



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

Differences between the National Model Work Health and Safety Regulations 2019 and the Occupational Safety and Health Regulations 1996

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Introduction

The [national model Work Health and Safety \(WHS\) Act](#) provides the overarching duties for participants in relation to health and safety in the workplace. Detailed requirements related to specific hazards are provided in the [15 January 2019 national model Work Health and Safety Regulations 2019](#) (model WHS regulations) in a similar fashion to the requirements of the [Occupational Safety and Health Regulations 1996](#) (the OSH regulations).

The intention is for the model WHS regulations to be adopted, subject to consultation, as the Western Australian Work Health and Safety regulations (WA WHS regulations).

To help facilitate the WA WHS regulations being developed, the Commission for Occupational Safety and Health (Commission) requested that the differences between the model WHS regulations and the OSH regulations be identified. As a result of the request, this document (titled *Differences between the National Model Work Health and Safety Regulations 2019 and the Occupational Safety and Health Regulations 1996*) was developed.

The *Differences between the National Model Work Health and Safety Regulations 2019 and the Occupational Safety and Health Regulations 1996* document is not a comprehensive list of all the differences.

Every effort has been made to identify the significant differences between the two sets of regulations and the comparison table attached below is provided for your reference. It is acknowledged that stakeholders will have particular interests in relation to the workplace health and safety laws and will likely identify other differences. In view of these circumstances, as a stakeholder, please ensure you make your own comparisons between the two sets of regulations in relation to proposals that affect your workplace or area of interest. If you are involved in mining or petroleum and geothermal energy operations, please make your comparisons with the related legislation listed under *List of internet links in the Consultation Package* in [Review Process Summary – Develop Work Health and Safety Regulations for Western Australia](#).

There is no obligation on you to provide comment or make a submission about all of the individual regulations in the model WHS regulations. You have the discretion to choose whether you provide a comment or submission in relation to any or all of the regulations in the model WHS regulations.

If you would like to make comments about the model WHS regulations use the [Template - WHS Regulations Submission Document](#).

When making your submission, please consider providing specific responses to the following issues:

1. What is the benefit to workplace participants of a proposal?

2. What is the likely cost for you, your business and the Regulator to implement a specific proposal?
3. Is a specific recommendation likely to be effective in achieving healthier and safer workplaces?
4. Are there any unintended consequences of adopting individual regulations in the model WHS regulations?
5. If a new requirement is proposed by the model WHS regulations, what are the costs and benefits?

Demolition licensing, Commercial driver fatigue and Protection from tobacco smoke – unique provisions from the Occupational Safety and Health Regulations 1996

The existing Occupational Safety and Health Regulations 1996 (OSH regulations) include the following provisions, which are not in the national model WHS regulations:

- Demolition licensing – r. 3.114 to r. 3.129
- Commercial driver fatigue – r. 3.130 to 3.134
- Protection from tobacco smoke – r. 3.44A to 3.44I

Part 4.6 of the model WHS regulations provides the requirements for demolition work. The jurisdictional note for Part 4.6 Division 2 states that:

A jurisdiction may insert transitional and savings provisions for the licensing of demolishers pending the regulation of demolishers under the Occupational Licensing National Law.

It is intended that the demolition licensing requirements of the OSH regulations will be included in the WA WHS regulations. Commercial driver fatigue and Protection from tobacco smoke regulations will also be included in the WA WHS regulations and apply to all workplaces including mining. There will also be some amendments reflecting the tobacco smoke exclusion in the Mines Safety Inspection Regulations (r. 9.31) 1995 for non-coal underground mines. The bulk of the WA WHS regulations will not apply to petroleum and geothermal energy operations. To avoid unnecessary duplication, it is anticipated that the following Parts of the model WHS regulations will apply to petroleum and geothermal energy operations:

- Chapter 2 Representation and Participation – Parts 2.1, 2.2, 2.3, 2.4, which provides for workplace consultation, Health and Safety Representatives, and Safety Committees
- Chapter 3 General Risk and Workplace Management – Part 3.1
- Chapter 11 Miscellaneous – Part 11.3, which provides for the clarification of miscellaneous matters.

If you would like to make comment about the Demolition licensing, Commercial driver fatigue and Protection from tobacco smoke regulations, please use the [Template - WHS Regulations Submission Document](#).

Mines and petroleum and geothermal energy operations

- The model WHS regulations will apply to workplaces generally. Workplace health and safety regulations relevant to mines and petroleum and geothermal energy laws will additionally apply. The proposals for the mines and petroleum and geothermal energy laws are available at the following links:
 - [Mining Sector](#)
 - [Petroleum and Geothermal Energy Sector](#)

Commission for Occupational Safety and Health

The Commission for Occupational Safety and Health (Commission) is an independent tripartite body, whose members are appointed by the Minister for Mines and Petroleum; Industrial Relations (Minister). It is the peak consultative forum on occupational safety and health in Western Australia. The Commission's membership consists of union, industry, government and expert members, the WorkSafe Western Australia Commissioner and an independent Chairperson appointed by the Minister for Industrial Relations.

The Commission has endorsed consideration of some WHS regulations for Western Australia being amended to be consistent with the OSH regulations. The following four WHS regulations are identified for consideration in this publication:

1. R. 5 – Definitions, Confined space;
2. R. 221 – Plant used in connection with tree lopping;
3. R. 244 – Altered plant designs to be registered; and
4. R. 376 – Duty to give a health monitoring report to the regulator.

The endorsement does not necessarily reflect the view of individual members of the Commission.

Comparison Table – Differences between the National Model Work Health and Safety Regulations 2019 and the Occupational Safety and Health Regulations 1996

	Model WHS Regulations	OSH Regulations
Chapter one – Preliminary		
1. Commencement date	<p>R. 2 specifies a commencement date for the regulations. The date specified will be modified appropriately when a commencement date is determined by the Government of Western Australia.</p> <p>Sub-regulation 2(2) provides a later starting date for r. 164 (residual current devices in hostile operating environments). This option was provided for jurisdictions that did not have these requirements previously. Regulation 164 describes circumstances where a “hostile operating environment exists”.</p>	<p>Already includes requirements for residual current devices under r. 3.60. However, the requirement in the OSH regulations is not limited to circumstances where a “hostile operating environment exists”.</p>
2. Requirement for regulator to provide a response within 14 days	<p>The model WHS regulations require the regulator to advise an applicant within 14 days in relation to decisions for authorisation, and some review matters. Examples include r. 89(4), r. 91(2)(c), r. 96 and others.</p>	<p>The OSH regulations do not impose a fixed time on the Commissioner for a response. However, section 63 of Western Australia’s <i>Interpretation Act 1984</i> requires a decision to be made ‘with all convenient speed and as often as occasion arises’.</p>
3. Definition (r. 5) – accredited assessor	<p>Assessors for high risk work licences must be accredited to conduct High Risk Work Licence (HRWL) assessments (r. 113).</p> <p>In some jurisdictions, the regulator may also be an accredited assessor. This is not the case in Western Australia and a jurisdictional note provides that jurisdictions may remove the reference to the regulator (r. 114(5)) as an accredited assessor in the model WHS regulations.</p>	<p>There is no equivalent authority for the regulator to be registered as an assessor for HRWL purposes.</p>
4. Boilers - Definitions	<p>R. 5 provides a definition of boiler for the purpose of high risk work licensing that includes ‘... boilers with less than 5 square metres heating surface or 150 kilowatt output’.</p>	<p>An HRWL for basic boiler operation is not required unless a boiler has an output of more than 500kw.</p>
5. Definitions– combustible liquid	<p>Refer to the defined phrase (r.5) combustible liquid in:</p>	<p>No equivalent.</p>

