

*Submission to the discussion paper*

*Work Health & Safety Regulations for  
Western Australia*

*August 2016*



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 98 years, AMMA's membership spans the entire resource industry value chain: exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to those industries.

AMMA works to ensure Australia's resource industry is an attractive and competitive place to invest, do business, employ people and contribute to our national wellbeing and living standards.

The resource industry is and will remain a major pillar of the national economy and its success will be critical to what Australia can achieve as a society in the 21st Century and beyond.

The Australian resource industry currently directly generates over 8% of Australia's GDP. In 2014-15, the value of Australian resource exports was \$171.9 billion. This is projected to increase to \$256 billion in 2019-20. It is forecast that Australian resources will comprise the nation's top three exports by 2018-19. Over 50% of the value of all Australian exports are from the resource industry.

Australia is ranked number one in the world for iron ore, uranium, gold, zinc and nickel reserves, second for copper and bauxite reserves, fifth for thermal coal reserves, sixth for shale oil reserves and seventh for shale gas reserves.

AMMA members across the resource industry are responsible for significant levels of employment in Australia. The resources extraction and services industry directly employs 219,800 people. Adding resource-related construction and manufacturing, the industry directly accounts for four per cent of total employment in Australia.

Considering the significant flow-on benefits of the sector, an estimated 10 per cent of our national workforce, or 1.1 million Australians, is employed as a result of the resource industry.

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## EXECUTIVE SUMMARY

- AMMA welcomes the opportunity to make a submission on the proposed Work Health & Safety Regulations for Western Australia (WA), which represents an important part of WA's participation in the nationally harmonised work health and safety system (WHS) for general industry.
- AMMA has been actively involved in the WHS harmonisation process from the outset, having made detailed submissions to the *National review into model OHS laws* in July 2008 and the *Exposure draft for the Model OHS Act and Stage 1 Model Regulations* in November 2009.
- AMMA has closely tracked announcements and proposals as they specifically pertain to WA's participation in the nationally harmonised scheme. AMMA has previously provided a comprehensive submission during the public comment period for the *Work Health & Safety Bill (WA)*, which is the legislation that the current regulatory proposals will underpin.

### Key issues for the resource industry

- The resource industry is committed to continuously improving health and safety outcomes at the workplace. Many AMMA members operate across state and territory WHS jurisdictions, with almost half of AMMA's membership having operations in WA, reflecting the importance of WA to Australia's resource industry and our economy.
- Multi-jurisdictional operators, including many AMMA members, spend significant time and resources understanding their obligations and implementing systems under various WHS and mine safety regimes to which they are subject, as well as educating employees who will work across jurisdictional borders.
- As such, AMMA has an interest in ensuring the "harmonisation" of Australia's WHS laws and regulations yields maximum benefits in terms of standardisation, with minimal differences between jurisdictions.
- As a core principle, AMMA supports standardisation so that businesses can navigate their obligations in jurisdictions seamlessly, and ensure that their compliance efforts contribute to making resource workplaces safer. Having said that, it is noted that WA will deviate from the Model Regulations in the ways outlined in the discussion paper. Notwithstanding AMMA's core position favouring standardisation, AMMA has responded to key proposals contained in the discussion paper on their merits.

- AMMA has also historically focused on the intersection of WHS and workplace relations in areas such as union access to workplaces and the powers of elected health and safety representatives (HSRs).
- This submission addresses those key areas as well as providing feedback on other proposals of relevance to AMMA's membership, including the option of enforceable undertakings as outlined below.

### **Enforceable undertakings**

- A key difference between the Model WHS Act (which has been adopted by other participating jurisdictions) and the WA version of the Act carries over into the current Regulations.
- Under the Model Act, and in other participating jurisdictions following the harmonised model, persons conducting a business or undertaking (PCBUs) can enter into enforceable undertakings as an alternative to prosecution. The latest public draft of the Work Health & Safety Bill (WA) did not contain the option of enforceable undertakings as an alternative to prosecution, but did include enforceable undertakings as an option once a matter had gone to court (thus retaining in WA the current provisions of the Occupational Safety & Health Act (WA) (OSH Act) in that regard).
- As AMMA noted in its submission to the earlier Bill, AMMA does not support the removal of the option for undertakings under the standardised model legislation. AMMA's earlier submission noted that WA courts to date have not taken up enforceable undertakings. An example of such an enforceable undertaking might be a commitment by a PCBU to train staff to prevent future safety incidents occurring.
- WorkSafe WA has said that enforceable undertakings as an alternative to prosecution are not practical because the regulator would then have to monitor all undertakings entered into, which would divert its resources away from investigation and compliance.
- AMMA maintains that is not a valid basis on which to deny WA employers the alternatives to prosecution that exist in other jurisdictions. It is also surprising that:
  - WorkSafe WA apparently lacks the capacity to monitor undertakings that its counterpart regulators apparently have in other state jurisdictions.
  - By implication, once a prosecution proceeds, WorkSafe WA has little or no further contact with a workplace / employer and, in particular, does not conduct any follow-up monitoring or inspection.

