



*Submission on the
Work Health & Safety (Resources) Bill*

*To the WA Department of Mines &
Petroleum*

August 2015

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcome to ensure the Australian resource industry is an attractive place to invest, do business, and create jobs.

Having actively served resource employers for more than 97 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

AMMA works with its strong network of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

Our members include companies working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to those industries.

The resource industry currently employs more than 1.1 million people either directly or indirectly and accounts for 18% of economic activity in Australia¹ (double its share of a decade ago).

Australia's earnings from resources and energy commodities are forecast to increase to around \$178 billion in 2015-16².

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¹ Reserve Bank of Australia research discussion paper, *Industry dimensions of the resources boom*, February 2013

² Office of the Chief Economist, *Resources and Energy Quarterly—June Quarter 2015*

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EXECUTIVE SUMMARY

- AMMA welcomes the opportunity to provide input to the WA Department of Mines & Petroleum on the consultation draft of the Work Health & Safety (Resources) Bill.
- It is worth noting at the outset that AMMA did not support the full consolidation of the three areas of safety legislation that have now been consolidated into the draft Bill.
- In AMMA's December 2014 [submission](#) to the consultation paper on the structure of mining, petroleum and major hazard facilities safety legislation, AMMA said while we were not opposed in principle to some level of consolidation in those areas, we believed, and still believe, that unifying all three areas of legislation into a single Act would not be the best outcome for Western Australia.
- We could see utility in having one regulator for OHS and process safety aspects of MHFs as opposed to having the Department of Mines & Petroleum (DMP) regulate process safety and a separate regulator, WorkSafe WA, regulating OHS as is currently the case. Those benefits would have flowed from Option 2 outlined in the initial consultation paper, which was the option AMMA supported.
- AMMA said it was important to keep mine safety separate to the other two areas of regulation in any consolidation exercise. Option 2 would have seen mine safety continue to be separately regulated under its own Work Health & Safety (Mines) Act WA if and when it replaced the current Mines Safety & Inspection Act 1994 (WA).
- Mine safety in WA is very high by world standards and has seen significant improvements in the past 20 years during which time the Mines Safety & Inspection Act 1994 (WA) has been in place.
- Petroleum and MHF safety are very much built on a "safety case" model whereas mine safety is built on a "safety management system" model. An ongoing focus of mine safety legislation is a risk-based approach which has been the emphasis of activity in recent years, and AMMA maintains that should continue under the current consolidation process.
- With all of the above in mind, full consolidation is the option being progressed by the WA government and AMMA is engaging with that process in good faith, providing feedback on the Bill and its progress accordingly.

RECOMMENDATIONS

Recommendation 1

- The Work Health & Safety Bill (WA) for general industry and the Work Health & Safety (Resources) Bill WA be progressed and finalised together so that consistency between the two can be assured and so that stakeholders can give informed feedback on both pieces of legislation.

Recommendation 2

- Given this is an “indicative” version of the Bill only, stakeholders have another opportunity to provide feedback on a subsequent version of the Bill before it is finalised and tabled in parliament.

Recommendation 3

- Noting that much of the detail and prescription in the three areas will come via the Work Health & Safety (Resources) Regulations rather than the Bill, stakeholders be able to consider the Regulations before the Bill is finalised.

Recommendation 4

- Any PCBU responsibility to provide safe accommodation (see s19(4) of the Bill under ‘Primary duty of care’) must not extend, either intentionally or unintentionally, to allowing unions right of entry to private accommodation, both either in the Work Health & Safety Bill or the Work Health & Safety (Resources) Bill. To that end, AMMA seeks an explicit prohibition within both Bills (for further details see the chapter on ‘Accommodation issues’ in this submission).

INTRODUCTION AND BACKGROUND

1. Currently, legislated safety obligations in the state of WA in mining, petroleum & geothermal, and major hazard facilities (MHFs) are housed in six different state Acts (and accompanying Regulations):
 - a. Mines Safety & Inspection Act 1994 (mine safety);
 - b. Petroleum and Geothermal Energy Resources Act 1967 (petroleum and geothermal safety onshore);
 - c. Petroleum Pipelines Act 1969 (petroleum and geothermal safety for land-based petroleum pipelines);
 - d. Petroleum (Submerged Lands) Act 1982 (petroleum and geothermal safety in WA's territorial sea);
 - e. Dangerous Goods Safety Act 2004 (process safety for MHFs); and
 - f. Occupational Safety & Health Act 1984 (OHS for MHFs).