	<p>a) r. 53 (flammable and combustible material not to be accumulated);</p> <p>b) part 3 of Schedule 12 (Manifest requirements – identification of hazardous chemicals);</p> <p>c) part 4 of Schedule 12 (Manifest – storage area for packaged hazardous chemicals); and</p> <p>d) part 7 of Schedule 13 (Placards for flammable liquids category 4 package or in bulk).</p> <p>These provisions will be removed so the definition of combustible liquid is not required.</p>	
<p>6. Definitions – confined space</p>	<p>The definition excludes “a mine shaft or the workings of a mine” from the definition of confined space.</p> <p>Stakeholder comments are requested as to whether it is appropriate to limit the exclusion to <u>underground</u> mines.</p>	<p>The Commission has endorsed consideration of the WHS regulations for Western Australia being amended to limit the exclusion to underground mines.</p>
<p>7. Definitions – emergency service organisation</p>	<p>Provide for a definition (r. 5) of emergency service organisation. A jurisdictional note authorises appropriate local provisions to be inserted. The following entities are proposed to be included in this definition:</p> <ol style="list-style-type: none"> 1. Department of Fire and Emergency Services 2. WA Police 3. St Johns Ambulance Service 4. Bush Fire Service 5. Volunteer Emergency Service 6. Volunteer Fire and Rescue Service 7. Volunteer Fire Services 8. Volunteer Marine Rescue Services 9. State Emergency Service 	<p>No equivalent.</p>
<p>8. Definitions – emergency service worker</p>	<p>R. 5 provides for a definition of an emergency service worker. A jurisdictional note authorises appropriate local provisions to be inserted. The definition will include reference to “Members of an emergency service organisation (paid and volunteers).”</p>	<p>No equivalent.</p>

<p>9. Definitions – excavation</p>	<p>R. 5 provides for a definition of excavation. Clause (b) includes a jurisdictional note to insert a relevant water law for bores. The relevant law in Western Australia is the <i>Water Services Act 2012</i>.</p>	<p>No equivalent requiring the prescription of a relevant water law for bores.</p>				
<p>10. Definitions – primary emergency service organisation</p>	<p>R. 5 provides for a definition of a primary emergency service organisation. A jurisdictional note authorises jurisdictions to determine the primary emergency service organisation. The definition will include reference to “the department of the Public Service principally assisting in the administration of the <i>Fire and Emergency Services Act 1998</i>”.</p>	<p>No equivalent requiring the prescription of a primary emergency service organisation.</p>				
<p>11. Definitions – rigging work</p>	<p>The definition of ‘rigging work’ provided in r. 5 is not the same as the definition in Division 3 of Schedule 6.3 in the OSH regulations. In addition, the WHS definition is not consistent with the <i>National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment [NOHSC: 1006 (2001)] 3rd Edition July 2001</i> (NOHSC:1006). The difference in the text is highlighted below by being <u>underlined</u>.</p> <table border="1" data-bbox="587 1220 1007 1899"> <tr> <td data-bbox="587 1220 778 1563">WHS r. 5</td> <td data-bbox="778 1220 1007 1563">“... mechanical load shifting equipment and associated gear to move, place or secure a load <u>using</u> plant, equipment or members of a building ... ”</td> </tr> <tr> <td data-bbox="587 1563 778 1899">NOHSC:1006</td> <td data-bbox="778 1563 1007 1899">“... mechanical load shifting equipment and associated gear to move, place or secure a load <u>including</u> plant, equipment or members of a building ... ”</td> </tr> </table> <p>The consequence of the word change is:</p> <ol style="list-style-type: none"> 1. WHS r. 5 definition, rigging work will involve a load being 	WHS r. 5	“... mechanical load shifting equipment and associated gear to move, place or secure a load <u>using</u> plant, equipment or members of a building ... ”	NOHSC:1006	“... mechanical load shifting equipment and associated gear to move, place or secure a load <u>including</u> plant, equipment or members of a building ... ”	<p>rigging work means —</p> <ul style="list-style-type: none"> (a) moving, placing or securing a load (such as plant, equipment or members of a building or structure) using mechanical load shifting equipment but does not include operation of the mechanical load shifting equipment; or (b) erecting or dismantling cranes or hoists.
WHS r. 5	“... mechanical load shifting equipment and associated gear to move, place or secure a load <u>using</u> plant, equipment or members of a building ... ”					
NOHSC:1006	“... mechanical load shifting equipment and associated gear to move, place or secure a load <u>including</u> plant, equipment or members of a building ... ”					

	<p>moved by <u>using</u> plant, equipment or members of a building ...”. It is not clear how a load could be moved by using members of a building.</p> <p>2. The NOHSC 1006 text means that the load <u>includes</u> plant, equipment or members of a building ...”. The plant, equipment or members of a building ... would not be used to move a load.</p> <p>The Department of Mines, Industry Regulation and Safety (DMIRS) raised this matter with Safe Work Australia (SWA) in 2015. However, as other stakeholders did not support correcting this apparent error, the national model WHS regulations have not been amended.</p>	
<p>12. Specified VET course – Asbestos</p>	<p>The WHS regulations prescribe the following asbestos specified VET courses:</p> <p>(b) in relation to Class A asbestos removal work—the VET course Remove friable asbestos; or</p> <p>(c) in relation to Class B asbestos removal work—the VET course Remove non friable asbestos; or</p> <p>(d) in relation to the supervision of asbestos removal work—the VET course Supervise asbestos removal; or</p> <p>in relation to asbestos assessor work—the VET course Conduct asbestos assessment associated with removal;</p>	<p>The OSH regulations do not prescribe specified VET courses for asbestos removal work. However, the Remove friable asbestos course is included in the conditions for an Unrestricted asbestos removal licence.</p> <p>NECA WA believes that 10559NAT - Course in Working Safely with Asbestos Containing Materials be mandatory for all construction workers</p>
<p>13. Meaning of person conducting a business or undertaking – person excluded</p>	<p>R. 7 makes reference to a “strata title body corporate”. For consistency with existing Western Australian strata laws, the term “strata title body corporate” will be replaced by “strata company” with reference to the definition of strata company in section 3(1) of the <i>Strata Titles Act 1985</i>”.</p>	<p>No equivalent.</p>
<p>Chapter Two – Representation and Participation</p>		
<p>14. Work Groups</p>	<p>Regulation 17 prescribes an extensive list of matters to be taken into account in negotiating for work groups.</p>	<p>The list of matters provided under s. 30(4) of the OSH Act is not as large.</p>