- AMMA urges the WA Government to rethink its position and to include enforceable undertakings as an option in the final Bill and in the Regulations, and to incorporate into the WA system national best practice in this area. If that requires increased funding for WorkSafe then extra funds should be allocated for that purpose.

### **Union access to workplaces**

- AMMA notes that the proposed Regulations do not include Part 2.4 of the Model Regulations relating to workplace entry by WHS entry permit holders. It has long been the WA government's position that it would instead refer to its existing IR regulation for workplace entry rights by permit holders rather than to the Model WHS Act and Regulations.
- To that end, the regulatory proposals in the current discussion paper are simply an extension of what the WA government has said it would do all along in participating in the nationally harmonised scheme.
- AMMA accepts that WA will abstain from national harmonisation in the area of union access to workplaces. In the event that substantial changes are made to either the WA IR Act's union access provisions or to the WA Work Health & Safety Act and / or Regulations in future, AMMA believes this area of regulation should be reviewed to see if standardisation can occur without detriment to WA businesses.
- We note in making this submission the growing trend for permit holders from some unions to undertake periods of work across different state jurisdictions, and the nationally consistent regulation of entry permits under the Fair Work Act 2009 (Commonwealth).

### **The current political context**

- AMMA notes that the current regulatory proposals have been released for consultation at a time when there is a limited number of state parliamentary sitting days between now and the WA state election which will be held in March 2017.
- We also note that at the same time as stakeholders are responding to these regulatory proposals for general industry, consultation is being undertaken on proposals for consolidated Regulations covering safety in mining, major hazard facilities and petroleum operations.
- AMMA notes that at the time of consulting over the two separate Regulations, neither piece of legislation has been finalised.
- AMMA notes that should the government change in WA next year, Labor has not committed to progressing either piece of legislation or the accompanying

Regulations. While AMMA does not agree with all proposals in the WA Work Health & Safety Bill and Regulations, we do believe they represent important progress towards the goal of harmonisation and should be passed through parliament during its remaining sitting days as a priority.

- Given that the current discussion paper only includes regulatory proposals, not full Regulations, AMMA would welcome the opportunity to provide feedback on final Regulations for general industry as well as for resources and major hazards before they are finalised. With both sets of legislation and regulations having a proposed start date of 1 July 2017, there should be ample time to review final Regulations before legislation takes effect.

## AMMA'S RESPONSE TO SPECIFIC PROPOSALS

| <b>Recommendations</b><br>Amend the WHS regulations to: |  | <b>Provisions affected</b>                    | <b>AMMA comment</b>  |
|---|--|---|--|
| <b>1:</b>   | Remove the requirement for a record to be retained after the completion of the work or notifiable incident.                              | 77(2); 85(4); 162;<br>303(2); 304(6)(a)       | AMMA supports this provision to minimise the regulatory burden associated with record keeping under the Regulations.   |
| <b>2:</b>   | Remove the requirement for training records to be retained after employment has ceased.  | 445(3)(b);<br>461(1)(b)                       | AMMA supports this provision to minimise the regulatory burden associated with record keeping under the Regulations.   |
| <b>3:</b>   | Require that health monitoring records for lead, asbestos and hazardous chemicals are provided to the worker on cessation of employment. | 378(1)(b); 388(3);<br>418(1)(b);<br>444(1)(b) | While AMMA supports current requirements for health monitoring records to be provided to employees for lead, asbestos and hazardous chemicals after the employer obtains them, AMMA believes individuals can retain those records themselves and that no additional administrative burden should be imposed on business to provide those records again on cessation of employment. |
| <b>4:</b>   | Require that results of monitoring for airborne contaminants are provided to the worker as soon as they are available.                   | 50.   |  |

| Recommendations               |   | Provisions affected  | AMMA comment   |
|-------------------------------|---|--|--|
| Amend the WHS regulations to: |   |  |  |
| 5:                            | Remove the requirement for a record related to plant with presence sensing equipment to be retained for five years. | 226(2)(a)  | AMMA supports this provision to minimise the regulatory burden associated with record keeping under the Regulations. |
| 6:                            | Delete the requirement for persons to keep specified documentation available for inspection.                        | 94; 124; 226(3); 230; 237(4); 262; 303(4); 304(5); 313(4); 445(4); 465(3)(b); 505.   |  |
| 7:                            | Replace the placeholder phrase 'external review body' with the defined term <b>the Tribunal</b> .                   | 105(5)(b), 519(5)(b) and 683(1) and 683(2)(b).   | Support.   |
| 8:                            | Clarify that spent convictions are not required to be declared.   | 87(2)(h) 90(a), 107(2)(a), 116(2)(f), 119(a), 135(2)(a), 492(2)(f)(i) and 492(2)(f)(iii) 500(1)(a) and 500(1)(b), 521(2)(a). |  |
| 9:                            | Refer to the Environmental Protection Act 1986.   | 419(3)(e); 492(f)(iii), 500(b).  |  |

