



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

Submission templates - Work Health and Safety Regulations for Western Australia

Submission by:

P3 Risk and Safety Solutions

26th November 2019

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WHS Regulations submission coversheet

Section 1: Submission details

Full name	William Byrne		
Organisation and position (if applicable)	Director – P3 Risk and Safety Solutions Pty Ltd.		
Email	[REDACTED]		
Telephone			
Employment status (if applicable)	<input type="checkbox"/> Worker <input checked="" type="checkbox"/> Employer <input type="checkbox"/> Self-employed <input type="checkbox"/> Other (enter details)	<input type="checkbox"/> Principal contractor <input type="checkbox"/> Contractor <input checked="" type="checkbox"/> OSH professional	
Size of workplace	<input checked="" type="checkbox"/> Small (0-9)	<input type="checkbox"/> Medium (20-199)	<input type="checkbox"/> Large (200+)
Please indicate in what capacity you are making this submission (select one of the following categories)	<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Business <input type="checkbox"/> Community organisation <input type="checkbox"/> Employer organisation <input type="checkbox"/> Other (enter details)	<input type="checkbox"/> Industry representative <input type="checkbox"/> Academic <input type="checkbox"/> Government representative <input checked="" type="checkbox"/> Professional	
Which industry sector do you operate in?	All industries		
Your type of job or business (if applicable)	OHS consultancy and service provision business		

Section 1: Permission details

Internet publication

Public submissions may be published in full on the website, including any personal information of authors and/or other third parties **contained in the submission**.

Please tick this box if you wish for your input to remain confidential (that is, you **do not consent** to having your input published on the internet)

Anonymity

Please tick this box if you wish for your input to be treated as anonymous (that is, you **do not consent** to having your name, or the name of your organisation, published on the internet with your input)

Third party personal information

Please tick this box **if your input contains personal information of third party individuals**, and strike out the statement that is not applicable in the following sentence:

The third party **consents** / **does not consent** to the publication of their information.

WHS Regulations submission comments

Enter your comments on specific regulations in the table below. You may add new rows at the end of the table if you wish to include comments on other aspects of the national model WHS regulations.

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

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?

This template can be used for providing your views concerning:

- National Model Work Health and Safety Regulations
- Demolition licensing under the OSH regulations
- Commercial driver fatigue under the OSH regulations
- Protection from tobacco smoke under the OSH regulations
- Proposed deletions in Western Australia to remove overlap with the *Dangerous Goods Safety Act 2004*

Section 2: Feedback

Track-changed document submission

Which consultation document(s) are you providing feedback on?

- Differences between the national model WHS regulations and the OSH regulations 1996
- Consultation document WHS (Mines) Regulations for WA
- Consultation document WHS (Petroleum and Geothermal Energy Operations) Regulations for WA
- Proposed deletions in WA to remove overlap with the Dangerous Goods Safety Act 2004*
- Commercial vehicle drivers: Hours of work – Work Health and Safety Regulations for WA
- Protection from tobacco smoke – Work Health and Safety Regulations for WA
- Demolition work: Licence – Work Health and Safety Regulations for WA

Number of pages in your submission Total of 43 pages

Does this submission contain a **track-changed version** of the draft proposal?

Yes

No

If yes, submit as a Microsoft Word compatible document (.docx)*

General comments

Q1 What is the benefit to workplace participants of a proposal?

P3 Risk and Safety Solutions (P3RSS) represents a diverse range of industry sectors, business and councils mainly medium sized. The feedback from clients identified the main benefits were for businesses and workers who work across state boundaries and across currently different intra-state legislative regimes. In these cases, it was viewed that the model legislation should potentially reduce ambiguity and possibly unnecessary paperwork. Smaller businesses or those not operating across jurisdictions didn't see improvements from the proposal. Whilst employees were favourable of the introduction of industrial manslaughter provisions, P3RSS as a consultancy business is less convinced. The evidence to date indicates that prosecutions are painfully slow in coming close to the maximum sanctions, and an increased use of enforceable undertakings may have greater positive impact at a business and industry level.

Q2. What is the likely cost for you, your business and the Regulator to implement a specific proposal?