15. Health and Safety Representatives	R. 18 provides details in relation to the procedures for the election of a health and safety representative.	The OSH Act (sections 31(6) to (11)) and the Mines Safety and Inspection Act (s. 56) provide comparatively more details.
16. Health and Safety Representative training	R. 21(1)(b) prescribes an entitlement to an annual one day refresher training course for Health and Safety representatives.	R. 2.3 provides for the Commission for Occupational Safety and Health (Commission) accrediting a training course suitable for attendance by Health and Safety Representatives during their term of holding office. At this time the Commission has not accredited a course.
17. Review of control measures and asbestos management control plan	Regulations 38(2)(e); 38(4); 401(1)(g); 401(3)) require control measures to be reviewed when specified conditions are met. One of the conditions specified is that a review must occur at the request of an HSR under the following circumstances: <ul style="list-style-type: none"> • wherever a provision requires risk assessment in accordance with Part 3.1; and • in relation to working with lead. HSRs may also request a review of an asbestos management control plan under the model WHS regulations (430(1)(d); 430(2)).	No equivalent authority for an HSR to trigger a review of control measures is prescribed.
18. Personal protective clothing and equipment (PPE)	R. 44 requires the person conducting a business or undertaking to provide PPE to workers.	R. 3.33 requires that the PPE is in accordance, and complies, with the relevant requirements of prescribed Australian and New Zealand Standards.
Chapter Three – General Risk and Workplace Management		
19. Flammable and combustible material not to be accumulated	R. 53 requires that flammable or combustible substances are kept at the lowest practicable quantity.	No equivalent.
Chapter Four – Hazardous Work		
20. Noise –exposure standard	R. 57 requires a PCBU to ensure the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise.	R. 3.46 provides the same requirement as regulation 57, but modified by practicability. R. 7.3 of the MSI regulations provides the action level similar to the OSH regulations.

		R. 7.4 of the MSI regulations requires noise levels to be reduced so far as is practicable.
21. Noise – audiometric testing	R. 58 provide requirements for audiometric testing, including timeframes for when testing must commence and how often it should be repeated.	No equivalent in the OSH regulations. There is no specific requirement for audiometric testing in the MSI regulations but it forms part of health assessment under r. 3.27(1) which is based on risk of exposure. In addition, the State Mining Engineer may require any additional health monitoring (r. 3.27(2)).
22. Management of risk of fall	Regulations 78 and 79 require that where it is not reasonably practicable to eliminate the risk of falls from one level to another, the person conducting a business or undertaking must provide adequate protection against the risks by: <ol style="list-style-type: none"> 1. providing a fall prevention device if it is reasonably practicable to do so; 2. if the above is not reasonably practicable, provide a work positioning system; or 3. where the above two measures are not reasonably practicable, provide a fall arrest system. 	Under r. 3.55, employers and main contractors, self-employed people or a person having control of a workplace must ensure that: <ol style="list-style-type: none"> 1. edge protection is provided and kept in place where there is a risk of a fall of two or more meters from the edge of a scaffold, fixed stair, landing, suspended slab, formwork or falsework at the workplace; and 2. for any other edges where there is a risk of a fall of three or more metres, edge protection or a fall injury prevention system must be provided. <p>In addition, r. 3.54 requires holes or openings, with dimensions of more than 200mm x 200mm but less than 2 metres x 2 metres, are covered.</p>
23. Notice of assessment – time to apply, HRWL	R. 87(2)(f)(ii) requires an application for an HRWL to include a copy of a certification that was issued not more than 60 days before the application is made.	R. 6.6(3)(a) requires a 'recently issued' notice of satisfactory assessment. This approach provides flexibility for the regulator to deal with applications made soon after the deadline when there are mitigating circumstances for the late application (such as the applicant being in a remote or regional area).

<p>24. Residential requirements for authorisations</p>	<p>The regulator is required by r. 89(2)(c)(i) to be satisfied that applicants reside in the jurisdiction before issuing an HRWL. The WHS regulations also allow the regulator to issue an HRWL if circumstances exist that justify the grant of the licence (WHS r. 89(2)(c)(ii)).</p> <p>Similar residential requirements to those for an HRWL apply to Registration of Plant Designs and Items of Plant (WHS r. 256(2)(i)) and Licensing of Asbestos Removalists and Asbestos Assessors (WHS r. 497(2)(c) & (d)).</p>	<p>No equivalent.</p> <p>Providing the assessments are carried out in Western Australia, an HRWL can be issued by the regulator even if the applicant resides in another jurisdiction.</p> <p>The HRWL applicant with a residential address outside Western Australia is also not obliged to provide a submission detailing the circumstances that justify the granting of the HRWL.</p>
<p>25. High Risk Work Licence – Reassessment of competency</p>	<p>R. 95 provides the regulator with the power to direct the holder of an HRWL to obtain a reassessment of competency.</p>	<p>The power provided in regulation 6.17(1) is more specific as it requires provision of the notice of assessment within a specified time.</p>
<p>26. High risk work licence – Grace period for renewal</p>	<p>Regulations 101(4); 102; and 103 permit HRWLs to be renewed up to 12 months after the expiry date in exceptional circumstances.</p>	<p>R. 6.9(1) provides a 24-month grace period for renewal of a high risk work licence with no exceptional circumstances.</p>
<p>27. English language requirements</p>	<p>R. 114 requires an accredited assessor to act in accordance with their accreditation which includes the conditions of accreditation. Regulation 121 of the model WHS regulations provides authority for the regulator to impose conditions. Under these provisions, it is assumed that the regulator will have the authority to administratively impose a condition, similar to the r. 6.20(2)(d) of the OSH regulations, requiring sufficient knowledge of the English language.</p>	<p>R. 6.20(2)(d) includes an English language requirement as part of a notice of satisfactory assessment.</p>
<p>28. Concrete placing booms - HRWL</p>	<p>Concrete placing boom is defined in r. 5 as:</p> <p style="padding-left: 40px;">meaning plant incorporating an articulating boom, capable of power operated slewing and luffing to place concrete by way of pumping through a pipeline attached to, or forming part of, the boom of the plant.</p> <p>As a result of being listed in Schedule 3, an HRWL is required for mobile and static concrete placing booms.</p>	<p>An HRWL is required for “vehicle-mounted concrete placing boom” which is defined in Schedule 6.2, Division 4 as:</p> <p>meaning a boom —</p> <ul style="list-style-type: none"> (a) with 2 or more stages; and (b) mounted on a vehicle; and (c) able to be slewed or luffed; and (d) along which concrete is pumped by means of a

	No provisions in the WHS regulations deal with the transition to include the additional types of concrete placing booms that will require an HRWL.	pipe attached to, or incorporated within, the boom.
29. Forklift truck – HRWL	The model WHS regulations define a forklift truck for the purposes of HRWLs to mean “a powered industrial truck equipped with lifting media made up of a mast and an elevating load carriage to which is attached a pair of fork arms or other arms that can be raised 900mm or more above the ground, but does not include a pedestrian-operated truck or a pallet truck.”	Schedule 6.3, Division 5, CI 8 of the OSH regulations defines forklift truck to mean “a powered industrial truck equipped with lifting media made up of a mast and an elevating load carriage to which is attached a pair of forkarms”. Where the definition in the OSH regulations is limited to “a pair of forkarms”, the WHS regulations include “other arms that can be raised 900mm or more above the ground”. This change may also have consequences for Order picking forklift truck HRWLs.
30. Reach stackers – HRWL	The model WHS regulations introduce an HRWL class for Reach stackers (Schedule 3 item 23; Schedule 4 item 23) as defined in r. 5. A worker with any of the HRWL classes for slewing mobile cranes may also operate a Reach stacker as the HRWL class for Reach stackers is included in the hierarchy. No provisions in the WHS regulations deal with the transition to include the Reach stackers that will require an HRWL.	There is no Reach stacker HRWL class. If a Reach stacker meets the definition of non-slewing mobile cranes, then an HRWL is required.
31. Boilers – high risk work licence classes	The model WHS regulations include only two classes of HRWL for boilers: a) standard boiler operation; and b) advanced boiler operation. Reducing the number of HRWL boiler classes from three in the OSH regulations to two in the model WHS regulations will create transition issues. The Advance classes of HRWL for boiler operation in the OSH regulations and model WHS regulations can be considered equivalent as they permit workers to operate all kinds of boilers. However, there is no direct correlation between the classes of Basic and Intermediate	The OSH regulations presently require an HRWL to operate three classes of boilers: <ul style="list-style-type: none"> • pressure equipment operation, basic; • pressure equipment operation, intermediate; and • pressure equipment operation, advanced.

