHS Act and regulations qualify the duties of duty holders through the phrase “so far as reasonably practicable” (SFARP). SFARP is defined in s. 18 of the model WHS Act and contains a number of criteria that is taken into consideration, such as the likelihood of the risk; the degree of harm; knowledge; availability of risk elimination or minimisation; and the cost of eliminating or minimising risks.

It is the AMWU’s position that SFARP is used inappropriately throughout the regulations. This is because SFARP makes duties difficult to define and subsequently enforce.

In the 2017 Queensland review of its OSH regime⁴ the Reviewer considered how the introduction of SFARP has contributed to the decline in improvement notices in Queensland:

The harmonised laws introduced the notion of SFARP. Under the WHS Act 1995, all offences could be described as strict liability and effectively reversed the onus of proof upon obligation holders (as they were then called). Offences were drafted in terms of ‘must ensure the workplace health and safety of persons’ or ‘must provide and maintain safe plant’. The obligation was not qualified, it was absolute (*emphasis added*).

Under the WHS Act 2011, all Act contraventions include the qualifying condition SFARP. This lowers the likelihood of an offence occurring in a particular circumstance when compared with the provisions of the WHS Act 1995. Fewer identifiable contraventions would mean fewer improvement notices, as a contravention is required to issue an improvement notice.⁵

...

Two significant outcomes for infringement notice offences arose under the nationally harmonised laws. The first outcome was that only minor or less serious offences were infringeable. The second outcome was that offences with qualifying clauses such as SFARP became unfringeable.⁶

SFARP may be appropriate when there is a variety of known and acceptable risk control measures or options. An example of this is the duty to provide basic health requirements. The duty to provide potable water cannot be subject to SFARP, however how the water is provided – whether by a tap or water cooler – can be.

There are two main categories where SFARP is used inappropriately in the regulations:

- Inappropriate usage for fundamental requirements; and
- Inappropriate usage for known risk control provisions.

Inappropriate use for fundamental requirements

There are duties that we say concern basic workplace protections that should not be qualified by SFARP. These are:

39	(3) The person must ensure, so far as is reasonably practicable , that the information, training and instruction provided under this regulation is provided in a way that is readily understandable by any person to whom it is provided
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³ The AMWU WA Branch expresses its gratitude to Deb Vallance (ACTU) for her work on this area.

⁴ ‘Best Practice Review of Workplace Safety Queensland: Final Report’, 3 July 2017, <https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0016/143521/best-practice-review-of-whsq-final-report.pdf>.

⁵ Ibid, page 55.

⁶ Ibid, page 56.

40	<p>A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the following:</p> <p>(a) the layout of the workplace allows, and the workplace is maintained so as to allow, for persons to enter and exit and to move about without risk to health and safety, both under normal working conditions and in an emergency;</p> <p>(b) work areas have space for work to be carried out without risk to health and safety;</p> <p>(c) floors and other surfaces are designed, installed and maintained to allow work to be carried out without risk to health and safety;</p> <p>(d) lighting enables:</p> <p style="padding-left: 40px;">(i) each worker to carry out work without risk to health and safety; and</p> <p style="padding-left: 40px;">(ii) persons to move within the workplace without risk to health and safety;</p> <p>and</p> <p style="padding-left: 40px;">(iii) safe evacuation in an emergency;</p> <p>(e) ventilation enables workers to carry out work without risk to health and safety;</p> <p>(f) workers carrying out work in extremes of heat or cold are able to carry out work without risk to health and safety;</p> <p>(g) work in relation to or near essential services does not give rise to a risk to the health and safety of persons at the workplace.</p>
41	<p>(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities.</p> <p>(2) The person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that the facilities provided under subregulation (1) are maintained so as to be:</p> <p style="padding-left: 40px;">(a) in good working order; and</p> <p style="padding-left: 40px;">(b) clean, safe and accessible.</p>

Inappropriate usage for known risk control provisions

The AMWU submits that SFARP should be removed from the following regulations. These risk controls are well known and accepted and should not be subject to the SFARP qualifier.