| Recommendations               |   | Provisions affected   | AMMA comment |
|-------------------------------|---|---|--------------|
| Amend the WHS regulations to: |   |   |              |
| 10:                           | Remove the regulator from the definition of <b>accredited assessor</b> .  | Definition of <b>accredited assessor</b> .                    |              |
| 11:                           | Remove the exception permitted if the <b>accredited assessor</b> is the regulator.  | 114(5).   |              |
| 12:                           | Replace the defined term <b>electricity supply authority</b> with the defined term <b>network operator</b> from regulation 4 of the Electricity (Network Safety) Regulations 2015.  | Definition of <b>electricity supply authority</b>             |              |
| 13:                           | Replace the definitions of <b>electrical equipment</b> , <b>electrical installation</b> and <b>electrical work</b> in the model WHS to incorporate or reference the definitions provided in the Electricity (Licensing) Regulations 1991. | 144; 145; 146.  |              |
| 14:                           | Alter the exclusion provided in the definition of pressure piping so that it applies to a pipeline to which any other written law applies.  | Definition of pressure piping clause (c)(ii).                 |              |
| 15:                           | Insert 'the department of the Public Service principally assisting in the administration of the Fire and Emergency Services Act 1998' as the definition of <b>primary emergency service organisation</b> .                                | Definition of <b>primary emergency service organisation</b> . |              |
| 16:                           | Replace the term <b>strata title body corporate</b> with the term <b>strata company</b> , and change the reference to, or replicate   | 7   |              |

| <b>Recommendations</b><br>Amend the WHS regulations to: | <b>Provisions affected</b>   | <b>AMMA comment</b>  |
|---|--|--|
|   | the definition of, <b>strata company</b> in section 3(1) of the Strata Titles Act 1985.  |  |
| <b>17:</b>  | Incorporate the approach to working near overhead power lines from the OSH regulations, including specification of safe distances and control measures.  | 166  |
| <b>18:</b>  | To insert a period of 7 days as the timeframe to make an application for an external review of a decision  | 701<br><br>Oppose. AMMA does not believe that seven days is sufficient and suggests 14 days.   |
| <b>19:</b>  | Include a list of laws prescribed for the purpose of section 271(3)(c)(ii) of the WHS Bill 2014 for the purpose of providing information that is necessary or convenient for the administration or enforcement of another Act. | 702.   |
| <b>20:</b>  | Remove references to enforceable undertakings from the model WHS regulations.  | 87(2)(j), 87(2)(k), 90(c), 107(2)(c), 116(2)(h), 116(2)(i), 119(b), 135(2)(b), 492(2)(f)(v), 492(2)(f)(vi), 500(1)(c), 521(2)(b).<br><br>Oppose in principle.<br><br>AMMA understands that as a natural extension of WA's decision not to include in its draft Work Health & Safety Bill enforceable undertakings as an alternative to prosecution, the reference to undertakings is proposed to be removed from the accompanying Regulations.<br><br>Please see AMMA's comments in the executive summary to this submission for details on AMMA's position in relation to enforceable undertakings. |

| Recommendations<br>Amend the WHS regulations to: |  | Provisions affected                     | AMMA comment  |
|--|--|---|---|
| <b>21:</b>                                       | Remove Part 2.4 (Workplace Entry by WHS Entry Permit Holders).   | Part 2.4.                               | Accept in principle.<br><br>AMMA understands that as a natural extension of WA's decision not to include the Model Act's right of entry provisions in the Work Health & Safety Bill for WA, reference to those provisions would also be removed from the Regulations.<br><br>AMMA accepts WA's decision to refer instead to its IR laws for union entry rights. However, AMMA believes this issue should be revisited in future with an aim towards national consistency to the extent that no detriment occurs to WA operations. |
| <b>22:</b>                                       | Use the general definition of <b>competent person</b> provided in clause (g) as the default for all competent persons.   | Definition of <b>competent person</b> . |   |
| <b>23:</b>                                       | Add the requirement that a competent person for work on energised electrical installations must be authorised to carry out electrical work under the Electricity (Licensing) Regulations 1991. | Definition of <b>competent person</b> . |   |
| <b>24:</b>                                       | Add the competency requirements for testing and tagging for the purpose of regulation 163.   | Definition of <b>competent person</b> . |   |

| <b>Recommendations</b><br>Amend the WHS regulations to: |   | <b>Provisions affected</b>                      | <b>AMMA comment</b> |
|---|---|---|---------------------|
| <b>25:</b>  | Replace the requirement for a professional engineer to conduct major inspections of cranes and amusement devices with a <b>competent person</b> .               | 235(4) and 235(5);<br>241(5) and 241(6).        |                     |
| <b>26:</b>  | Require a <b>competent person</b> instead of specifying a geotechnical engineer to ensure the sides of a trench are safe from collapse.                         | 306(4)  |                     |
| <b>27:</b>  | Remove all references to specific courses in the definition of <b>specified VET course</b> with the exception of those for HRWLs.                               | Definition of <b>specified VET course</b> .     |                     |
| <b>28:</b>  | Include a new definition of <b>approved training course</b> as a course approved by the regulator.  | Definition of <b>approved training course</b> . |                     |
| <b>29:</b>  | Replace the requirement for a <b>specified VET course</b> for all purposes other than HRWL with a requirement to complete the <b>approved training course</b> . | 460; 494;<br>498(a)(ii)(A);<br>499(b)(i); 518.  |                     |
| <b>30:</b>  | Remove generic requirements for information, training and instruction in relation to general workplace management and confined spaces.                          | 39; 76.   |                     |
| <b>31:</b>  | Implement the approach to construction induction training in Division 11 of Part 3 of the OSH regulations, while retaining mutual recognition of CIT cards.     | Part 6.5 and related definitions.               |                     |