P3RSS and some of our customers (nominally the larger businesses that already have a national presence) see a majority "upside" as there is likely to be little change to the way with which they currently operate with a mature OHS system that is certified to an ISO standard. Our smaller and medium sized business clients are mixed with unknown additional administrative costs that appear to be both real and imagined. P3RSS sees that it is critical that Western Australian small and medium businesses must be better supported to understand and implement compliant OHS approaches early. This must be appropriately funded with resources to sustain all businesses, both in the city and regionally.

Q3. Is a specific recommendation likely to be effective in achieving healthier and safer workplaces?

P3RSS are of the opinion that there is a need for good data that is linked to simple yet effective targeted programs and campaigns to achieving healthier and safe workplaces. It is also important to utilise Health and Safety Representatives and implement genuine workforce consultation to effectively bridge the gap between work as done and work as imagined. Improved education with businesses in understanding then enforcing due diligence requirements as a proactive campaign would also be very effective. The regulator must be appropriately resourced and engaging to support small and medium sized businesses and to proactively engage with industry bodies such as the small business development corporation and similar to deliver a multi directional program and lift the whole industry collectively.

Q4. Are there any unintended consequences of adopting individual regulations in the model WHS regulations?

P3RSS and our clients acknowledge that there will inevitably be unintended consequences and the most obvious have been relating to administrative and training / retraining costs both for the businesses as well as the regulator themselves. The extent and impact of these cost (and resourcing) implications remain less clear although. By way of example of cost increases to business, the HRS training and retraining will increase costs per each elected HSR by at least 100% and possibly more

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relative to the current requirements. Cost increases to the regulator have been identified where numerous increased administration burden has been proposed.

It is however acknowledged that on a whole it is positive, and the negative cost impacts may be offset where there is the requirement to implement a strong safety management system, improved risk management, improved management of change, improved consultation and involvement of workers, and increased due diligence requirements.

Positive 'unintended consequences' could also include a fresh spotlight on health and safety in the transition, and ongoing through the introduction of the due diligence requirements at a business level.

Q5. If a new requirement is proposed by the model WHS regulations, what are the costs and benefits?

As highlighted in the responses to Q2 and Q4, we believe that the "devil will be in the detail" including the cost implication for the transition, management and ongoing maintenance. Small to medium business are likely to be greatest impacted from a proportional cost prospective and not likely to have any material increased benefits (such as a safer workplace). The regulator will be critical in supporting small and medium business in this transition, they must be fully funded, engaged and functional to achieve increased "understanding and buy-in" with simple "fit for purpose" solutions for Western Australian businesses.

WHS Regulations – Other general considerations:

1) Referenced AS or AS/NZS

Of the 15 referenced standards in the modern WHS Regulations, only 53% (8) remain current either as is or with full revision (same original date) or with minor amendments. 47% (7) have either been superseded or more critically in the case of AS 4801, being removed from service and replaced by ISO 45001.

Is it the intent to prescribe the ISO (or AS/NZS) OHS management system standard as a Class A – Asbestos removal operator licence pre-requisite?

Recommendation:

Do not include dates with any referenced standards and add a statement in the definitions regarding "compliance to the latest version". Alternatively, remove altogether from Regulations and use codes of practice that include the AS or AS/NZS standards or in a guidance note.

In the case of AS 4801 – OHS management system certification as a prerequisite for obtaining / retaining a Class A - Asbestos removal licence. This standard will no longer be used after 2021 and is being replaced by ISO 45001:2018. (There is however an "out" should the regulator determine an alternative/equivalent system).

2) Safety management systems (that are to be documented)

Only required for:

- (i) Class A - Asbestos removalists (ie certified safety management system to AS4801:2001) and
- (ii) Licenced Major hazardous facilities (which is expressed as a part of the documented and approved safety case).

Only the Class A Asbestos removalist SMS needs to be certified, the Licenced MHF does not.

Also, there is no prescribed requirement for a safety management system for other Construction Work, etc...

All sites deemed a "construction project*" require a WHS Management Plan (not a SMS). In the new WHS Regs this is construction activities that meet the \$250,000 threshold for the cost of the construction work where the cost of the construction work. Where the construction project includes

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"high risk" construction activities Safe Work Method Statements must be formalised, submitted to the Principal Contractor and approved prior to work commencing.

(NOTE: * current WA regulations deem a "construction project" as one that meets the definition of construction work and has more than 4 persons involved at the site. No cost value is specified, only number of persons on site)

Small and medium sized businesses need clarity and support across the board on how to best satisfy the requirements (both PCBU principal duties and the Chapter 3 - General Risk and Workplace Management regulations).