151	<p>A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that electrical equipment is not used if the equipment:</p> <p style="padding-left: 40px;">(a) is required to be tested under regulation 150; and</p> <p style="padding-left: 40px;">(b) has not been tested.</p>
189	<p>(1) This regulation applies if a designer of plant uses guarding as a control measure.</p> <p>(2) The designer must ensure, so far as is reasonably practicable, that the guarding designed for that purpose will prevent access to the danger point or danger area of the plant.</p>
204	<p>(1) A person with management or control of plant at a workplace must not commission the plant unless the person has established that the plant is, so far as is reasonably practicable, without risks to the health and safety of any person.</p>

	(2) A person with management or control of plant at a workplace must not decommission or dismantle the plant unless the decommissioning or dismantling can be carried out, so far as is reasonably practicable , without risks to the health and safety of any person.
209	The person with management or control of plant at a workplace must ensure, so far as is reasonably practicable , that any pipe or other part of the plant associated with heat or cold is guarded or insulated so that the plant is without risks to the health and safety of any person
215	(1) This regulation applies to a person with management or control of powered mobile plant at a workplace. (2) The person must ensure, so far as is reasonably practicable , that a suitable combination of operator protective devices for the plant is provided, maintained and used. (3) The person must ensure, so far as is reasonably practicable , that no person other than the operator rides on the plant unless the person is provided with a level of protection that is equivalent to that provided to the operator.
219	(1) This regulation applies in relation to plant that is used to lift or suspend persons or things. (2) The person with management or control of plant at a workplace must ensure, so far as is reasonably practicable , that the plant used is specifically designed to lift or suspend the load. (6) The person must ensure, so far as is reasonably practicable , that loads are lifted or suspended in a way that ensures that the load remains under control during the activity.
294	(1) A person conducting a business or undertaking that commissions construction work in relation to a structure must, so far as is reasonably practicable , consult with the designer of the whole or any part of the structure about how to ensure that risks to health and safety arising from the design during the construction work are: (a) eliminated, so far as is reasonably practicable; or (b) if it is not reasonably practicable to eliminate the risks, minimised so far as is reasonably practicable.
343	A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable , that a hazardous chemical in pipe work is identified by a label, sign or another way on or near the pipe work
397	(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable , that a lead process area at the workplace is kept clean
398	(1) A person conducting a business or undertaking at a workplace must take all reasonable steps to ensure that a person does not eat, drink, chew gum, smoke or carry materials used for smoking in a lead process area at the workplace. (2) A person conducting a business or undertaking at a workplace must provide workers with an eating and drinking area that, so far as is reasonably practicable , cannot be contaminated with lead from a lead process.
428	If a person with management or control of a workplace plans to relinquish management or control of the workplace, the person must ensure, so far as is reasonably practicable , that the asbestos register is given to the person, if any, assuming management or control of the workplace

Recommendation 2: That SFARP is removed from regulations 39,40, 41, 151, 189, 204, 209, 215, 219, 294, 343, 397, 398 and 418.

5. ANALYSIS OF WHS

CHAPTER ONE - PRELIMINARY

Definitions – Emergency Service Organisation⁷

The AMWU agrees with the list of emergency service organisations listed. We note however that the Bush Fire Service should be the Volunteer Bush Fire Service.

Recommendation 3: That the reference to ‘Bush Fire Service’ is amended to ‘Volunteer Bush Fire Service’.

Definitions – Rigging Work⁸

The Comparison Document includes commentary on how the definition of “rigging work” is defined in WHS r. 5, which is substantially similar to the definition in OSH r. 4.

Regulation 5 reads:

rigging work means:

- (a) the use of mechanical load shifting equipment and associated gear to move, place or secure a load using plant, equipment or members of a structure to ensure the stability of those members.
- (b) The setting up or dismantling of cranes or hoists.

The Comparison Document makes the comment that “it is not clear how a load could be moved by using members of a building”. The AMWU is unsure as to whether there has been a misinterpretation of what “members of a building” refers to. It is a reference to a structural element of a building that is generally load-bearing, such as a beam, column or retaining wall.

The AMWU notes that under the NSW and Queensland schemes the definitions of rigging work are very similar to WHS r. 5 and OSH r. 5.

CHAPTER TWO – REPRESENTATION AND PARTICIPATION

Health and Safety Representative training⁹

Under WHS r. 21(1)(b) HSRs are entitled to one day per year for refresher training. In the AMWU’s experience this can be insufficient, especially where HSRs need OSH training specific to their industry. This has been our experience for HSRs in the hydrocarbons industry, or HSRs working on major hazard facility sites.

The AMWU echoes UnionsWA’s recommendation that the entitlement in section 72(9) of the *Work Health and Safety Act (SA) 2012* be adopted.

Recommendation 4: That r. 21(1)(b) be amended so that HSRs are entitled to three days refresher training in their second year, and two days refresher training in their third year.

⁷ Comparison Document, reference 7, page 10.