	<p>pressure equipment operation in the OSH regulations, and Standard boiler operation in the model WHS regulations. For example, with an Intermediate Boiler HRWL, operators can use some boilers that are capable of being fired by multiple fuels simultaneously. The WHS regulations require an Advanced Boiler HRWL for operators to use boilers that are capable of being fired by multiple fuels simultaneously.</p> <p>Methods to transition from the three boiler classes in the OSH regulations to the two classes in the WHS regulations are not specified. However, as drafted in the model WHS regulations, Basic Boiler HRWL operators under the OSH Act will have to upgrade their HRWL to a Standard Boiler HRWL even if they only want to operate a Basic Boiler. Similarly, as Advanced Boiler HRWL under the model WHS regulations are required for boilers that are capable of being fired by multiple fuels simultaneously, Intermediate Boiler HRWL operators under the OSH regulations will not be able to operate some of the boilers that are capable of being fired by multiple fuels simultaneously.</p>	
<p>32. Registered Training Organisations to retain records - HRWL</p>	<p>No equivalent</p>	<p>R. 6.32 requires Registered Training Organisations to retain records in relation to an assessment for an HRWL. The records are used to support the audit of Registered HRWL Assessors.</p>
<p>33. Notice of demolition work</p>	<p>R. 142 prescribes that the regulator is provided with 5 days written notification before the demolition work begins and involves a:</p> <ul style="list-style-type: none"> • structure related to the physical integrity that is at least 6 metres in height; • load shifting machinery on suspended floor; and explosives. 	<p>R. 3.119 requires the Commissioner to be notified at least 5 working days before class 1, class 2 and class 3 demolition work is intended to begin.</p> <p>For class 1 and class 2, issues to consider include:</p> <ul style="list-style-type: none"> • the height threshold is 10 metres or more; • there are references to total or partial demolition , tilt-up method of construction with no reference to height;

		<ul style="list-style-type: none"> • use of a tower crane or crane with a safe working load greater than 100 tonnes; • brittle and fragile roofing; and • single storey dwellings are not excluded.
<p>34. General Electrical Safety in Workplaces and Energised Electrical Work</p>	<p>Part 4.7 of the model WHS regulations introduces definitions and some requirements which are inconsistent with the OSH regulations. In turn, the OSH regulations reference the Electricity (Licensing) Regulations 1991 (EL regulations).</p> <p>If the definitions and requirements in the national model WHS regulations are applied as drafted, there will be inconsistencies with existing requirements as specified in the OSH regulations and EL regulations. Alternatively, if the definitions and requirements from the OSH regulations are retained, including the references to the EL regulations, there will be <i>consequence for the WA WHS regulations</i>.</p> <p>Views are requested about the adoption of Part 4.7 of the model WHS regulations as drafted or whether amendments should be made to the model WHS regulations to reflect existing electricity regulations in the OSH regulations and the EL regulations.</p> <p>If you would like to make comment about the Part 4.7, General Electrical Safety in Workplaces and Energised Electrical Work use the submission template.</p>	<p>On 14 May 2018, the Occupational Safety and Health Amendment Regulations 2017 (Electrical Amendment Regulations) commenced. Under the electrical amendment regulations, electrical work on or near live electrical installations and equipment will be prohibited, except for circumstances where it is impossible to work without the installation being energised, such as testing.</p> <p>The electrical amendment regulations also require the electricity main switch to be turned off before any workers enter the ceiling space of domestic properties. Similar provisions to the electrical amendment regulations are not included in Part 4.7 – General Electrical Safety in Workplaces and Energised Electrical Work of the model WHS regulations.</p> <p>NECA WA supports the retention of the current OSH regulations to ensure that they remain consistent with the definitions contained in the Electrical Licensing Regulations.</p>
<p>35. Power for Inspector to immediately suspend an authorisation</p>	<p>Regulations 110; 138 and 524 provide the regulator with the power to immediately suspend an authorisation if there is an imminent serious risk to health or safety of any person, or when a corresponding WHS regulator has suspended an equivalent authorisation.</p> <p>NECA WA would support the adoption of these new these regulations</p>	<p>Immediate suspension provisions are not included.</p> <p>Where an Inspector identifies an imminent serious risk to health or safety of any person, the Inspector will issue a Prohibition Notice to prevent the activity.</p>

<p>36. Making records available for inspection</p>	<p>Regulations 94; 124; 226(3); 230; 237(4); 262; 303(4); 304(5); 313(4); 445(4); 465(3)(b) and 505) require prescribed documents to be made available for inspection.</p> <p>NECA WA would support the adoption of the these new regulations</p>	<p>Similar provisions do not presently exist in the OSH regulations.</p>
<p>37. Testing of electrical equipment and portable appliances – competent person</p>	<p>Regulation 150((1)(b) requires the regular inspection of electrical equipment by a competent person if it is used in an environment where the electrical equipment is operating in conditions that are likely to result in damage to the equipment or a reduction in its expected life span.</p>	<p>The OSH regulations limit the requirement to the testing of electrical equipment on a construction workplace by reference to AS/NZS 3012: Electrical Installations – Construction and demolition sites in r. 3.61.</p> <p>The testing is also required to be undertaken by a competent person which includes:</p> <ol style="list-style-type: none"> 1. a licensed electrician; or 2. a person who has been trained and satisfactorily completed a competency-assessed training course on testing and tagging using a portable appliance tester. <p>NECA WA believes that 2 should read a person who has completed UEENEEE101A and UEENEEP026A.</p> <p>NECA WA believes the definition of a competent person should always include a formally recognised qualification listed as Nationally Recognised Training</p> <p>There should be no ambiguity around what defines a “competent person</p>
<p>38. Testing of electrical equipment and portable appliances – information tags</p>	<p>There are some differences between the information required on tags by the OSH regulations (including AS 3012) and r. 150(4). R. 150(4) has a list of issues to be recorded which may be in the form of a tag on the equipment but does not specify tagging required.</p>	<p>R. 3.62 require tagging and references the requirements in AS/NZS 3012 Electrical Installations – Construction and Demolition Sites</p> <p>NECA WA supports the retention of this OSH regulation in any new regulatory regime.</p>