There is a "Model Code of Practice - How to manage work health and safety risks" (SWA, 2018) but very wordy and confronting, and doesn't appear to express the value of a basic (documented) SMS.

Given the significant increases in the penalties and the introduction of the industrial manslaughter provision I believe that a clearer mechanism and guidance is essential to at least give small and medium business an "opportunity" to improve without significant cost impacts.

Recommendation:

Establish a clearer guidance around the benefits of a documented SMS and a simple mechanism to facilitate this (whilst continuing to meet a risk-based approach).

Regulator to be sufficiently resourced to support the small and medium businesses for an extended period.

Promote the "Worksafe Plan" (or similar) program more vigorously and actively engage with the Small Business Development Corporation and industry associations.

3) The use of the term “without risk”.

The term “without risk” is used throughout the model WHS Regulations:

Chapter 3 – General risk and workplace management

- R 38 Review of control measures
- R 40 Duty in relation to general workplace facilities

Chapter 5 Plant and structures

- R 204 Control of risks arising from installation or commissioning
- R 209 Guarding and insulation from heat and cold
- R 239 Storage of amusement devices and passenger ropeways

Chapter 7 Hazardous Chemicals

- R 356 Keeping hazardous chemicals stable
- R 366 Stopping use of underground storage and handling systems

What is the practical implication of meeting the workplace standard of “without risk”?

Does the inclusion of the statement “so far as is reasonably practicable” provide the practicality aspect as no activity (nor living) is without risk in some form or other, and as such, is the use of this term (“without risk”) necessary?

Recommendation:

Do not include the use of this term – “without risk”, as P3RSS believes this to be unnecessary and adds complexity and confusion into what is intended to be legislation based upon a risk-based approach.

A heavy emphasis on upskilling and provision of examples will be needed to demystify what is meant by the term “without risk”. Critically important for the thousands of small and medium sized businesses that may not appreciate nuance and its “real-world” application.

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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>	<p>Noted – consider aligning with existing OSH regulations.</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>	<p>Noted – Regulator implications</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>	<p>Noted - Likely cost implications for the regulator (and taxpayer). If no demonstrable benefits, consider removing.</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>	<p>Noted – no further comment</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<p>5. Definitions– combustible liquid</p>	<p>Refer to the defined phrase (r.5) combustible liquid in:</p> <ul style="list-style-type: none"> a) r. 53 (flammable and combustible material not to be accumulated); b) part 3 of Schedule 12 (Manifest requirements – identification of hazardous chemicals); c) part 4 of Schedule 12 (Manifest – storage area for packaged hazardous chemicals); and d) part 7 of Schedule 13 (Placards for flammable liquids category 4 package or in bulk). <p>These provisions will be removed so the definition of combustible liquid is not required.</p>	<p>No equivalent.</p>	<p>Noted – no further comment</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>Agree with the endorsement.</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>Noted: What is the implication given that most are placing themselves immediately in “harms way” which is not aligned with the intent of the Act and regulations.</p> <p>Some only reference: Ambulance, and Fire and Emergency services.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
8. Definitions – emergency service worker	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).”	No equivalent.	Noted – No further comment
9. Definitions – excavation	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> .	No equivalent requiring the prescription of a relevant water law for bores.	Noted – No further comment
10. Definitions – primary emergency service organisation	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> ”.	No equivalent requiring the prescription of a primary emergency service organisation.	Noted – No further comment

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments				
<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="488 536 1178 823"> <tr> <td data-bbox="488 536 663 679">WHS r. 5</td> <td data-bbox="669 536 1178 679">“... 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="488 684 663 823">NOHSC:1006</td> <td data-bbox="669 684 1178 823">“... 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 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. 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>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>	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> <ol 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. 	<p>Noted – Recommend make previous amendments as suggested.</p>
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 ...”						