| <b>Recommendations</b>        |   | <b>Provisions affected</b>               | <b>AMMA comment</b> |
|-------------------------------|---|--|---------------------|
| Amend the WHS regulations to: |   |  |                     |
| <b>32:</b>                    | Replace the requirements for HSR training with the equivalent of regulation 2.2 of the OSH regulations, but remove the phrase “..during the first year of holding office...”. | 21.                                      |                     |
| <b>33:</b>                    | Correct the definition of rigging work by replacing the phrase ‘load using’ with the phrase ‘load including’.   | Definition of <b>rigging work</b> .      |                     |
| <b>34:</b>                    | Limit the requirement for an HRWL for concrete placing booms to mobile concrete placing booms.  | Schedule 3 Item 22; Schedule 4 Items 22. |                     |
| <b>35:</b>                    | Exclude boilers of 500kw output or less from the definition of <b>boiler</b> .  | Definition of <b>boiler</b> .            |                     |
| <b>36:</b>                    | Permit the current holders of HRWLs for the basic and intermediate pressure equipment operation to be able to renew their HRWLs under the WHS regulations.                    | Schedule 3 new items.                    |                     |
| <b>37:</b>                    | Transition existing holders of the HRWL class for advance pressure equipment operation to advanced boiler operation.  | Transitional provisions.                 |                     |
| <b>38:</b>                    | Remove the separate HRWL class for <b>reach stackers</b> .  | Schedule 3 item 23; Schedule 4 item 23.  |                     |

| Recommendations               |  | Provisions affected | AMMA comment  |
|-------------------------------|--|---------------------|---|
| Amend the WHS regulations to: |  |                     |   |
| <b>39:</b>                    | Permit the holder of an HRWL to operate a non-slewing mobile crane to operate a reach stacker.   | Schedule 3 item 14. |   |
| <b>40:</b>                    | Require the provision of a 'recently issued' <b>certification</b> for a high risk work licence.  | 87(2)(f)(ii).       |   |
| <b>41:</b>                    | Incorporate the power for the regulator provided in regulation 6.17(1) of the OSH regulations in relation to reassessment of competency. | 95.                 |   |
| <b>42:</b>                    | Clarify that an applicant for an HRWL can be asked for a reassessment of competency.   | 95                  | Support   |
| <b>43:</b>                    | Include compliance with amended regulation 95 as a matter to be taken into account when granting an HRWL.                                | 90.                 |   |
| <b>44:</b>                    | Permit an HRWL to be cancelled or suspended if a licence holder does not comply with a request made under regulation 95.                 | 106.                |   |
| <b>45:</b>                    | Include an English language requirement as part of the requirements for the conduct of a competency assessment.                          | 114(2).             | Support in principle.<br>AMMA would like to see further consultation with stakeholders about an appropriate English language requirement. |

| <b>Recommendations</b>        |   | <b>Provisions affected</b> | <b>AMMA comment</b> |
|-------------------------------|---|----------------------------|---------------------|
| Amend the WHS regulations to: |   |                            |                     |
| <b>46:</b>                    | Replace the requirement that an accredited assessor is qualified to conduct an assessment if their skills, knowledge and experience are in accordance with the Standards for NVR Registered Training Organisations 2011, with a requirement the person has acquired, through training and work experience, the skills necessary to assess a person's competency to do high risk work of that class. | 118(6)(a).                 |                     |
| <b>47:</b>                    | Include a condition of accreditation for HRWL assessors to cooperate with audits of their activities.   | 112(2).                    | Support.            |
| <b>48:</b>                    | Permit the regulator to consider all accreditations where an assessor has been convicted of an offence related to authorisations.   | 134(1); 135(2).            | Support.            |
| <b>49:</b>                    | Remove the exception provided for the requirement of direct supervision of a worker carrying out work in the course of HRWL training.   | 84(2).                     |                     |
| <b>50:</b>                    | Implement the grace period provided in regulation 6.9(1) of the OSH regulations for renewal of an HRWL.   | 101(4); 102; 103.          |                     |
| <b>51:</b>                    | Include the requirements of regulation 6.32 of the OSH regulations requiring RTOs to retain records.  | New provision.             |                     |