<p>39. Unsafe distances - overhead or underground electric line</p>	<p>R. 166 refers to an “unsafe distance of overhead or underground electric line”.</p> <p>Neither of these proposals mandates a specific distance so that remains the responsibility of Western Power</p>	<p>R. 3.64 prescribes the safe distances (by reference to the “danger zone”) from overhead power lines in Western Australia and includes specification control measures for working within those distances if needed.</p> <p>Safe distances from underground power lines are not specified. Information on safe distances is available from the network operator (e.g. Western Power for the south-west grid).</p>
<p>40. Implementation of OSH regulations – connection to construction site</p>	<p>No equivalent.</p>	<p>R. 3.62 specifies when electricity is to be connected to a construction site.</p> <p>NECA WA supports the retention of this OSH regulation in any new regulatory regime</p>
<p>41. Implementation of OSH regulations – evidence portable electrical equipment has been tested</p>	<p>No equivalent.</p>	<p>R. 3.63 requires a person bringing electrical equipment to a construction site to provide evidence the electrical equipment has been tested.</p> <p>NECA WA supports the retention of this OSH regulation in any new regulatory regime</p>
<p>42. Diving work - construction</p>	<p>Part 4.8 provides the requirements for diving work</p> <p>Persons undertaking high risk diving work are required by the model WHS regulations (r. 183) to comply with Australian New Zealand Standard AS/NZS 2299.1:2007 <i>Occupational Diving Operations - Standard Operational Practice</i> (the diving standard). High risk diving work involves construction work and certain types of salvage work.</p>	<p>R. 3.29 requires persons undertaking construction diving work to comply with the diving standard.</p>
<p>43. Diving work - other</p>	<p>Other types of diving work prescribed in the model WHS regulations include general diving work and limited scientific diving work. Minimum requirements for competency, supervision, medical certification and record keeping are prescribed for these types of diving.</p>	<p>General duty to provide safe systems of work apply.</p>

Chapter Five – Plant and Structures

<p>44. Roll-over protection on tractors</p>	<p>R. 216 excludes the requirement for a roll over protective structure installed for tractors with a mass of:</p> <ul style="list-style-type: none"> • less than 560 kilograms; and • 15,000 kilograms or more. 	<p>The thresholds in r. 4.45 are:</p> <ul style="list-style-type: none"> • less than 800 kilograms; and • more than 15,000 kilograms.
<p>45. Tree lopping</p>	<p>R. 221 provides an exception for tree loppers from the requirement to work from a work box under certain conditions.</p>	<p>This work practice is not permitted. The Commission has endorsed consideration of the WHS regulations for Western Australia being amended to be consistent with the OSH regulations.</p>
<p>46. Retention of records - plant</p>	<p>R. 226 requires that records of plant with presence sensing safeguard systems must be kept for a specified time, with a maximum period set by regulation 226(2)(a) of five years.</p> <p>R. 237 requires that the record must be kept for the period that the plant registered under Part 5.3 is used or until the person relinquishes control of the plant. Some plant with presence sensing safeguard systems may also be registered under Part 5.3 of the WHS regulations and there may be a conflict in the requirements.</p>	<p>R. 4.34 requires that a record is made and kept of any maintenance, inspection, commissioning, and alteration of the plant or test results. These records must be made accessible at all reasonable times and must be retained while the plant remains under control of the duty holder. There is no prescribed requirement for records to be kept for five years.</p>
<p>47. Duties of a person conducting a business or undertaking involving the management or control of plant – Major inspection</p>	<p>Regulations 235 and 241 provide requirements for the major inspection of registered mobile cranes and tower cranes, and the annual inspection of amusement devices.</p>	<p>R. 4.54(4)(a) requires that a crane, hoists or building maintenance unit is maintained, inspected or manufactured and operated in accordance with the written instructions of the designer or manufacturer.</p> <p>In relation to amusement structures, r. 4.52 requires that the structure is operated, maintained and inspected in accordance with AS 3533 Amusement Rides and Devices (AS3533). The training/qualifications/ experience for inspection in AS3533.2 1997 includes a requirement that the person “... should possess formal engineering qualifications and experience similar to those of the designer (see AS 3533.1)”.</p>

<p>48. Duties of a person conducting a business or undertaking involving the management or control of plant – Competent person</p>	<p>The competent person as defined in regulations 235 and 241 includes the requirement that the person is:</p> <ol style="list-style-type: none"> 1. registered under a law that provides for the registration of professional engineers; or 2. determined by the regulator to be a competent person. <p>The jurisdictional notes acknowledge that not all jurisdictions register engineers. NSW has amended the relevant sub-regulations as follows:</p> <ol style="list-style-type: none"> A registered under a law that provides for the registration of professional engineers; or B a member (or is qualified to be a member) of Engineers Australia with the status of Chartered Professional Engineer; or C entered on the National Professional Engineers Register administered by the Institution of Engineers Australia, 	<p>In Western Australia:</p> <ol style="list-style-type: none"> 1. there is no law that provides for the registration of professional engineers; 2. the employer has the duty to make decisions in relation competency under the OSH Act; and 3. there is no authority under the OSH Act or OSH regulations for the regulator to make determinations about the competency of persons to conduct major inspections of registered mobile cranes and tower cranes or annual inspections of amusement devices or passenger ropeways.
<p>49. Duties of a person conducting a business or undertaking involving the management or control of plant – Design life</p>	<p>Regulation 235 also has requirements for the inspection of registered mobile cranes or tower cranes being carried out with reference to the end of the design life recommended by the manufacturer for the crane or recommendations of a competent person or every 10 years.</p>	<p>R. 4.54(a) requires that the crane, hoist or unit is maintained, inspected and operated in accordance with written instructions developed by the manufacturer, written instructions approved by the Commissioner or in accordance with AS 2550.</p>
<p>50. Duties of a person conducting a business or undertaking involving the management or control of plant – Amusement devices</p>	<p>R. 241 requires an annual inspection of amusement devices and passenger ropeways by a competent person.</p>	<p>R. 4.52 has requirements with reference to an amusement structure being operated, maintained and inspected as applicable, in accordance with Australian Standard AS 3533 – Amusement rides and devices or the Australian Association of Live Steamers Code or manufacturer’s instructions or instructions developed by a competent person.</p>
<p>51. Altered plant designs to be registered</p>	<p>R. 244(3) exempts tower and gantry cranes from design registration if the cranes are moved to a new location.</p>	<p>R. 4.2 requires the registration of the cranes and their supporting structure if moved to a new location.</p> <p>The Commission has endorsed consideration of the</p>

		WHS regulations for Western Australia being amended to be consistent with the OSH regulations.
Chapter Six – Construction Work		
52. Meaning of construction work	<p>R. 289 provides a definition of construction work. While similar, some terms are different to those used in the OSH regulations. For example “alteration”, “conversion” and “fitting-out”, which are specified in r. 289 (1), are not used in the OSH regulations.</p> <p>R. 289(2) identifies a series of inclusions with references to removal of waste, prefabricated elements and essential services.</p> <p>Generally, the WHS and OSH regulations should apply to the same work. However, please ensure you consider the definitions to identify any variations and potential consequences.</p>	R. 1.3 defines construction work with references including painting, cleaning, scaffolding and shoring, work involving driving or extracting piles work involving a well or borehole, roadworks and work involving underground cables.
53. Meaning of high risk construction work	<p>R. 289 defines high risk construction work. Some terms are different to those used in the OSH regulations. For example :</p> <ul style="list-style-type: none"> • r. 291(c) refers to “... demolition of an element or structure that is load-bearing ...”; and • r. 291(k) refers to energised electrical installations or services <p>As with the meaning of construction work, generally, the WHS and OSH regulations should apply to the same work. However, please ensure you consider the definitions to identify variations.</p>	<p>The definition in r. 3.137 includes the following comparative terms:</p> <ul style="list-style-type: none"> • construction work involving demolition; • construction work on or near energised electrical installations and lines (whether overhead or underground).
54. Threshold for construction project	<p>R. 292 provides the definition of a construction project. Construction work that meets the definition of a construction project requires the appointment of a principal contractor who has additional duties.</p> <p>The threshold specified in the model WHS regulations is \$250,000.</p>	<p>The threshold in r. 3.142 for a main contractor in relation to an occupational health and safety management plan is where five or more persons are likely to be working at the same time. This replicates the threshold established in clause 7.30 of the <i>National standard for construction work [NOHSC:1016(2005)]</i>.</p> <p style="background-color: yellow;">NECA WA supports the retention of this OSH</p>