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<p>12. Specified VET course - Asbestos</p>	<p>The WHS regulations prescribe the following asbestos specified VET courses:</p> <ul style="list-style-type: none"> (b) in relation to Class A asbestos removal work—the VET course Remove friable asbestos; or (c) in relation to Class B asbestos removal work—the VET course Remove non friable asbestos; or (d) in relation to the supervision of asbestos removal work—the VET course Supervise asbestos removal; or (e) in relation to asbestos assessor work—the VET course Conduct asbestos assessment associated with removal; 	<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>Noted – compare with other jurisdictions and implement best fit for WA small and medium sized businesses.</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>Noted – No further comment</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>	<p>Noted - How unworkable is it really? What is the “lived experience”? Need to ensure that the implications to small and medium businesses are considered.</p>
<p>15. Health and Safety Representatives</p>	<p>R. 18 provides details in relation to the procedures for the election of a health and safety representative.</p>	<p>The OSH Act (sections 31(6) to (11)) and the Mines Safety and Inspection Act (s. 56) provide comparatively more details.</p>	<p>Noted – Retain existing detailed provisions only if this makes sense otherwise simplify.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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.	<p>Noted – This adds a significant cost implication for small and medium businesses as this at least doubles the training costs regarding refreshers PLUS addition 1 days wages every 24 months.</p> <p>Actual benefit to workplace safety for the cost under the existing training regime also unclear.</p>
17. Review of control measures and asbestos management control plan	<p>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:</p> <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. <p>HSRs may also request a review of an asbestos management control plan under the model WHS regulations (430(1)(d); 430(2)).</p>	No equivalent authority for an HSR to trigger a review of control measures is prescribed.	<p>Noted – Likely to be a positive if the true intent remains improved WHS (rather than another agenda).</p>
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.	<p>Noted – Could this be better addressed with an improved Code of Practice provision that represents all sectors which is critical.</p>
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.	<p>Noted – No further comment</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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.	Noted - Recommend staying with the existing provision wording. And if so, remove the publication date from the AS/NZS 1269.1 to future proof the requirements.
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)).	Noted – There will be increased costs to small and medium business that are already under financial duress. Where does the “prescribed workplace” testing fit (Workers’ Compensation and Injury Management Act 1981 WA) ? With the suggested provision of audio testing every 2 years. Is there a provision in place for administering this to the degree that will be required? Again, increased costs for small business due to implication of workplaces where ear plugs are used. A greater education program is required to assist small and medium businesses in these areas.

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<p>22. Management of risk of fall</p>	<p>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:</p> <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. 	<p>Under r. 3.55, employers and main contractors, self-employed people or a person having control of a workplace must ensure that:</p> <ol style="list-style-type: none"> 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>	<p>Noted – Recommend updating the WHS to include these from the OSH Regs.</p>
<p>23. Notice of assessment – time to apply, HRWL</p>	<p>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.</p>	<p>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>	<p>Noted – Recommend making amendments to provide flexibility as this is mainly an administration aspect rather than an actual acute control.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<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>Noted - This is administrative. What was the original intent?</p> <p>The issue as we see it is more around the regulation and policing of those who assess and issue the HRWL. Focus should be on this.</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>Noted – We assume that this is used following the issuing of a prohibition notice directly on the HRWL holder. Administrative and policing issue.</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>Noted – Although this will add additional burden on the regulator to administer a tighter timeframe, this will align with the other jurisdictions.</p> <p>There will be an increased responsibility to the individual HRWL holder and the PCBU will need to be aware of this, especially small and medium businesses (WA).</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
27. English language requirements	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.	R. 6.20(2)(d) includes an English language requirement as part of a notice of satisfactory assessment.	Noted – This should ensure consistency across jurisdictions which is positive for small and medium businesses.
28. Concrete placing booms - HRWL	<p>Concrete placing boom is defined in r. 5 as:</p> <p>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>No provisions in the WHS regulations deal with the transition to include the additional types of concrete placing booms that will require an HRWL.</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> <p>(a) with 2 or more stages; and</p> <p>(b) mounted on a vehicle; and</p> <p>(c) able to be slewed or luffed; and</p> <p>(d) along which concrete is pumped by means of a pipe attached to, or incorporated within, the boom.</p>	Noted – support making amendments as appropriate.
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.”	<p>Schedule 6.3, Division 5, Cl 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 fork arms”.</p> <p>Where the definition in the OSH regulations is limited to “a pair of fork arms”, 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.</p>	Noted – support making amendments as appropriate to achieve consistency.