⁸ Comparison Document, reference 11, page 11.

⁹ Comparison Document, reference 16, page 13.

CHAPTER THREE – GENERAL RISK AND WORKPLACE MANAGEMENT

The AMWU notes that the following regulations in OSH are not replicated in WHS:

- 3.9 Fire precautions, duties of employer etc. as to
- 3.11 Warning signs for hazards, duties of employer
- 3.15 Air temperature, employer's duties
- 3.17 Cleanliness of workplace and rubbish
- 3.18 Floors, stairs
- 3.19 Seating, employer's duties

Recommendation 5: That the above OSH regulations be replicated in WA WHS.

Personal protective clothing and equipment (PPE)¹⁰

The AMWU notes that unlike OSH r. 3.33, WHS r. 44 does not include a requirement that PPE provided to workers has to comply with the relevant prescribed Australian Standard.

Under WHS r.44(3), the standard for PPE is that it must minimise risk to health and safety, by ensuring that the PPE is suitable for the work and suitable in size. This is a far less prescriptive and rigorous standard than OSH r 3.33.

Recommendation 6: That the Australian Standards requirement for PPE in OSH r. 3.33 is replicated in WA WHS r. 44.

The AMWU also notes that there are PPE-related provisions in OSH with no equivalent in WHS. This includes the following:

- 3.40 Respiratory protective equipment generally
- 3.41 Supplied air respirators required for certain atmospheres
- 3.42 Duties in relation to provision of supplied air respirators etc.
- 3.43 Specifications, maintenance, testing of supplied air respirators
- 3.44 Quality of air in supplied air respirators

These provisions address an essential safety mechanism for workers who work in an oxygen deficient¹¹ or toxic environment.¹²

Recommendation 7: That the respiratory PPE requirements in OSH r. 3.40 – 3.44 are replicated in WA WHS.

CHAPTER FOUR – HAZARDOUS WORK

High Risk Work Licence – Reassessment of competency¹³

WHS r. 95 provides that where the regulator reasonably believes the holder of a HRWL may not be competent to carry out high risk work, the regulator has the power to direct the HRWL holder to obtain a reassessment of competency.

OSH r. 6.17 provides the regulator with an arguably wider set of powers. Regulation 6.17(1) allows the regulator to set a time limit on when the reassessment has to be provided by, and r. 6.17(2) also

¹⁰ Comparison Document, reference 16, page 13.

¹¹ OSH, r. 3.41(a).

¹² OSH, r. 3.41(b) – (d).

¹³ Comparison Document, reference 25, page 15.

stipulates that if the HRWL holder does not provide a notice when directed, they may be regarded as no longer competent to do high risk work.

Recommendation 8: That the specific provisions in OSH r. 17 be replicated in WA WHS r. 95.

Boilers – high risk work licence classes

The AMWU does not have any comments to make on the proposed two classes of HRWL for boilers under WHS. However, the Comparison Document does call for comment on the transition from three classes to two boiler classes. The AMWU's position is that affected workers should be afforded 12 months to obtain new boiler HRWL.

Recommendation 9: That there be a 12-month transition process for the new boiler HRWL classes.

Heat-related illness

It is now recognised that heat-related illnesses such as heat stress or heat stroke is a real and deadly issue in Australia. The Australian Medical Association has noted the adverse effect that heat has on mortality, hospital admissions and general morbidity.¹⁴

The AMWU has many members who are at risk of heat-related illness in the workplace. We have members who work in workshops or other similar enclosed workspaces, where they are required to work on machinery or with hot tools. It is not unusual for the temperature inside these spaces to reach in excess of 50 degrees Celsius. Whilst working in these spaces it is common for ventilation to be limited and workers are required to wear high coverage PPE.

Our members are also required to work outdoors with direct and prolonged exposure to the sun. A notable proportion of our membership also work in the north-west of WA, where temperatures reach extremes.

It is the AMWU's position that stronger protections against the prevention of heat-related illnesses at work are needed in WA WHS. WHS and OSH contain protections against the 'extremes' of heat,¹⁵ but this is not adequate for today's workplaces. With our changing climate leading to increasingly higher temperatures and incidences of heat waves, temperatures and conditions that used to be considered 'extreme' heat are now commonplace. There is a very real need to introduce more rigorous controls around exposure to heat in the workplace.

Recommendation 10: That exposure to heat stress in the workplace is classified in WA WHS as high risk work.

Recommendation 11: That WA WHS include a duty on a PCBU to manage a worker's risk of heat-related illness.