		regulation in any new regulatory regime
55. Tilt-up construction work – high risk construction work	Include tilt-up construction work as high risk construction work (r. 291) which requires the use of a safe work method statement.	<p>The definition of high risk construction work at r. 3.137 includes construction work involving tilt-up or precast concrete</p> <p>In addition, Part 3, Division 9, Sub-division 1 – Tilt-up concreted and precast concrete elements (regulations 3.88 to regulation 3.88J), prescribes requirements in relation to tilt-up construction work, including:</p> <ul style="list-style-type: none"> • notification to the Commissioner; • compliance with specified elements of the Australian Standard AS3850 – <i>Tilt-up concrete construction</i> (the tilt-up standard); and • competency requirements. <p>NECA WA believes that Competency should be held in CPCCCM1016 - Identify requirements for safe tilt-up work</p>
56. Tilt-up construction work – Code of Practice	Safe Work Australia has published the <i>National code of practice for precast, tilt-up and concrete elements in building construction</i> .	In relation to tilt-up work AS 3850 – Tilt-up concrete construction, is referenced.
57. Additional controls - trenches	R. 306 provides the alternative for a geotechnical engineer to ensure the sides of a trench are safe from collapse. A geotechnical engineer is not included in the definition of competent person in the model WHS regulations.	R. 3.111(2) & r.3. 112(2) make reference to the “area of the opening being assessed by a competent person ...” and do not prescribe a “geotechnical engineer”.
58. General construction induction training	<p>Part 6.5 provides the requirements for General construction induction training (CIT). Division 2 of the Part includes the authority for a person who has successfully completed general CIT training to apply to the regulator for the CIT card.</p> <p>A jurisdictional note recognises that that some jurisdictions have</p>	<p>Division 11 of Part 3 implements the requirements for construction induction training (CIT) in Western Australia.</p> <p>Rather than the regulator issuing the CIT card at the successful completion of the CIT training course, there is authority for the CIT cards to</p>

	alternative arrangements to issue CIT cards.	be issued to a person by the Registered Training Organisation that conducted the CIT training course.
59. Local government notifications	No equivalent.	R. 2.10 presently requires local governments to notify the Commissioner of all permits issued on a monthly basis in relation to construction work.

<p>Chapter Seven – Hazardous Chemicals</p>	<p>Part 7 of the WHS regulations deals with 'Hazardous Chemicals'. The regulations in Part 7 cover both, 'occupational health and safety' provisions and specific requirements that are covered by Dangerous Goods legislation.</p>	
<p>60. Dangerous goods – relevant safety laws</p>	<p>R. 328 provides for hazardous chemicals, and explosives in the prescribed circumstances and the jurisdictional notes making references to relevant safety laws. The <i>Dangerous Goods Safety Act 2004</i> will be inserted as the relevant safety law.</p>	<p>No equivalent.</p>
<p>61. Dangerous goods – overlap</p>	<p>Dangerous goods and major hazard facilities will remain under dangerous goods legislation. However, the approach to dangerous goods, including major hazard facilities will be reviewed within two years of the WHS Act being proclaimed in Western Australia, with a view to determining whether dangerous goods and major hazard facility regulations are brought under the WHS Act.</p> <p>Because the <i>Dangerous Goods Safety Act 2004</i> and its regulations will continue to operate, there will be some overlap between the dangerous goods legislation and Chapter 7 – Hazardous chemicals of the model WHS regulations. To address this overlap, it is proposed that the following model WHS regulations 336, 347, 348, 349, 350, are deleted: 354, 361, 364 to 367 and 389 to 391. As a consequence schedules (11, 12 & 13) are also proposed for deletion.</p> <p>For further information, please review Proposed deletions in Western Australia to remove overlap with the <i>Dangerous Goods Safety Act 2004</i>. The document explains the the reasons for the proposed deletions.</p> <p>Matters covered by these hazardous chemicals regulations include packaging and age restrictions for supply, manifest quantities, placard requirements, emergency plans, storage and handling systems and pipelines. There will also be consequential</p>	

	<p>amendments to definitions and Schedules in the WHS regulations.</p> <p>If you would like to make comment about proposed dangerous goods deletions use the submission template.</p>	
62. Classification of chemicals	<p>R. 329 requires the manufacturer or importer of a chemical to determine whether it is hazardous or not in accordance with the 3rd revised edition of the GHS. Safe Work Australia is currently consulting publicly in relation to changing this to the 7th revised edition of the GHS and the transitional arrangements for this.</p> <p>Classification information is used in labelling and safety data sheet regulations (335 and 330).</p>	<p>Reg. 5.3 requires the manufacturer or importer of a chemical to determine whether it is hazardous or not in accordance with either the Approved Criteria [NOHSC: 2011(2003)] or the 3rd revised edition of the GHS.</p>
63. Information and training in relation to chemicals	<p>R. 39 provides a general requirement for a PCBU to provide adequate information, instruction and training to workers.</p> <p>There is not a specific record keeping duty.</p>	<p>Reg. 5.21 requires that duty holders provide those who are likely to be exposed to a hazardous substance at work with information about and training on health risks, control measures, PPE and health surveillance, and keep records of the training</p>
64. Duty to provide health monitoring	<p>R. 368 provides the triggers for health monitoring for hazardous chemicals. Sub-regulations 368(a) requires health monitoring due to a <i>significant risk</i> to the worker's health because of exposure to a scheduled hazardous chemical.</p>	<p>For r. 5.23(1) the health surveillance threshold is where the health of a person is <i>at risk</i> due to exposure to the scheduled chemical, not at <i>significant risk</i>.</p>
65. Duty to give health monitoring report to regulator	<p>R. 376 places a duty on the PCBU to provide a copy of the health monitoring report to the regulator.</p>	<p>R. 5.24 places the duty to provide the health monitoring report to the regulator, on the medical practitioner who prepared it if the results indicate exposure.</p> <p>The Commission has endorsed consideration of the WHS regulations for Western Australia being amended to be consistent with the OSH regulations.</p> <p>NECA WA supports the retention of this OSH regulation in any new regulatory regime</p>