Modernising safety legislation

2. The consolidated indicative version of the Work Health & Safety (Resources) Bill comes at a time when general safety laws have also undergone a modernisation / harmonisation process with the exposure draft of the Work Health & Safety Bill for general industry released in late 2014.
3. AMMA notes, however, that the Work Health & Safety Bill has not yet been finalised and tabled in parliament.
4. Separate mine safety legislation was also in the process of being developed for WA and was expected to be called the Work Health & Safety (Mines) Act, which would eventually replace the current Mines Safety & Inspection Act 1994 (WA).
5. That mine safety reform process, which was incredibly political in and of itself, was close to completion, having started some six or seven years ago under the National Mine Safety Framework (NMSF). It was expected that new mine safety legislation would be implemented in mid-2016.
6. In short, the current consolidation process creates further uncertainty in this area (and employers must be given sufficient time to come to grips and prepare for it), as does the delay of the general Work Health & Safety Bill (WA).

7. With consolidation of mine safety with the other two areas of regulation now proceeding, AMMA believes it is important that the Work Health & Safety Bill be progressed at the same time so that employers have a full understanding of the new regulatory landscape in WA.
8. If the Work Health & Safety Bill is not planned to be progressed at this point in time, this is something employers should be made aware of in the context of considering this current Bill.

ACCOMMODATION ISSUES

9. AMMA's long-running stance in relation to union access to worksites has been that the preferred persons with responsibility for entering sites to investigate safety issues should be the regulators and inspectors with the responsibility for administering and enforcing the safety legislation in each jurisdiction.
10. Having said that, AMMA has no problem with employees exercising their right to be represented by their union, and the union on their behalf raising any health and safety issue with the employer and inspector, without necessarily having to enter the workplace themselves.
11. In short, AMMA maintains that a right of entry for union officials must set appropriate boundaries to ensure such rights are not used as a means to pursue industrial agendas.
12. At present, unions are pursuing an industrial agenda of gaining right of entry into accommodation villages which at present are explicitly protected from union access. Unions are doing so through submissions to various inquiries that are currently on foot, including the two FIFO-related inquiries in WA and Qld.
13. Under no circumstances should the Work Health & Safety (Resources) Bill or the Work Health & Safety Bill for general industry have the effect of opening up private villages or accommodation to union right of entry and all that this entails. Current protections are there for a reason – to allow employees privacy in their private time – and to remove such a right is something AMMA vehemently opposes.
14. No extension of right of entry entitlements to residential premises should be included in the current (or any other) Bill, or through consequential amendments to the Industrial Relations Act 1979 (WA) which may impact on the other legislation in this area.
15. As a safeguard, s129 and s170 of the model Work Health & Safety Act adopted in other participating jurisdictions should be included in the Work Health & Safety (Resources) Bill unless another safeguard is put in place.
16. [Section 129](#) states (under threat of a \$10,000 penalty):

“A WHS entry permit holder must not enter any part of a workplace that is used only for residential purposes.”
17. [Section 170](#) states that the powers of an “inspector” in relation to entry are not exercisable in relation to any part of a place that is used only for residential purposes except:

- a. With the consent of the person with management or control of the place;
or
 - b. Under the authority conferred by a search warrant; or
 - c. For the purpose of gaining access to a suspected workplace only if the inspector reasonably believes that no reasonable alternative access is available and that this be done at a reasonable time having regard to when work is carried out at the place to which access is sought.
18. Alternatively, a provision similar to that contained in [s493](#) of the Fair Work Act 2009 (Commonwealth) could be included in the Work Health & Safety (Resources) Bill. That section states very clearly:
- “The permit holder must not enter any part of premises that is used mainly for residential purposes.”*
19. As with the Chamber of Minerals & Energy submission to this Bill, AMMA recommends in addition to the above safeguards, that the duty to maintain accommodation remains qualified as a “maintenance” duty and continues to be based on what is “reasonably practicable” depending on the level of control and management the duty holder has.
20. AMMA would be pleased to provide further information or answer any follow-up questions in relation to this submission.