| Recommendations<br>Amend the WHS regulations to: |  | Provisions affected                    | AMMA comment  |
|--|--|--|---|
| <b>52:</b>                                       | Replace the residential requirement for high risk work licences with the requirement that the applicant was assessed in Western Australia. | 89(2)(c)                               | AMMA can see why this proposal has been made. On one view of it this will potentially restrict the ability of business to transfer holders of HRWLs from other states, but on another view it will ensure the assessment process remains rigorous.<br><br>AMMA would ideally like to see HRWL licences able to transfer from other states but a strengthened assessment process across jurisdictions to ensure adequate levels of competency so that no retraining is required of licence holders from other states who transfer to WA. |
| <b>53:</b>                                       | Remove the residential requirement for registration of plant design and asbestos removal licences.   | 256(2)(d);<br>497(2)(c);<br>497(2)(d). |   |
| <b>54:</b>                                       | Facilitate online lodgement of authorisations.   | Various.                               |   |
| <b>55:</b>                                       | Remove the requirement for a control measure to be reviewed at the request of an HSR.  | 38(2)(e); 38(4);<br>401(1)(g); 401(3). | Support.  |
| <b>56:</b>                                       | Remove the requirement for an asbestos management control plan to be reviewed at the request of an HSR.                                    | 430(1)(d); 430(2).                     |   |

| Recommendations               |  | Provisions affected   | AMMA comment |
|-------------------------------|--|---|--------------|
| Amend the WHS regulations to: |  |   |              |
| <b>57:</b>                    | Remove the power of inspectors to immediately suspend an authorisation.  | 110; 138; 524.  |              |
| <b>58:</b>                    | Remove the requirement for the regulator to advise of a decision within 14 days and rely on section 63 of the Interpretation Act 1984. | 89(4), 91(2)(c), 98(6), 109(1), 112, 118(4), 120(2)(c), 127(6), 137(1), 140, 256(4), 257(2)(c), 283(3)(c), 284(3)(c), 286, 288(6), 288C(2)(c), 393(3), 407(4), 497(4), 501(2)(c), 508(3)(c), 509(3)(c), 511, 513(6), 523(1), 526; 680(1); 681; 694; 696(1); 698(1). |              |
| <b>59:</b>                    | Remove the provision for a different start date for residual current devices in hostile operating environments.                        | 2   |              |
| <b>60:</b>                    | Remove the term ‘flyings’ from the definition of <b>combustible dust</b> .   | Definition of <b>combustible dust</b> .   |              |

| Recommendations<br>Amend the WHS regulations to: |   | Provisions affected                       | AMMA comment   |
|--|---|---|--|
| 61:  | Remove the definition of <b>combustible liquid</b> .  | Definition of <b>combustible liquid</b> . |  |
| 62:  | Replace the definition of <b>excavation</b> with the phrase '...means an open face, hole, or cavity created as a result of using tools, machinery or explosives...' | Definition of <b>excavation</b> .         |  |
| 63:  | Remove the reference to 'mines' in the exceptions to the definition of <b>excavation</b> .  | Definition of <b>excavation</b> .         | Support given that mines are / will be regulated separately in WA.   |
| 64:  | Insert the Water Services Act 2012 in reference to a bore in the exceptions to the definition of <b>excavation</b> .  | Definition of <b>excavation</b> .         |  |
| 65:  | Remove the redundant clarification that risk assessments may be applied to a class of hazards, tasks, circumstances or things.                                      | 12  |  |
| 66:  | Remove the matters prescribed for the determination of work groups.   | 16; 17.                                   |  |
| 67:  | Remove the minimal procedural requirements for the election of health and safety representatives.   | 18.                                       | AMMA does not support this proposal as procedural requirements are important for the election of HSRs. If those requirements are removed from the Regulations they should go into guidance material. |

| <b>Recommendations</b><br>Amend the WHS regulations to: |   | <b>Provisions affected</b> | <b>AMMA comment</b>   |
|---|---|----------------------------|---|
| <b>68:</b>  | Require that a PCBU provides facilities and training to ensure effective first aid so far as is reasonably practicable.   | 42.                        | Support.  |
| <b>69:</b>  | Require PCBUs to prepare procedures to effectively respond to an emergency.   | 43.                        | Support.  |
| <b>70:</b>  | Remove the duplicated duty for the provision of PPE to other persons at the workplace.  | 45.                        | Support to the extent that this is purely a duplication.                            |
| <b>71:</b>  | Remove the regulations for hazardous atmospheres and ignition sources.  | 51; 52.                    |   |
| <b>72:</b>  | Remove the regulations in relation to flammable and combustible materials.  | 53.                        |   |
| <b>73:</b>  | Remove the regulations providing control measures in relation to falling objects.   | 54; 55.                    |   |
| <b>74:</b>  | Include the OSH regulations for protection from tobacco smoke with the exception of the power for an inspector to require a tobacco product be extinguished (3.44I), the requirement for signs (3.44D) and the defence for smoking in a private vehicle or residence (3.44G). | New division.              |   |
| <b>75:</b>  | Modify the requirement to ensure the noise exposure standard is not exceeded so far as is reasonably practicable.   | 57.                        | AMMA supports the inclusion of the “so far as is reasonably practicable” qualifier. |