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<p>30. Reach stackers – HRWL</p>	<p>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.</p> <p>No provisions in the WHS regulations deal with the transition to include the Reach stackers that will require an HRWL.</p>	<p>There is no Reach stacker HRWL class.</p> <p>If a Reach stacker meets the definition of non-slewing mobile cranes, then an HRWL is required.</p>	<p>Noted – No further comment.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<p>31. Boilers – high risk work licence classes</p>	<p>The model WHS regulations include only two classes of HRWL for boilers:</p> <ul style="list-style-type: none"> a) standard boiler operation; and b) advanced boiler operation. <p>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 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>The OSH regulations presently require an HRWL to operate three classes of boilers:</p> <ul style="list-style-type: none"> • pressure equipment operation, basic; • pressure equipment operation, intermediate; and • pressure equipment operation, advanced. 	<p>Noted – No further comment.</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>Noted – Further consideration would be required based upon a decision to continue to use independent RTOs (Registered HRWL Assessors).</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<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; <p>load shifting machinery on suspended floor; and explosives.</p>	<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; • 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>Noted - These specifics appear to be part of the AS2601 standard.</p> <p>Where viewed as a safer alternative the newer regulations could be bolstered by simple addition of this into the new WHS such that the reliance on buying an AS is reduced (reduce cost to business) – or added to Code of Practice.</p> <p>There would be an ongoing impact on an interstate PCBU or the WA PCBU where the specific have been altered when working across jurisdictions.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<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>Noted – unsure of appropriate comment</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>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>Noted - No further comment</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>Similar provisions do not presently exist in the OSH regulations.</p>	<p>Noted – Administrative aspect. Support if it makes practical sense.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<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 <p>a person who has been trained and satisfactorily completed a competency-assessed training course on testing and tagging using a portable appliance tester.</p>	<p>Noted - The new regulation appears to be more open to interpretation and does not appear to provide sufficient “prescriptive” guidance.</p> <p>Is this captured in the CoP for Construction work to provide clarity?</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).</p> <p>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>Noted – A lack of “visual” aids may be a cost saving for the WA PCBU, however it is harder for workers and others identify “tagged and tested” equipment and indirectly may place a further administrative burden to maintain an up to date register at each workplace at all times.</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>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>Noted – Consider the applications in other jurisdictions.</p> <p>Has consideration been made for any additional burden placed on the PCBU, the Regulator, the supervisor and workers?</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
40. Implementation of OSH regulations – connection to construction site	No equivalent.	R. 3.62 specifies when electricity is to be connected to a construction site.	Noted - What mechanisms are in place in other jurisdictions? Was this an unnecessary regulation in the WA instrument or is it the “trigger” for the process?
41. Implementation of OSH regulations – evidence portable electrical equipment has been tested	No equivalent.	R. 3.63 requires a person bringing electrical equipment to a construction site to provide evidence the electrical equipment has been tested.	Noted – Would the intent be to have this included in the CoP for Construction work? (That currently does not exist in WA). If not, recommend adding this into the WHS Regs.
42. Diving work - construction	Part 4.8 provides the requirements for diving work 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.	R. 3.29 requires persons undertaking construction diving work to comply with the diving standard.	Noted - The date on the standard as quoted in this table has already been update to AS/NZS 2299.1:2015 has been updated. As a general rule of thumb all dating when referencing an Australian Standard should be removed to ensure that the standard remains current.
43. Diving work - other	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.	General duty to provide safe systems of work apply.	Noted – No further comment.
Chapter Five – Plant and Structures			

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
44. Roll-over protection on tractors	<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>Noted - No issues with the change.</p> <p>Potential cost impact on PCBU's including councils, farmers and the lawn mowing industry and other excavation and quad bike operators.</p>
45. Tree lopping	<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>Noted – How do arborists do this now?</p>
46. Retention of records - plant	<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>Noted – Appears to simply be an Administrative issue.</p> <p>Simplify for consistency</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<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>Noted – So what have the recent WHS reviews shown? Take guidance from these.</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>Noted - No additional comment</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
49. Duties of a person conducting a business or undertaking involving the management or control of plant – Design life	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.	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.	Noted – Include whichever is more appropriate.
50. Duties of a person conducting a business or undertaking involving the management or control of plant – Amusement devices	R. 241 requires an annual inspection of amusement devices and passenger ropeways by a competent person.	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.	Noted – Include whichever is more appropriate.
51. Altered plant designs to be registered	R. 244(3) exempts tower and gantry cranes from design registration if the cranes are moved to a new location.	R. 4.2 requires the registration of the cranes and their supporting structure if moved to a new location. The Commission has endorsed consideration of the WHS regulations for Western Australia being amended to be consistent with the OSH regulations.	Noted - Give the number of collapses outside of WA, we agree with the Commissions endorsement.
Chapter Six – Construction Work			