<p>66. Duty to give health monitoring report to relevant persons conducting businesses or undertakings</p>	<p>R. 377 permits the PCBU to provide the health monitoring report to others at a workplace that may have a corresponding duty.</p>	<p>R. 5.23(4) requires information from health monitoring to be kept confidential.</p>
<p>67. Using, handling and storing restricted hazardous chemicals.</p>	<p>Under r. 382 and Schedule 10, Table 10.3, silica is classified as a “restricted hazardous chemical”. Its use, in relation to abrasive blasting, is restricted to a concentration of less than 1.0%.</p>	<p>Crystalline silica is prescribed as a “hazardous substance prohibited for specified uses or methods of handling” under r. 5.14 and Schedule 5.2. In particular, a substance that contains crystalline silicon dioxide is prohibited for use as an abrasive material in abrasive blasting except where less than 2% dry weight of crystalline silicon dioxide is present as a contaminant.</p>
<p>68. Risk assessment for hazardous substances report</p>	<p>No equivalent.</p>	<p>R. 5.15 and r. 5.16 require that the employer, main contractor and self-employed person must conduct a risk assessment and assess the risk of injury or harm to a person as a result of a person being exposed to “hazardous substances”. If this process identifies a significant risk, then a report must be prepared on the assessment and the action to be taken to comply with relevant regulations. This report must be kept in a register at the workplace.</p> <p>NECA WA supports the retention of this OSH regulation in any new regulatory regime</p>
<p>69. Notification of lead risk work</p>	<p>R. 403 introduces a new requirement for a person in control of a business or undertaking to notify the regulator within seven days, where they have determined that work is “lead risk work”.</p>	<p>No equivalent.</p>
<p>Chapter Eight – Asbestos</p>		
<p>70. Work involving asbestos or ACM – prohibitions and exceptions</p>	<p>R. 419(3)(e) provides for the relevant legislation in relation to the transport of asbestos. Consistent with the accompanying jurisdictional note, the <i>Environmental Protection Act 1986</i> will be specified. The</p>	<p>No equivalent.</p>

	<i>Environmental Protection Act 1986</i> will also be inserted into r. 492(2)(f) and r. 500(1)(b).	
71. Work involving asbestos or ACM – changes	The asbestos removal licensing requirements in Part 8.7 to Part 8.10 of the model WHS regulations are more extensive and prescriptive than in the OSH regulations and there are some significant changes. The variations between the WHS and OSH regulations identified in this discussion are not a comprehensive list. Therefore if you are involved in asbestos removal work, please ensure you carefully consider the content of this Part carefully with a view to identifying matters of interest to you.	
72. Asbestos Removal Work	R. 493 establishes the requirements to apply for a Class A licence for friable asbestos removal work and r. 494 establishes the requirements to apply for a Class B licence for non-friable asbestos removal work. Each licence requires a specified VET course for nominated asbestos removal supervisors (regulations 498 and 499) and for workers (regulation 460) and relevant industry experience. There is also a requirement for asbestos assessors to be licensed (regulation 493).	Prescribes Unrestricted (r. 5.45A) and Restricted (r. 5.45B) asbestos removal licences. The OSH regulations broadly require the Commissioner to be satisfied about the capabilities of the licence holder to ensure the work is done in a safe and proper manner. This includes a requirement for appropriate training and experience. Licences for asbestos assessors are not required.
73. Work involving asbestos or ACM – Training courses	The specified VET courses for asbestos are defined in regulation 5 of the model WHS regulations.	Training courses in the OSH regulations that satisfy the requirements for supervisors and workers are approved by the Commissioner and required as part of the application process. The asbestos courses presently approved by the Commissioner are: Restricted Asbestos: <ul style="list-style-type: none"> • RAL001 – Restricted Asbestos Licence; or • CPCCBC4051A m-Supervise Asbestos Removal Unrestricted Asbestos:

		<ul style="list-style-type: none"> • CPCDE3015A – Remove Friable Asbestos.
74. Certified safety management systems	<p>R. 493(1)(e) prescribes that Class A asbestos removalists have a <i>certified safety management system</i> (as defined in r. 5) in place and r. 6 prescribes that a regulator may make a determination for the purposes of a <i>certified safety management system</i>.</p>	<p>No equivalent requirement for a certified safety management system.</p> <p>The WHS Class A Asbestos Removal Licence is equivalent to an Unrestricted Asbestos Removal Licence. A <i>certified safety management system</i> is not required. Instead, applicants for an Unrestricted Asbestos Removal Licence are required to provide an asbestos removal work procedures manual.</p>
75. Licensed asbestos assessors	<p>Part 8.10 includes a system of assessors licensed by the regulator to conduct clearance inspections for Class A licensed asbestos removal work.</p> <p>A licenced asbestos assessor is required to have completed the <i>specified VET course - Conduct asbestos assessment associated with removal</i> and make declarations similar to those required for an asbestos removal licence.</p>	<p>Assessors conducting clearance inspections for Class A licensed asbestos removal work are not licensed in Western Australia. However, the Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)] (asbestos removal code) requires that a competent person undertakes the clearance inspections.</p>
76. Asbestos registers - threshold date	<p>Under r. 425, the threshold date for creating an asbestos register is 31 December 2003 which is the date a comprehensive Australia-wide ban on the import, manufacture and use of all types of asbestos and asbestos containing material (ACM) took effect. With some specified exceptions, the model WHS regulations require persons with management or control of buildings constructed prior to 31 December 2003 to prepare an asbestos register.</p> <p>The 31 December 2003 date is also used as a threshold to permit maintenance or service work on non-friable asbestos in regulation 419(3)(c), management of in situ asbestos in regulation 419(3)(h), demolition and refurbishment of a structure or plant (r. 447).</p> <p>Workplace buildings constructed in the 13 years between 1 January 1991 and 31 December 2003 will</p>	<p>In Western Australia, construction material using asbestos was banned in the mid-eighties. While not specified in the OSH regulations, 31 December 1990 has been used widely for the presumption that asbestos is not contained in a structure. Consequently, under the OSH regulations, asbestos registers have not been required for buildings constructed after 31 December 1990, unless ACM is suspected to be present.</p>

	have the obligation to create and maintain asbestos registers.	
77. Asbestos registers – copy required	<p>Part 8.6 of the model WHS regulations provide duties in relation to demolition and refurbishment of buildings built before 31 December 2003.</p> <p>R. 449 requires the person with management or control of the workplace to provide a copy of the asbestos register to the PCBU carrying out the work. Regulation 450 provides a mirror obligation for the PCBU to acquire a copy of the register.</p> <p>For older and larger buildings, the asbestos register may be substantial and require significant copying on behalf of the person with management or control of the workplace.</p>	Employers should obtain a copy of the asbestos register before conducting demolition work.
78. Asbestos - Decontamination facilities	Requirements for decontamination facilities are provided in r. 471 (asbestos removal) and r. 483 (asbestos work).	The decontamination facilities requirements for asbestos removal are provided in the asbestos removal code. Compliance with the asbestos removal code is required by r. 5.45. Decontamination facilities are not specified for asbestos work other than removal work (e.g. maintenance).
79. Exception for trace amounts of asbestos	R. 419 provides the general prohibition on working with asbestos, but also includes a number of exceptions. The exception provided in r. 419(5)(a)(ii) relates to soil with visible friable asbestos that a competent person has determined does not contain more than trace levels of asbestos.	No equivalent.
80. Laboratories that can be used to test asbestos	<p>Laboratories that can be used to test asbestos (regulations 423; 479(2)(b); 479(2)(c)) are prescribed. These are a:</p> <ul style="list-style-type: none"> • National Association of Testing Authorities (NATA) accredited laboratory accredited for the relevant test method; or • laboratory approved by the regulator in accordance 	DMIRS does not have the authority to approve laboratories to conduct tests for asbestos or to offer its laboratory for this purpose. DMIRS does not operate such a laboratory.