| <b>Recommendations</b><br>Amend the WHS regulations to: |   | <b>Provisions affected</b>   | <b>AMMA comment</b> |
|---|---|------------------------------|---------------------|
| <b>76:</b>  | Remove the requirements for audiometric testing.  | 58.                          |                     |
| <b>77:</b>  | Remove the duplicate duties of designers, manufacturers, importers and suppliers of plant in regulations related to noise, manual tasks and confined space. | 59; 61; 64.                  |                     |
| <b>78:</b>  | Remove the regulations for confined spaces relating to connected plant and services, emergency procedures and PPE.  | 70.                          |                     |
| <b>79:</b>  | Include the demolition licensing requirements of the OSH regulations.   | New provision.               |                     |
| <b>80:</b>  | Add demolition licensing to the definition of <b>class</b> .  | Definition of <b>class</b> . |                     |
| <b>81:</b>  | Remove the requirement for the regulator to be notified prior to the commencement of demolition work.   | 142.                         |                     |
| <b>82:</b>  | Clarify that a Class 1 demolition licence may be issued for one or more of the types of work to be conducted.   | New provision.               |                     |
| <b>83:</b>  | Not include OSH regulations that refer to Australian Standard AS 2601 – Demolition of Structures for licensed demolition work.                              | New provision.               |                     |
| <b>84:</b>  | Include a new provision setting out the minimum experience and training requirements for supervisors of demolition work.                                    | New provision.               |                     |

| <b>Recommendations</b><br>Amend the WHS regulations to: |  | <b>Provisions affected</b> | <b>AMMA comment</b> |
|---|--|----------------------------|---------------------|
| <b>85:</b>  | Remove the redundant requirement for unsafe electrical equipment to be disconnected or isolated.   | 149.                       |                     |
| <b>86:</b>  | Remove the requirements of regulations 161 and 162 in relation to control measures and record keeping for work on energised electrical equipment.                              | 161; 162.                  |                     |
| <b>87:</b>  | Remove the requirement for records to be kept in relation to the testing of electrical equipment.  | 150(3); 150(4).            |                     |
| <b>88:</b>  | Ensure the tag attached when testing and tagging electrical equipment includes the electrical worker's licence or permit number.   | 163.                       | Support.            |
| <b>89:</b>  | Include a requirement similar to regulation 3.62 of the OSH regulations specifying when electricity is to be connected to a construction site.                                 | New provision.             |                     |
| <b>90:</b>  | Include a requirement similar to regulation 3.63 of the OSH regulations requiring a person bringing equipment onto a construction site to provide evidence it has been tested. | New provision.             |                     |
| <b>91:</b>  | Include a provision requiring the main switch is de-energised before a worker enters a roof space.   | New provision.             |                     |

| Recommendations<br>Amend the WHS regulations to: |  | Provisions affected                               | AMMA comment   |
|--|--|---|--|
| <b>92:</b>                                       | Require compliance with the Australian New Zealand Standard AS/NZS 2299.1:2007 Occupational Diving Operations - Standard Operational Practice for construction diving work, consistent with the approach in the OSH regulations. | Part 4.8.   | AMMA does not oppose this proposal in principle.<br><br>However, AMMA agrees with the ACCI position that Australian Standards are costly and numerous and businesses should not be expected to purchase the range of Australian Standards required if they are inserted into regulation. If and when an appropriate reference to an Australian Standard is made in these Regulations, the government should ensure those standards are free and accessible.<br><br>AMMA also suggests finalisation of these provisions awaits the outcome of the current review of Model Diving Regulations. |
| <b>93:</b>                                       | Include a new part that replicates the requirements of Division 10 of Part 3 of the OSH Regulations – Driving commercial vehicles.   | New provisions.                                   |  |
| <b>94:</b>                                       | Remove the requirement for individual items of plant to be registered with the regulator.  | 227; 246, 247, 264 to 281, 282(3), 288A(b); 288B. | Support.<br><br>This would remove a large and unnecessary burden on business.  |
| <b>95:</b>                                       | Remove the exception permitting tree loppers to be suspended from a crane (not in a workbox).  | 221.  |  |

| <b>Recommendations</b>        |  | <b>Provisions affected</b> | <b>AMMA comment</b> |
|-------------------------------|--|----------------------------|---------------------|
| Amend the WHS regulations to: |  |                            |                     |
| <b>96:</b>                    | Remove the duplicate requirement for storage of amusement devices in regulation 239.   | 239.                       |                     |
| <b>97:</b>                    | Replace the monetary threshold for a construction project with the 5 person threshold provided in regulation 3.142 of the OSH regulations.               | 292.                       |                     |
| <b>98:</b>                    | Remove the duplicate requirement to prevent unauthorised access to an area where a trench is to be dug.  | 306(1) and 306(2).         |                     |
| <b>99:</b>                    | Incorporate the competency requirements for tilt-up construction work from the OSH regulations.  | New provision.             |                     |
| <b>100:</b>                   | Modify the incorporated requirements in relation to training for supervisors for panels manufactured at workplaces other than a construction site.       | New provision.             |                     |
| <b>101:</b>                   | Include the equivalent of regulation 2.10 of the OSH regulations requiring local government to notify the Commissioner of permits for construction work. | New provision.             | Support.            |
| <b>102:</b>                   | Remove references to divisions that have been removed by other amendments.   | 314.                       | Support.            |
| <b>103:</b>                   | Remove the requirement for the provision of safety signs in relation to hazardous chemicals.   | 353.                       |                     |