Ultraviolet Radiation (UVR)

Skin cancer is the largest group of cancers diagnosed in Australia each year. It is established that increasing your exposure to UV increases your risk of developing skin cancer,¹⁶ and workers who

¹⁴ AMA Vice President Dr Stephen Parnis, Speech to the Australian Summit on Extreme Heat and Health, 2 March 2016, <<https://ama.com.au/media/ama-speech-australian-summit-extreme-heat-and-health>>

¹⁵ OSH, r. 3.15; WHS, r. 40(f).

¹⁶ Australian Institute of Health and Welfare, 'Skin cancer in Australia', 13 July 2016, <<https://www.aihw.gov.au/reports/cancer/skin-cancer-in-australia/formats>>.

work outdoors have exposure levels 10 times higher than workers who are based indoors.¹⁷ It has been our anecdotal experience that more of our members are pursuing workers compensation claims for skin cancer that has developed due to high exposure to the sun at work.

The AMWU also notes that exposure to UVR isn't contained to work in the sun, with other artificial sources of UVR in the workplace. Relevantly to our membership, electric arc and laser welding flashes are the primary source of artificial UVR in the workplace. Workers in occupations such as boilermakers and welders have been shown to have a higher risk of contracting cataracts or ocular melanoma.¹⁸

Given the prevalence of exposure to UVR at work and its significant health impacts, the WA WHS should contain stronger protections against UVR exposure.

Recommendation 12: That exposure to UVR at work be classified in WA WHS as high risk work.

Recommendation 13: That WA WHS include a duty on a PCBU to manage a worker's exposure to UVR.

Dust

General

Aside from the asbestos provisions in WHS Chapter 8 there are no regulations that cover dust hazards in the workplace. This is despite Safe Work Australia recognising that exposure to dust has the potential to either cause or aggravate respiratory diseases such as asthma, asbestosis, chronic obstructive pulmonary disease and respiratory system cancers.¹⁹

The AMWU refers to the UK Health and Safety Executive's Guidance Note, *Dust in the workplace: general principles of protection*.²⁰ We recommend introducing a general dust regulation informed by the principles in this guidance note.

Recommendation 14: That exposure to dust in the workplace is classified in WA WHS as high risk work.

Recommendation 15: That WA WHS include a duty on a PCBU to manage a worker's exposure to dust.

Silica Dust

There has been an alarming increase in new cases of silicosis in Australia,²¹ with 600,000 workers in Australia exposed to silica in the workplace and an estimated 230 Australians each year

¹⁷ Cancer Council, 'Sun protection in the workplace', 27 March 2019, <<https://www.cancer.org.au/preventing-cancer/sun-protection/sun-protection-in-the-workplace.html>>.

¹⁸ Anthony J Dixon and Brian F Dixon, 'Ultraviolet radiation from welding and possible risk of skin and ocular malignancy', *Med J Aust* 2004, 181 (3): 155-157, <<https://www.mja.com.au/journal/2004/181/3/ultraviolet-radiation-welding-and-possible-risk-skin-and-ocular-malignancy>>.

¹⁹ National Hazard Exposure Worker Surveillance: Exposure to dust, gases, vapours, smoke and fumes and the provision of controls for these airborne hazards in Australian workplaces, July 2010, <https://www.safeworkaustralia.gov.au/system/files/documents/1702/nhews_exposure_dust_gases_vapours_smoke_fumes_provision_controls_airborne_hazards_australian_workplac.pdf>

²⁰ <https://www.hse.gov.uk/pubns/eh44.pdf>

²¹ 'Silicosis surge prompts more calls for a ban on engineered stone products', ABC News, 16 September 2019, <<https://www.abc.net.au/news/2019-09-16/silicosis-surge-prompts-call-for-ban-on-engineered-stone-product/11516138>>.

subsequently developing lung cancer.²² There is no evidence that supports a safe level of silica dust exposure,²³ raising the clear and pressing need to put controls around exposure to silica.

The AMWU refers to r. 319C of the *Occupational Health and Safety Regulations 2017* (Vic), which provides:

Use of power tools – engineered stone

- (1) An employer, a self-employed person or a person who manages or controls a workplace must ensure that a power tool is not used for cutting grinding or abrasive polishing of engineered stone at a workplace unless the use is controlled.
- (2) ...
- (3) An employer, a self-employed person or a person who manages or controls a workplace must ensure that any controls used in accordance with subregulation (2) are properly designed, installed, used and maintained so that the controls are effective in reducing exposure to airborne crystalline silica dust generated as a result of cutting, grinding or abrasive polishing of engineered stone.

