

*Submission to the Consultation Regulatory  
Impact Statement*

*Work Health & Safety (Resources and  
Major Hazards) Regulations for Western  
Australia*

*September 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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## Introduction

1. AMMA welcomes the opportunity to make a submission on the Consultation Regulatory Impact Statement on the proposed Work Health & Safety (Resources & Major Hazards) Regulations for Western Australia (WA), which represents a consolidation of three areas of safety in WA – mining, major hazard facilities and petroleum.
2. As noted in AMMA's August 2015 [submission](#) to the then-Work Health & Safety (Resources) Bill for WA (which these proposed Regulations would underpin), AMMA did not support the full consolidation of the three areas of safety.
3. In AMMA's December 2014 [submission](#) responding to the consultation paper on the structure of mining, petroleum and major hazard facilities safety legislation, we said while we were not opposed in principle to some level of consolidation in those areas, unifying all three areas of legislation and regulations would not be the preferred outcome for safety and health in WA workplaces.
4. AMMA would have preferred to keep mine safety separately regulated. Petroleum and major hazards safety are very much built on a "safety case" model whereas mine safety is built on a "safety management system" model.
5. Having said that, AMMA responds below to key proposals in the Consultation RIS (the RIS) on their merits.

## The current political context

6. 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 in March 2017.
7. We also note that at the same time as stakeholders are responding to these regulatory proposals, consultation is being undertaken quite separately on proposals for general industry.
8. As AMMA noted in our August 2016 [submission](#) to the discussion paper on the Work Health & Safety Regulations for general industry, at the time of consulting over the two separate Regulations, neither piece of legislation has been finalised.
9. AMMA further notes that should the government change in WA next year, Labor has not committed to progressing either piece of legislation or the accompanying Regulations.
10. With that in mind, given that the current consultation RIS only includes regulatory proposals, not full Regulations, AMMA would welcome the opportunity to provide feedback on final Regulations for resources, major hazards and petroleum as well

as for general industry. 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 any accompanying legislation takes effect.

## Guiding principles for employers

11. 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.
12. For that reason, AMMA supports national harmonisation of mine safety and general safety laws to the greatest extent possible, so long as that process does not increase the regulatory burden or compliance costs for business.
13. AMMA notes that WA is one of several states regulating mine safety separately to its legislation and regulations for general industry.
14. The RIS points out on page 3 that the proposed regulations have been simplified and significantly adapted from the model WHS regulations for mining to ensure they are relevant to resources industry safety and minimise prescription. Once again, AMMA's preference is for standardisation where possible to minimise the regulatory burden on cross-jurisdictional employers.
15. Notwithstanding AMMA's core position favouring standardisation, AMMA has responded to key proposals contained in the discussion paper on their merits.

## Key issues for employers

### Transitional periods

16. AMMA would like to see further consultation with industry over proposed transitional periods to ensure they are workable. Three to six months may not be enough time for many businesses to change the way they do things and, as a result, 12 months would be a more appropriate minimum transitional period.

### Clarity and simplicity

17. Given that three distinct areas of safety are being consolidated, with stakeholders yet to see the actual consolidated Regulations, AMMA is invested in ensuring that the final result is as user-friendly as possible, and that obligations are clearly set out and able to be understood by businesses across the various sectors.
18. Ideally, as mentioned, industry representatives including AMMA should have an opportunity to see a final exposure draft of the Regulations ahead of them being

finalised with a view to assessing them for clarity of design as well as substantive content.

### **Mental health**

19. AMMA notes that page 158 of the RIS points out that the term “employer” has been replaced with “Person Conducting a Business or Undertaking (PCBU)” and “employee” has been replaced with “worker”. AMMA welcomes those changes to ensure consistency of language with the Model WHS legislation and regulations.
20. However, AMMA notes the term “health” has now been defined in the proposed Work Health & Safety (Resources and Major Hazards) Bill to include “mental health”, which broadens the scope of the legislation. While the regulator, the Department of Mines & Petroleum, says in the RIS there will be no specific regulations covering mental health, this seems to reflect a lack of specificity around requirements in relation to this important issue while still imposing obligations. It also seems to open the way for regulations to be made on this and other issues in future as the need arises without proper industry consultation.
21. The RIS states while there will be no specific regulations covering mental health, “as with all diseases, if the disease is work-related the regulator must be notified as required”.
22. Unlike many other health issues, there is less of a defined line between work-related and personal mental health issues than with other types of health issues. AMMA would not like to see employers tasked with deciding whether or not to notify a regulator about a mental health issue, notwithstanding the fact that the issue may not have been brought to the employer’s attention, or the employer is aware of other non-work-related stressors in the employee’s life which may (subject to an expert’s confirmation) substantially or entirely explain a mental health concern, rendering it non-reportable.
23. AMMA is concerned about a lack of clarity around requirements in this area and would like to see this made clear in the final version of the Regulations and legislation.

