



Submission to Consultation Paper

*Structure of Mining, Petroleum and Major  
Hazard Facilities Safety Legislation*

*December 2014*



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 96 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to those industries.

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

The resource industry currently employs more than 1.1 million people either directly or indirectly and accounts for 18% of economy activity in Australia<sup>1</sup> (double its share of a decade ago). Australia's earnings from resources and energy commodities is projected to increase at an average rate of 7% a year from 2013-14 to total \$274 billion in 2018-19<sup>2</sup>.

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

<sup>2</sup> Bureau of Resources and Energy Economics, *Resources and Energy Quarterly—September Quarter 2014*

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## KEY ISSUES

1. AMMA welcomes the opportunity to provide feedback to this important consultation over the proposed consolidation of various pieces of legislation in Western Australia covering safety aspects of mining, petroleum & geothermal, and major hazard facilities (MHFs).
2. AMMA provides the feedback contained in this submission to help inform the government in this important process.
3. According to the consultation paper released for public comment, the purpose of consultation is to establish whether stakeholders believe that the unification of mines, petroleum and MHF safety legislation into a single Act would provide the best outcomes for Western Australia.
4. While AMMA and its members are not opposed in-principle to some level of consolidation in these areas, we believe unifying all three into a single Act would not be the best outcome for Western Australia for the reasons outlined in this submission.
5. AMMA therefore in-principle supports Option 2 of the five options outlined and does not at this stage support full unification under Option 1, which appears to be the preferred option put forward in the consultation paper.
6. AMMA looks forward to being consulted in more detail on these issues and on the content of any unified legislation or reforms that may result from this process.

### Limited consolidation

7. Currently legislated safety obligations in mining, petroleum & geothermal, and MHFs are contained in six different state Acts (and regulations):
  - Mines Safety & Inspection Act 1994 (mine safety);
  - Petroleum and Geothermal Energy Resources Act 1967 (petroleum and geothermal safety onshore);
  - Petroleum Pipelines Act 1969 (petroleum and geothermal safety for land-based petroleum pipelines);
  - Petroleum (Submerged Lands) Act 1982 (petroleum and geothermal safety in WA's territorial sea);
  - Dangerous Goods Safety Act 2004 (process safety for MHFs); and

- Occupational Safety & Health Act 1984 (OHS for MHFs).
8. AMMA can 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 WorkSafe WA regulate OHS as is currently the case. These benefits would flow from Option 2 in the consultation paper, which AMMA supports.
  9. However, AMMA and its members stress that it is important to keep mine safety separate to the other areas of regulation in any consolidation exercise and therefore does not support Option 1.
  10. In AMMA's view, Option 2 is the most sensible and workable of the five options given that mine safety would continue to be separately regulated under its own Work Health & Safety (Mines) Act (WA) when it eventually replaces the current Mines Safety & Inspection Act 1994 (WA).
  11. Under Option 2, petroleum safety and MHF safety (including OHS and process safety) would be unified in a single Act under a single regulator - the WA DMP.
  12. AMMA's in-principle support for Option 2 does not extend to the specific content and effect of any final legislation that might be developed as a result of the government adopting that option or other options.

## Major hazard facilities and petroleum

13. Despite favouring Option 2, AMMA understands there is an argument that process safety and OHS aspects of MHFs are distinct and should be kept in separate legislation under separate regulators. However, AMMA understands that currently the relevant DMP and WorkSafe staff in WA are located in close proximity and work very closely together in any case.
14. With that in mind, AMMA's view is that consolidating those two aspects of MHF safety under a single regulator in a single piece of legislation should prove relatively seamless and offer some streamlining benefits.
15. Safety and health provisions for the petroleum industry are also currently spread across three separate Acts (and regulations):
  - The Petroleum and Geothermal Energy Resources Act 1967 (WA);
  - The Petroleum (Submerged Lands) Act 1982 (WA); and
  - The Petroleum Pipelines Act 1969 (WA).

16. AMMA believes there is room for simplification and limited consolidation in the above areas.
17. AMMA would be happy to enter into further discussions on these issues as appropriate should further detail be required or new information come to light.

## Total consolidation

18. Option 1 in the consultation paper, which appears to be the option the state government favours, would bring together under a single Act and regulator the safety aspects of petroleum and geothermal legislation, mining legislation and MHFs.
19. In AMMA's view, this would be a bridge too far in the current environment and would not produce the best outcomes for safety in Western Australia.
20. Mine safety in Western Australia is currently very high by world standards and has seen significant improvements in the past 20 years during which the Mines Safety & Inspection Act 1994 (WA) has been in place.
21. AMMA does not believe that the state's currently strong safety performance should be put at risk by any proposal to consolidate mine safety with other very different areas of safety regulation such as those for petroleum and MHFs.
22. Mine safety has its own particular issues that AMMA believes are best handled by specific and discrete regulations, legislation and inspectorates (even if housed within the same department). This is also important to ensure continued appropriate funding for mine safety.
23. The fact is that mining and petroleum have very different risk profiles and are very different industries. Petroleum and MHF safety is very much built on a "safety case" model whereas mining is built on a "safety management system" model.
24. An ongoing focus of mine safety legislation is a risk-based approach and that has been the focus of activity in recent years. Under the safety management system model in mining, principal mining operators are required to put in place safety management systems as a duty under mine safety legislation.
25. In the petroleum area, the regulator largely focuses on handling incoming safety cases, with safety management systems being one part of that, which is entirely appropriate for the petroleum industry but not necessarily for mine safety.