Recommendation 16: That WA WHS replicate r. 319C of the Victorian regulations.

The AMWU further supports UnionsWA’s position that there is no safe way to manufacture, install or remove artificial stone products with a silica content above 80%.

Recommendation 17: That WA WHS prohibit the use of artificial stone products with a silica level of 80% or more.

The AMWU strongly supports the position of UnionsWA on reducing the exposure standard for respirable crystalline silica from 0.1 mg/m³ to 0.02 mg/m³.

There is real and pressing evidence of the increase of incurable, silica-related diseases.

We note that there has been national agreement that the exposure standard be reduced to 0.05/m³ by 30 September 2022. The AMWU respectfully submits that this will come far too late for the hundreds of workers who will continue to be exposed to silica during this time.

Recommendation 18: That WA WS includes a 0.02/m³ standard for respirable crystalline silica.

CHAPTER FIVE – PLANT AND STRUCTURES

Duties of a person conducting a business or undertaking involving the management or control of plant²⁴

Part 5.2 Division 4 of WHS deals with the duties of a person involving the management or control of a plant. The Comparison Document contrasts WHS r. 235 with OSH 4.54(4)(a), however the AMWU does not agree that the two are analogous provisions.

WHS r.235 sets out the following requirements:

- A person with management or control or a registered crane or tower crane must ensure that a major inspection of the crane is carried out by a competent person:
 - At the end of the design life recommended by the manufacturer for the crane; or

²² Cancer Council, ‘New silica resources launched during Safe Work Month’, 22 October 2019, <<https://www.cancer.org.au/news/media-releases/new-silica-resources-launched-during-safe-work-month.html>>.

²³ Cancer Council, ‘Silica Dust’, <<https://www.cancer.org.au/preventing-cancer/workplace-cancer/silica-dust.html>>.

²⁴ Comparison Document, reference 47-50, pages 21-22.

- If there are no manufacturer's recommendations, in accordance with the recommendations of a competent person; or
- If it is not reasonably practicable to comply with the two previous options, every 10 years from the date that the crane was first commissioned or first registered, whichever occurred first.
- A competent person is a person who has acquired through training, qualification or experience the knowledge and skills to carry out a major inspection of the plant and is registered under a law that provides for the registration of professional engineers.
- A major inspection is an examination of all critical components of the crane and a check of the effective and safe operation of the crane.

There are no other inspection requirements in WHS regarding registered cranes or tower cranes.

This is different to OSH r. 4.54(4)(a), which provides that where there is a crane, hoist or building maintenance unit then the responsible person at the workplace must ensure that it is *maintained, inspected and operated*:

- In accordance with the written instructions developed at the time of design or manufacture by the person who designed or manufactured the crane, hoist or unit; or
- If the above is not practicable, in accordance with any written instructions approved by the regulator; or
- If the above is not practicable, in accordance with the relevant Australian Standard.

The onus in OSH r. 4.54(4)(a) is in practice broader than WHS r. 235. This is because manufacturers' instructions and the Standards prescribe non-major inspections and at shorter intervals than ten years.

Recommendation 19: That the provisions in OSH r. 4.54(4)(a) replace r. 235 in WA WHS.

CHAPTER SIX – CONSTRUCTION WORK

Threshold for construction projects²⁵

The AMWU agrees with the definition of a construction project in WHS r. 292. However, we are unsure as to whether the \$250,000 threshold could be avoided by a project being divided up into discrete modules or phases.

Recommendation 20: That WHS r.292 clarify what constitutes the \$250,000 threshold.

Local government notifications²⁶

The AMWU notes that there is no WHS equivalent to OSH r. 2.10, which requires local governments to notify the Commissioner of all construction work permits issued each month. This is information that we believe the Commissioner should have, so that they have better records of what construction work is occurring in the state.

Recommendation 21: That OSH r. 2.10 be replicated in WA WHS.

²⁵ Comparison Document, reference 54, page 23.

²⁶ Comparison Document, reference 59, page 24.

CHAPTER SEVEN – HAZARDOUS CHEMICALS

Information and training in relation to chemicals²⁷

The AMWU notes that WHS r. 39 provides a general duty for a PCBU to provide adequate information, instruction and training to workers. This is a lower standard than the targeted obligation in OSH r. 5.21(1), which requires that where a person is likely to be exposed to a hazardous substance at the workplace, they must receive relevant and adequate information and training on a variety of risks and controls.²⁸

Under OSH r. 5.21(2) there is also a requirement that records are kept of any training under OSH r. 5.21(1). There is no WHS equivalent. In the AMWU's experience one of the first questions asked when either assessing a workplace or investigating a workplace incident is whether there are any records of training.