### **Training costs**

24. On page 45 of the RIS, it is acknowledged there may be additional costs associated with new training requirements. AMMA would like to add that not only do those changes seem to significantly increase the need for training, but monetary costs are not the only costs that should be taken into account. In some cases, functions may not be able to be performed until significant new training has been undertaken, which may not for a variety of operational reasons be able to be done immediately.

25. We also note that the remote nature of resources work in Western Australia, and the localisation of services in Perth, can cause further delays in onsite training, and add to costs for employers. This underscores, among other things, the need for extended transitional periods in some cases.

### **Codes of practice and guidance material**

26. AMMA notes that page 45 of the RIS states:

*“Under the proposed WHS (R&MH) Regulations, most of the prescriptive requirements in the current regulations are not repeated; instead, this prescription will be moved to codes of practice or guidance material.”*

While AMMA supports the move away from prescription in principle, there remain concerns among employers about the enforceability and legal standing of codes of practice and guidance material in the event a matter goes before the courts. While AMMA in principle supports a lack of prescription where it does not undermine safety outcomes, we equally see the need for employers to know exactly what their obligations are and to understand exactly how certain policy documents can and will be used to determine their liability.

### **Risk assessments**

27. Page 22 under Min-4 in the Mining industry regulation proposals states:

*“The risk assessment must be conducted by a competent person using appropriate methods.”*

28. AMMA expects that the precise meaning of “competent person” and “appropriate methods” will be made clear in the final version of the Regulations and that stakeholders will be able to give feedback on that before the Regulations are finalised. AMMA maintains that this changed requirement needs to be clearly defined in the Regulations but with sufficient flexibility to allow for different company approaches to risk management.

### **Mine safety management systems**

29. In Min-1 of the Mining regulations proposals on page 19 of the RIS, the proposed amendment is that the mine operator must submit to the regulator an “outline of the mine safety management system” to obtain approval. It says this will “formalise the current informal process”.
30. Some employers have concerns about how this would apply from a contractor point of view to mine operators. Does this mean the mine operator could become responsible for submitting a mine safety management system for a specialised task to be performed by a contractor over which it has no control? Greater clarity

about what is intended here would be welcome, and an indication that the nature of contracting and control in resource sector operations has been properly taken into account.

### **Site senior executives and training**

31. On page 20 of the Consultation RIS, under Min-2a and Min-2c of the Mining proposals under “Registered Manager”, it states that “every mine will need to have an appointed site senior executive (SSE)”:

*“The SSE must have passed an applicable mining legislation test, completed a recognised health and safety risk management course and have at least 2 years’ work experience in or about a mine. These requirements will also be applicable to Exploration Managers. These requirements will now be prescribed in the regulations.”*

32. The RIS then goes on to state that:

*“These additional requirements will enhance the quality of health and safety management.”*

33. Min-2c contains similar proposals for “supervisors”:

*“All supervisors will now have a minimum of 2 years’ experience in similar operation or industry; must have passed an applicable mining legislation examination and must have successfully completed a recognised risk management course.”*

34. Among other things, AMMA is concerned that the definition of “supervisor” in Min-2c may not be clear (i.e. is it a supervisor appointed by the mine operator or anyone who performs a supervisory function?)

35. On the face of these proposals, the impact may be that some existing supervisors or managers could need significant re-training in order to meet the new requirements. This would add significantly to financial costs as well as loss of person hours (noting again the particular challenges of training in remote areas). This could also have a flow-on effect to operations depending on how quickly any required training could be completed. Again, there is a solid argument for extended transitional periods.

### **Cultural and linguistic diversity**

36. AMMA notes there are no explicit plans in the RIS to remove Regulation 4.17(1) that is currently in the Mines Safety and Inspection Regulations 1995 in the move to consolidated Regulations. The RIS does not flag that as an area of change

which AMMA assumes means it will be carried over into the consolidated regulations.

37. Regulation 4.17(1) states that “each responsible person at a mine must ensure that a person is not employed to work in or about the mine in a position of responsibility unless the person is able to speak the English language readily and intelligibly and is able to read and write the English language competently”.
38. This is a very important Regulation to retain given that safety on mine sites is critically important and workers must be able to read signs that, for example, specify a speed limit or warn of corrosive materials or gases.
39. AMMA would be happy to answer any questions arising from this submission at any stage, and would welcome further consultation on the issues raised.