	<p>with guidelines published by SWA; or</p> <ul style="list-style-type: none"> laboratory operated by the regulator. 	
81. Asbestos removal control plan	<p>R. 464 requires a licensed asbestos removalist to prepare an asbestos removal control plan.</p> <p>Asbestos work is also high risk construction work (r. 291(d)) and requires a safe work method statement.</p>	<p>An asbestos removal plan is not required for non-friable asbestos removal.</p> <p>R. 5.45, for friable asbestos, requires compliance with the asbestos removal code and the development of an asbestos removal control plan.</p>
82. Notifications – Unrestricted asbestos removal work	<p>R. 466 requires the licensed asbestos removalist to inform the regulator in writing five days prior to the commencement of asbestos removal work (Class A and Class B).</p>	<p>R. 5.45E permits the Commissioner to include conditions on an asbestos removal licence.</p> <p>Notification of Unrestricted asbestos removal work 7 days prior to the work commencing is required as a condition of the licence. The form of notification is not provided in the OSH regulations and the licence holder is required to notify in the manner and form approved by the Commissioner.</p> <p>A notification to the Commissioner for Restricted Asbestos removal work (Class B) is not required under the OSH regulations.</p>
83. Notifications – Threshold to advise regulator of respirable asbestos fibres	<p>R. 476 of the model WHS regulations creates duties for a Class A (friable) asbestos removalist to take action if respirable asbestos fibres exceed a specified threshold. R. 476(1)(b)(ii) includes a requirement to immediately notify the regulator if airborne asbestos fibres are more than 0.02 fibres/ml.</p>	<p>Notification to the regulator is not required.</p>
84. Informing persons in the immediate vicinity	<p>R. 468 requires the person with management or control of a workplace to inform persons about asbestos control work. R. 468(3)(b) requires that any persons occupying premises in the immediate vicinity are informed.</p>	<p>The asbestos removal code applies to friable asbestos work and requires that persons in adjoining properties that might be affected by the asbestos removal activities must also be consulted.</p>
85. Disposing of asbestos waste and contaminated personal protective equipment	<p>R. 472 and r. 484 provide requirements for appropriate disposal of asbestos waste and contaminated personal protective</p>	<p>R. 5.52 requires disposal to be compliant with the asbestos removal code which requires a</p>

	equipment (for asbestos removal work and asbestos-related work respectively). R. 472(1)(a) requires the container to be labelled in accordance with the Globally Harmonised System of chemical labelling.	generic label for asbestos waste.
Chapter Nine – Major Hazard Facilities	<p>The model WHS regulations provide for the regulation and licensing of major hazard facilities.</p> <p>At this time the major hazard facilities legislation <i>Dangerous Goods Safety Act 2004</i> will not be included in the WHS laws. As a result Part 9, Major Hazard Facilities, and all associated definitions and schedules will be removed from the WHS regulations for Western Australia.</p> <p>Major hazard facilities will remain under dangerous goods legislation. However, the approach to dangerous goods will be reviewed within two years of proclamation of the WHS Act in Western Australia, with a view to determining whether dangerous goods and major hazard facility regulations are brought under the WHS Act.</p>	
Chapter Ten – Mines	The Minister for Mines; Industrial Relations has advised that Mines will have its own set of regulations. As a result, Part 10 and all associated definitions and schedules will be removed from the WHS regulations for Western Australia. However, mines workplaces will still have to comply with all other WA WHS regulations.	
Chapter 11 – General		
86. Which decisions under these Regulations are reviewable	R. 676 of provides a table of reviewable decisions and a description of the person eligible to make an application for a review.	
87. Review of decisions under the Act – stay of decision	R. 701 Review of decisions under the Act – stay of decision, has a jurisdictional note allowing for a prescribed period to be inserted.	Subsection 51A(2) of the <i>Occupational Safety and Health Act 1984</i> (OSH Act) provides a 7 day period for requesting an external review of improvement and prohibition notices.
88. Confidentiality of information – exception	R. 702 provides for the prescription of a corresponding WHS law for	The regulator has limited ability to disclose information.

<p>relating administration or enforcement of other laws</p>	<p>the purposes of s. 271(3)(c)(ii) of the WHS Act. The laws proposed are:</p> <p>Western Australia:</p> <ol style="list-style-type: none"> 1. <i>Building Act 2011</i> 2. <i>Criminal Code Act Compilation Act 1913</i> 3. <i>Dangerous Goods Safety Act 2004</i> 4. <i>Electricity Act 1945</i> 5. <i>Emergency Management Act 2005</i> 6. <i>Fire and Emergency Services Act 1998</i> 7. <i>Industrial Relations Act 1979</i> 8. <i>Rail Safety National Law (WA) Act 2015</i> 9. <i>Road Traffic (Vehicles) Act 2012</i> 10. <i>Transport (Road Passenger Services) Act 2018</i> 11. <i>Vocational Education and Training Act 1996</i> 12. <i>Western Australian Marine Act 1982</i> 13. <i>Workers' Compensation and Injury Management Act 1981</i> <p>Commonwealth:</p> <ol style="list-style-type: none"> 14. <i>Australian Border Force Act 2015</i> 15. <i>Customs Act 1901</i> 16. <i>Health (Miscellaneous Provisions) Act 1911</i> 17. <i>National Vocational Education and Training Regulator Act 2011</i> 18. <i>Occupational Health and Safety (Maritime Industry) Act 1993</i> 19. <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> <p>NSW:</p> <ol style="list-style-type: none"> 20. <i>Mine Health and Safety Act 2004</i> <p>Queensland:</p> <ol style="list-style-type: none"> 21. <i>Mining and Quarrying Safety and Health Act (Qld)</i> 	<p>There is no equivalent to s. 271(3)(c) of the WHS Act.</p>
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	Victoria: <i>Occupational Health and Safety Act 2004.</i>	
89. Publication of notices for class exemptions	R. 695 requires the regulator to publish a notice in the Government Gazette when an exemption is granted to a class of person.	Western Australia does not presently publish exemptions or provide class exemptions.
Record keeping		
90. Retention of records – general	Regulations 77(2); 85(4); 162; 303(2); 304(6)(a) introduce requirements for records to be kept for a prescribed period of time after the completion of the work for which they are created. These regulations relate to risk assessments, evidence of high risk work, and training records, with some retention requirements being triggered by a notifiable incident.	No equivalent.
91. Retention of records after cessation of employment	R. 445(3)(b); 461(1)(b)) introduce requirements for health records to be kept for a prescribed period of time after employment has ceased. These requirements relate to either records of training related to asbestos or health monitoring/surveillance.	No equivalent.
92. Health monitoring records	Health monitoring (regulations 50, 378(1)(b); 388(3); 418(1)(b); 444(1)(b)) requires the retention of records by the Person Conducting the Business or Undertaking (PCBU) for 30 years (airborne contaminants, hazardous chemicals, carcinogens, lead) and 40 years (asbestos).	r5.24 and r. 5.26: <ul style="list-style-type: none"> impose the 30-year requirement on the medical practitioner and the employer respectively; and health surveillance reports are to be provided to the WorkSafe Western Australia Commissioner (the Commissioner), should the doctor cease practicing or the business cease operating.

Glossary

Commission

Commission for Occupational Safety and Health

DMIRS

Department of Mines, Industry Regulation and Safety

model WHS regulations	15 January 2019s national model Work Health and Safety Regulations
OSH regulations	Occupational Safety and Health Regulations 1996
WA WHS regulations	Western Australian Work Health and Safety regulations
WHS	Work Health and Safety