26. In AMMA's view, safety regulators across the two distinct areas (mining and petroleum) need very specific skill sets and should remain under separate legislation, with the ability for the DMP as the regulator for both to share information and knowledge as appropriate.
27. Unless greater and more specific benefits can be pointed to than those summarised in the consultation paper, AMMA can see no reason to risk the high standards of safety that have been established in the mine safety area in Western Australia. AMMA therefore does not support Option 1.
28. For the record:
  - Option 5 is to retain the status quo, which AMMA believes would be less beneficial than Option 2.
  - Options 3 and 4 involve partial consolidation but in ways that AMMA does not support given they would involve merging mine safety with other areas of regulation.

## Mine safety performance in WA

29. In 1997/98, the lost time injury frequency rate (the number of lost time injuries per million hours worked) in WA mining was eight. This was a 20 per cent improvement on the 1996/97 rate of 10<sup>3</sup>. There were also sadly 13 fatalities in the 1997/98 financial year in mining in Western Australia.
30. In 2012/13, there were no fatalities in the Western Australian minerals sector for the first time since records began in 1896<sup>4</sup>. Also, the lost time injury frequency rate (LTIFR) for 2012/13 was 2.5, the same as the previous year (2011/12).
31. While there have tragically been six fatalities in the WA minerals sector in the 18 months since the 2012/13 financial year (five of them in 2013-14) there is no doubt significant improvements in safety outcomes have been achieved over the past two decades, particularly taking into account the growth in employment in the industry during that time.

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<sup>3</sup> *Fatal and lost time injuries in Western Australian mines 1997/98*, published in March 1999 by the Department of Minerals and Energy, accessed in December 2014

<sup>4</sup> *Safety Performance in the Western Australian Mineral Industry, Accident and Injury Statistics 2012-13* published by the Department of Mines & Petroleum

## Employment growth

32. In August 1998, the mining industry across Australia employed 86,500 people, a large proportion of them in WA. By August 2014, this number had more than tripled to 237,400<sup>5</sup>.
33. The lost time injury frequency rate in the WA minerals sector has therefore reduced from 10 in 1997/98 to 2.5 in 2012/13 at the same time as employment in the WA minerals sector has at least tripled given the majority of jobs in the industry are in WA. Fatality rates have also significantly decreased in that time.
34. These significant improvements in safety are due not only to the importance the industry places on managing safety risks, but on the strong enforcement and legislative provisions that exist specifically for the industry.

## Modernising mine safety legislation

35. The proposal to consolidate safety aspects of mining, petroleum & geothermal, and MHFs into a single piece of legislation under Option 1 comes at a time when WA's mine safety legislation is itself being modernised.
36. As the government's consultation paper points out, all safety legislation in the three relevant areas will be subject to modernisation through separate processes, regardless of any consolidation of the legislative framework.
37. Progress in the modernisation of petroleum and MHF safety legislation lags behind that made in modernising WA's mine safety laws. New mine safety legislation is expected to be finalised and released in 2015 while the modernisation of MHF and petroleum safety legislation is expected to occur between 2015 and 2017.
38. In the state government's view, this provides a unique opportunity to undergo consolidation of all three areas at the same time as they are being modernised (Option 1). In AMMA's view, this risks further delaying modernised mine safety legislation as well as confusing the end user by rendering the final piece of legislation incredibly long and complex.
39. The mine safety legislation currently being developed, expected to be called the Work Health & Safety (Mines) Act, will replace the Mines Safety & Inspection Act 1994 (WA). This reform process, which has been incredibly political in and of itself, is now close to completion, having started some six or

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<sup>5</sup> Labour Force, Australia, Detailed Quarterly, August 2014, catalogue number 6291.0.55.003, published on 18 September 2014, accessed in December 2014



seven years ago under the National Mine Safety Framework (NMSF). At this stage, it is expected the new mine safety legislation will be implemented in mid-2016.

40. The DMP have prepared drafting instructions and the Bill is expected to be introduced to state parliament in mid-2015.
41. In light of the substantial progress in the development of the Work Health & Safety (Mines) Act in what has been an arduous process, AMMA is of the view that not only would Option 1 potentially risk WA's already strong safety performance but consolidation in all three areas would cause unnecessary delays to the implementation of modernised mine safety laws.
42. AMMA maintains this would be a backwards step at a time when real progress is being made to modernise the system.
43. For these reasons, AMMA does not believe that Option 1 is appropriate to pursue at this stage. While uniformity and simplicity are worthy objectives, consolidating all areas into one piece of legislation at this point in time would be too much too soon.

## Conclusion

44. While AMMA gives its in-principle support for the limited consolidation proposal contained in Option 2 due to the importance of maintaining separate mine safety legislation, this should not be seen as endorsing any legislative changes under a consolidated Bill.
45. These are extremely important matters to get right and AMMA welcomes further consultation in relation to these matters including over the detail of any unified legislation that develops out of this process.