| <b>Recommendations</b><br>Amend the WHS regulations to: |   | <b>Provisions affected</b> | <b>AMMA comment</b>   |
|---|---|----------------------------|---|
| <b>104:</b>   | Remove the redundant provisions for hazardous chemicals in relation to the requirements for emergency and safety equipment.                             | 360; 362.                  |   |
| <b>105:</b>   | Remove the duplicated requirement for supervision in relation to hazardous chemicals.   | 379.                       |   |
| <b>106:</b>   | Modify the requirement to provide changing and washing facilities to minimise lead contamination by practicability.                                     | 399(1).                    |   |
| <b>107:</b>   | Change the trigger for health monitoring where there is risk of exposure to a hazardous chemical/asbestos to also require a significant risk to health. | 368(b); 435(1)(b).         |   |
| <b>108:</b>   | Provide duty holders with an alternative approach to assess the biological exposure standard for hazardous chemicals.                                   | 368(b)(ii).                |   |
| <b>109:</b>   | Change the duty holder for provision of the health monitoring report to the regulator from the PCBU to the medical practitioner.                        | 376; 413; 442.             |   |
| <b>110:</b>   | Remove the ability of PCBUs to provide a health monitoring report to PCBUs with a corresponding duty.   | 377; 414; 443.             | While on one view of it this would reduce the administrative burden on PCBUs, on another view it could increase that burden if multiple PCBUs had to obtain health monitoring reports regarding the same duty. AMMA would |

| <b>Recommendations</b><br>Amend the WHS regulations to: | <b>Provisions affected</b>   | <b>AMMA comment</b>  |
|---|--|--|
|   |  | welcome further consultation / clarification on this issue.  |
| <b>111:</b>   | Remove the specified requirement to commence health monitoring prior to a worker commencing asbestos removal work. | 435(2).  |
| <b>112:</b>   | Remove provisions that are more appropriately regulated under the Dangerous Goods Safety Act 2004.                 | 334, 336, 347, 348, 349, 350, 354, 356, 358, 361, 363 to 367 and 389 to 391 and related definitions and schedules. |
| <b>113:</b>   | Replace the term Class A in relation to asbestos removal licences with the term unrestricted.                      | 459, 473<br>Part 8.8<br>Part 8.10<br>Related definitions.  |
| <b>114:</b>   | Replace the term Class B in relation to asbestos removal licences with the term restricted.                        | 459, 473<br>Part 8.8<br>Part 8.10<br>Related definitions.  |

| Recommendations<br>Amend the WHS regulations to: |   | Provisions affected  | AMMA comment |
|--|---|--|--------------|
| 115:   | Remove the definition of <b>certified safety management system</b> .  | Definition of <b>certified safety management system</b> ; 6.   |              |
| 116:   | Replace references to a <b>certified safety management system</b> with reference to an asbestos removal work procedures manual. | 493(1)(e), 498(b), 520(1)(e).  |              |
| 117:   | To replace the requirement for a licenced asbestos assessor to conduct clearances with a <b>competent person</b> .              | <p>For removal:<br/>489, 490, 491(2), 492(2)(i), 495, 528</p> <p>For amendment:<br/>492(1), 497(1), 502(1), 503, 504(1), 506(1), 508(1), 509(1), 511, 512, 513, 515, 516(1), 517(3), 517(4), 520(1), 522, 523(1).</p> <p>For amendment require a competent person or an independent competent person</p> |              |

| Recommendations               |   | Provisions affected   | AMMA comment |
|-------------------------------|---|---|--------------|
| Amend the WHS regulations to: |   |   |              |
|                               |   | 466(4)(c),<br>473(2)(a), 474(2),<br>474(3), 474(4),<br>475(1), 475(2),<br>475(6), 477(1)(d),<br>477(1)(e),<br>477(4)(a), 477(6),<br>and the note to<br>473.<br><br>The table in Part<br>11.1 (Reviewable<br>decisions)<br><br>Related definitions |              |
| <b>118:</b>                   | Remove the reference to 'equivalent' licence.   | 488.  |              |
| <b>119:</b>                   | Replace the specified date of 31 December 2003 with 31 December 1990.   | 425(6)(a); 447.   |              |
| <b>120:</b>                   | Require that access to the asbestos register is provided to the PCBU carrying out demolition or refurbishment work. | 449; 450.   |              |
| <b>121:</b>                   | Modify the requirement for decontamination facilities by practicability.  | 471; 483.   |              |