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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>	<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.</p>	<p>Noted - Recommend expanding to capture the additional activities</p>
53. Meaning of high risk construction work	<p>R. 289 291 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). 	<p>Noted – Is this an interpretative issue or simply semantics?</p> <p>What is the likely impact on small and medium businesses in the high risk construction work sector.</p>
54. Threshold for construction work	<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>Noted - Does this standard continue as a recognised and maintained standard as the NOHSC no longer exists and was replaced in 2009 by Safe Work Australia.</p> <p>According to Safe Work Australia this is an archived standard and replaced by the CoP – Construction Work.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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 <i>AS3850 – Tilt-up concrete construction</i> (the tilt-up standard); and • competency requirements. 	Noted – Recommend expanding inclusions if this is the better option.
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.	Noted – Add AS 3850 into the Code of Practice. But ensure that the publication year is not stated to ensure currency remains.
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”.	Noted – No further comment.

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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 alternative arrangements to issue CIT cards.</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 be issued to a person by the Registered Training Organisation that conducted the CIT training course.</p>	<p>Noted - Retain current arrangement as the additional "handoff" transaction simply adds cost and administration burden into the system (unless there is evidence that this has improved workplace safety performance).</p>
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.	Noted – No further comment (As unclear of the true intent of this original regulation)
Chapter Seven – Hazardous Chemicals	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		

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
60. Dangerous goods – relevant safety laws	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.	No equivalent.	Noted
61. Dangerous goods – overlap	<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 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>		Noted

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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>	<p>Noted – No further comment.</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>	<p>Noted – Is a requirement for other business such as Major Hazard Facilities and Class A Asbestos removalists (as stated in other sections of the WHS Regs) due to the requirement of a Safety Case (and safe management system) or a certified safety management system.</p> <p>Unclear of the benefit for the general small or medium business.</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>	<p>Noted – Consider the benefit of modifying the R. 368 to read “at risk” (although this needs to be better defined)</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>Noted – We agree with the commission, as the medical practitioner is best placed to independently report exposures. However if this isn't the case there will need to be increased education of the PCBU's around this aspect and the regulator will need to “police” closely.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
66. Duty to give health monitoring report to relevant persons conducting businesses or undertakings	R. 377 permits the PCBU to provide the health monitoring report to others at a workplace that may have a corresponding duty.	R. 5.23(4) requires information from health monitoring to be kept confidential.	Noted – Delicate issue and guidance will be required to ensure that individuals privacy is retained and there is no discrimination, especially from clients or principal contractors.
67. Using, handling and storing restricted hazardous chemicals	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%.	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.	Noted – No further comment.
68. Risk assessment for hazardous substances report	No equivalent.	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.	Noted – Recommend retaining this risk assessment (or the equivalent added into the appropriate regulation).
69. Notification of lead risk work	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”.	No equivalent.	Noted – No further comment.
Chapter Eight - Asbestos			

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
70. Work involving asbestos or ACM – prohibitions and exceptions	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 <i>Environmental Protection Act 1986</i> will also be inserted into r. 492(2)(f) and r. 500(1)(b).	No equivalent.	Noted – No further comment.
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.		Noted – No further comment.
72. Asbestos Removal Work	<p>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.</p> <p>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.</p> <p>There is also a requirement for asbestos assessors to be licensed (regulation 493).</p>	<p>Prescribes Unrestricted (r. 5.45A) and Restricted (r. 5.45B) asbestos removal licences.</p> <p>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.</p> <p>Licences for asbestos assessors are not required.</p>	Noted – No further comment.