Recommendation 22: That OSH r.5.21 be replicated in WA WHS.

Duty to provide health monitoring²⁹

Both WHS and OSH cover the duty to provide health surveillance for workers who are exposed to hazardous chemicals in the workplace. However, the two sets of regulations have different thresholds. WHS r. 368(a) provides that the duty is triggered where there is a *significant risk* to the worker's health due to the exposure. Under OSH 5.23(1) the threshold is where there is a *risk* to the worker's health.

'Significant risk' is a much higher standard than 'risk'. If the WHS provision is adopted this would result in poorer protection for workers who are exposed to hazardous chemicals.

Recommendation 23: That the wording in OSH 5.23(1) replace WHS r. 368(a) in WA WHS.

Risk assessment for hazardous substances report³⁰

Under OSH r. 5.15 where a worker is exposed to a hazardous substance in the workplace there is a duty on the employer to assess the risk of any resulting injury or harm. If a significant risk of injury or harm is identified, a report must be prepared on the assessment and the necessary action to achieve compliance with the relevant regulation in accordance with r. 5.16.

There are no analogous provisions in WHS.

Recommendation 24: That WA WHS replicate OSH r. 5.15.

CHAPTER EIGHT – ASBESTOS

Removal of in situ asbestos

On 31 December 2003 it became illegal to make, use or import asbestos into Australia. Despite this, there have been multiple instances of asbestos containing material (ACM) being imported into Australia and used on major building projects.

²⁷ Comparison Document, reference 63, page 26.

²⁸ OSH r. 5.21(a)-(e): the potential health risk and any toxic effects associated with the hazardous substance; the control measures used to minimise the risk to safety and health; the correct use of methods used to minimise adverse effects of exposure to the hazardous substance; the correct care and use of PPE; the need for, and details of, health surveillance.

²⁹ Comparison Document, reference 64, page 26.

³⁰ Comparison Document, reference 68, page 27.

WHS contains regulations prohibiting the use and handling of ACM but does not offer remedial options to the regulator if ACM is found in WA.

Recommendation 25: That WA WHS gives the regulator the power to order the removal of in situ ACM that has been imported or installed after the 2003 ACM ban.

OTHER

Psychosocial Hazards

The AMWU has long been a part of the push for better mechanisms to address psychosocial hazards in the workplace. We notably advocated for the Legislative Assembly Education and Health Standing Committee's inquiry into the impact of FIFO Work practices on mental health, and their report tabled on 18 June 2015. We have also participated extensively in the drafting process of the first code of practice for FIFO mental health.³¹

The AMWU notes the introduction of the *Work Health and Safety Bill 2019 (WA)* (WA WHS Bill) on 27 November 2019. We commend that the feedback from stakeholders regarding the importance of recognising psychosocial health in occupational health and safety has been taken on board, with the amended definition of 'health' in section 4 including 'psychological health'.

We further note that Safe Work Australia does have guidance material on work-related psychological health,³² and that there has been discussion regarding a national code of practice for the prevention of psychological injuries since 2010.

Despite all of this, in WHS there are no risk control measures to prevent exposure to psychosocial hazards.

Given the significant impact of psychosocial hazards not only on workers, but also on the economy,³³ there is a strong need to include regulations that specifically target minimising exposure to psychosocial hazards in the workplace.

Recommendation 26: That WA WHS include regulations that address risk controls and minimising exposure to psychosocial hazards.

³¹ 'Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors', Department of Mines, Industry Regulation and Safety, < http://www.dmp.wa.gov.au/Documents/Safety/MSH_MHW_FIFO_COP.pdf>.

³² 'Work-related psychological health and safety: a systematic approach to meeting your duties', Safe Work Australia, < https://www.safeworkaustralia.gov.au/system/files/documents/1806/work-related_psychological_health_and_safety_guide.pdf>.

³³ A Safe Work Australia study found that workplaces with a low Psychosocial Safety Climate cost the Australian economy approximately \$6 billion per annum: 'Psychosocial Safety Climate and Better Productivity in Australian Workplaces: Costs, Productivity, Presenteeism, Absenteeism', November 2016, < <https://www.safeworkaustralia.gov.au/system/files/documents/1705/psychosocial-safety-climate-and-better-productivity-in-australian-workplaces-nov-2016.pdf>>.