| <b>Recommendations</b><br>Amend the WHS regulations to: |   | <b>Provisions affected</b>    | <b>AMMA comment</b> |
|---|---|-------------------------------|---------------------|
| <b>122:</b>   | Remove the exception for the prohibition on asbestos work for soil containing trace amounts of visible friable asbestos.  | 419(5)(a)(ii).                |                     |
| <b>123:</b>   | Require a National Association of Testing Authorities accredited laboratory to test samples for asbestos.   | 423; 479(2)(b);<br>479(2)(c). |                     |
| <b>124:</b>   | Remove the generic training duties in relation to naturally occurring asbestos.   | 434.                          |                     |
| <b>125:</b>   | Include clarification that a separate asbestos removal control plan is not required if there is a compliant safe work method statement.                           | 464.                          |                     |
| <b>126:</b>   | Require notification to the regulator 7 days prior to the commencement of Unrestricted asbestos removal work.   | 466(1).                       |                     |
| <b>127:</b>   | Require the notice is provided in the manner and form approved by the regulator   | 466(1).                       |                     |
| <b>128:</b>   | Change the threshold to notify the regulator if specified respirable asbestos fibre levels exceed 0.05fibres/mL.  | 476(b)(ii).                   |                     |
| <b>129:</b>   | Remove the requirement that work is not resumed until the recorded respirable fibre level drops below 0.01fibres/mL as it is made redundant by regulation 476(1). | 476(2).                       |                     |

| <b>Recommendations</b><br>Amend the WHS regulations to: | <b>Provisions affected</b>   | <b>AMMA comment</b>  |  |
|---|--|--|--|
| <b>130:</b>   | Remove the requirement to notify persons occupying premises in the immediate vicinity (that are not PCBUs).                      | 468(3)(b).   |  |
| <b>131:</b>   | Clarify that an Inspector cannot be prevented from entering a workplace where licensed asbestos removal work is being conducted. | 470(3).  |  |
| <b>132:</b>   | Require that containers with asbestos waste are labelled in accordance with schedule 9 (hazardous chemicals).                    | 472; 484.  |  |
| <b>133:</b>   | Remove Chapter 9, Major Hazard Facilities, and all associated definitions and schedules.   | Major hazard facilities to be regulated by the DMP.<br><br>Regulations 530 to 608 inclusive.<br><br>Regulations 688 and 698 (in relation to exemptions).<br><br><b>Schedule 15</b><br><br><b>Schedule 16</b><br><br><b>Schedule 17</b><br><br><b>Schedule 18</b> | Support given that major hazard facilities are / will be regulated separately in WA. |

| <b>Recommendations</b><br>Amend the WHS regulations to: | <b>Provisions affected</b> | <b>AMMA comment</b>   |  |
|---|----------------------------|---|--|
|   |                            | Related definitions: <ul style="list-style-type: none"> <li>• <b>determined major hazard facility</b></li> <li>• <b>facility</b></li> <li>• <b>licensed major hazard facility</b></li> <li>• <b>local community</b></li> <li>• <b>local authority</b></li> <li>• <b>local community</b></li> <li>• <b>major hazard facility</b></li> <li>• <b>major hazard facility licence</b></li> <li>• <b>major incident</b></li> <li>• <b>major incident hazard</b></li> <li>• <b>modification</b></li> <li>• <b>proposed facility</b></li> <li>• <b>proposed major hazard facility</b></li> </ul> |  |

| <b>Recommendations</b><br>Amend the WHS regulations to: | <b>Provisions affected</b>   | <b>AMMA comment</b>  |  |
|---|--|--|--|
|   |  | <ul style="list-style-type: none"> <li>• <b>schedule 15 chemical</b></li> <li>• <b>surrounding area</b></li> <li>• <b>threshold quantity</b></li> </ul> <p>Items 46 to 62 inclusive in the table under regulation 676 (reviewable decisions).<br/>Related notes.</p> |  |
| <b>134:</b>   | Insert a note that mine safety is regulated under the Mines Safety and Inspection Act 1994 and that regulations 609 to 705 are not required. | Chapter 10.  | Support to the extent it is a clarifying provision.. |
| <b>135:</b>   | Remove items in the table at regulation 676 that refer to regulations that have been deleted.  | 676.   | Support.   |
| <b>136:</b>   | Remove the RTO as a valid applicant for review of a decision related to an accredited assessor.  | 676 - Items 8 to 16.   |  |

| <b>Recommendations</b>        |   | <b>Provisions affected</b> | <b>AMMA comment</b> |
|-------------------------------|---|----------------------------|---------------------|
| Amend the WHS regulations to: |   |                            |                     |
| <b>137:</b>                   | Remove the person with management or control of an item of plant as a valid applicant for review of a decision related to design registration of plant. | 676 - Items 25 to 27A.     |                     |
| <b>138:</b>                   | Remove the requirement for class exemptions to be published in the Government Gazette.  | 695(2).                    |                     |