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
73. Work involving asbestos or ACM – Training courses	The specified VET courses for asbestos are defined in regulation 5 of the model WHS regulations.	<p>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.</p> <p>The asbestos courses presently approved by the Commissioner are:</p> <p>Restricted Asbestos:</p> <ul style="list-style-type: none"> • RAL001 – Restricted Asbestos Licence; or • CPCBC4051A m- Supervise Asbestos Removal <p>Unrestricted Asbestos:</p> <ul style="list-style-type: none"> • CPCDE3015A – Remove Friable Asbestos. 	Noted – No further comment.
74. Certified safety management systems	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>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>	<p>Noted – Issue with the specification of AS 4801:2001 as this standard is in the process of being replaced completely by ISO 45001:2018.</p> <p>Referencing / specifying an ISO standard may not be appropriate; however, we support the need for a robust and specific safety management system (certified or otherwise)</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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>	<p>Noted – Generally support that a competent person is one that has completed the specified VET course.</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 have the obligation to create and maintain asbestos registers.</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>	<p>Noted – Generally support the establishment of asbestos registers in these instances.</p> <p>However, is there going to be an increased cost burden on private residents and others who own buildings and may be required to create and maintain an asbestos register prior to having maintenance or construction work undertaken on their residence?</p>
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>	<p>Employers should obtain a copy of the asbestos register before conducting demolition work.</p>	<p>Noted – refer to comments to Item 76 above.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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).	Noted – Implications for adopting R 483 will add cost into maintenance activities across all industry. A thorough awareness program will be required across all industry to achieve smooth transition.
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.	Noted – Effective definitions (and examples) around “trace levels”, “determined” and who is the “competent person” will be critical.
80. Laboratories that can be used to test asbestos	Laboratories that can be used to test asbestos (regulations 423; 479(2)(b); 479(2)(c)) are prescribed. These are a: <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 with guidelines published by SWA; or • laboratory operated by the regulator. 	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.	Noted – Acknowledged. As an aside - is the ChemCentre not still part of the state government and as such accessible to the DMIRS?
81. Asbestos removal control plan	R. 464 requires a licensed asbestos removalist to prepare an asbestos removal control plan. Asbestos work is also high risk construction work (r. 291(d)) and requires a safe work method statement.	An asbestos removal plan is not required for non-friable asbestos removal. R. 5.45, for friable asbestos, requires compliance with the asbestos removal code and the development of an asbestos removal control plan.	Noted – This will add cost into the system. Is the evidence in the other jurisdictions that this creates a safer outcome?

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
82. Notifications – Unrestricted asbestos removal work	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).	R. 5.45E permits the Commissioner to include conditions on an asbestos removal licence. 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. A notification to the Commissioner for Restricted Asbestos removal work (Class B) is not required under the OSH regulations.	Noted – Increased administration process for both regulator and Class B asbestos removalist. Increased costs.
83. Notifications – Threshold to advise regulator of respirable asbestos fibres	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.	Notification to the regulator is not required.	Noted – New administration reporting process to install for both regulator and asbestos removalist as well as greater monitoring requirements. Increased costs.
84. Informing persons in the immediate vicinity	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.	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.	Noted – Needs closer scrutiny.
85. Disposing of asbestos waste and contaminated personal protective equipment	R. 472 and r. 484 provide requirements for appropriate disposal of asbestos waste and contaminated personal protective 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.	R. 5.52 requires disposal to be compliant with the asbestos removal code which requires a generic label for asbestos waste.	Noted – Local council impacts.
Chapter Nine – Major Hazard Facilities	The model WHS regulations provide for the regulation and licensing of major hazard facilities.		

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
	<p>At this time the major hazard facilities legislation Dangerous Goods Safety Act 2004 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	<p>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.</p>		
Chapter Eleven – General			

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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.		Noted – No further comment.
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.	Noted – No further comment.

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
<p>88. Confidentiality of information – exception relating administration or enforcement of other law</p>	<p>R. 702 provides for the prescription of a corresponding WHS law for 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>Victoria:</p> <ol style="list-style-type: none"> 22. <i>Occupational Health and Safety Act 2004.</i> 	<p>The regulator has limited ability to disclose information. There is no equivalent to s. 271(3)(c) of the WHS Act.</p>	<p>Noted – No further comment.</p>

Reference to specific model WHS/OSH reg number	Model WHS Regs (General)	OSH Regs	Comments
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.	Noted – Unclear of intent.
	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.	Noted – Implications for small and medium businesses that do not have a documented safety management system.
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.	Noted – Implications for small and medium businesses that do not have a documented safety management system.
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. 	Noted – Recommended that the current OSH Reg be retained due to the risk of loss of record integrity that are managed by involving the Regulator and the medical practitioner (rather than just relying on the PCBUs). Incorporate the increased retention time for asbestos records to 40 years.

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