



# Consultation Regulation Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice

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## Glossary

|          |  |
|----------|--|
| ABS      | Australian Bureau of Statistics                          |
| ACCI     | Australian Chamber of Commerce and Industry              |
| ACT      | Australian Capital Territory                             |
| ACTU     | Australian Council of Trade Unions                       |
| Ai Group | Australian Industry Group                                |
| AQTF     | Australian Quality Training Framework                    |
| ASSC     | Australian Safety and Compensation Council               |
| CBA      | cost benefit analysis                                    |
| COAG     | Council of Australian Governments                        |
| CPM      | Comparative Performance Monitoring                       |
| Cth      | Commonwealth   |
| DALY     | Disability adjusted life year                            |
| DFD      | Department of Finance and Deregulation                   |
| DWL      | Deadweight loss  |
| HSR      | Health and Safety Representative                         |
| IGA      | Inter-Governmental Agreement                             |
| HWSA     | Heads of Workplace Safety Authorities                    |
| LSIG     | Licensing Standard Implementation Group                  |
| MHF      | Major Hazard Facility                                    |
| MSDS     | Material Safety Data Sheet                               |
| NDS      | National Data Set  |
| NHMRC    | National Health and Medical Research Council             |
| NCIS     | National Coroners Information System                     |
| NOHSC    | National Occupational Health and Safety Commission       |
| NPV      | net present value  |
| NSW      | New South Wales  |
| NT       | Northern Territory                                       |
| NTC      | National Transport Commission                            |
| OASCC    | Office of the Australian Safety and Compensation Council |
| OBPR     | Office of Best Practice Regulation                       |
| OHS      | Occupational health and safety                           |
| PCBs     | Polychlorinated biphenyls                                |
| PCBU     | Person conducting a business or undertaking              |
| PPE      | Personal protective equipment                            |
| POP      | Persistent organic pollutant                             |
| QLD      | Queensland   |
| RCD      | Residual current device                                  |
| RTO      | Registered Training Organisation                         |
| RIS      | Regulation Impact Statement                              |
| SA       | South Australia  |
| SIG-OHS  | Strategic Issues Group on OHS                            |

|      |  |
|------|--|
| TAG  | Temporary Advisory Group               |
| TAS  | Tasmania                               |
| UK   | United Kingdom                         |
| VET  | Vocational education and training      |
| VIC  | Victoria                               |
| VSLY | Value of a statistical life year       |
| WA   | Western Australia                      |
| WHS  | Work health and safety                 |
| WRIS | Work-Related Injuries Survey           |
| WRMC | Workplace Relations Minister's Council |



## EXECUTIVE SUMMARY

The harmonisation of work health and safety legislation is part of the Council of Australian Governments (COAG) National Reform Agenda. These reforms aim to deliver a more consistent approach to regulation by the jurisdictions and to reduce compliance costs on business. COAG (2008) agreed through an Intergovernmental Agreement (IGA) that OHS harmonisation would be achieved through national uniformity of the OHS legislative framework (comprised of a model OHS Act, supported by model OHS regulations and model codes of practice) complemented by a nationally consistent approach to compliance policy and enforcement policy. The IGA included a commitment to implement the new harmonised framework by the end of 2011.

The first step in this process was the development of a model Work Health and Safety (WHS) Act. In December 2009, The Workplace Relations Ministers' Council (WRMC) agreed to the model WHS Act which was accompanied by a Decision Regulation Impact Statement (Decision RIS).

The development of model Work Health and Safety (WHS) Regulations and Codes of Practice is an important element of the harmonised regulatory framework and will assist persons conducting a business or undertaking to comply with their respective duties of care.

This Consultation RIS focuses on the model WHS Regulations and Codes package that will support the model WHS Act. This RIS aims to inform business, governments and worker groups about the proposed model WHS Regulations and Codes, and to obtain their views about the potential cost benefits and impacts of any anticipated changes.

This Consultation RIS is intended to overlay the Decision RIS undertaken for the model WHS Act and not intended to cover those matters covered by the model WHS Act.

This Consultation RIS provides a preliminary assessment of the cost benefits and impacts of adopting the model WHS Regulations and Codes (Option 2) relative to retaining the status quo (Option 1). Preliminary analysis of the anticipated impacts of the proposed changes has been included. A detailed analysis will be undertaken in the Decision RIS to be developed following the public comment process.

## METHODOLOGY

In May 2010, the Agency of Safe Work Australia (the Agency) and the Office of Best Practice Regulation (OBPR) agreed to a methodology proposed by Access Economics to conduct analysis and consultation for this RIS. Comments from stakeholders were also taken into consideration in developing the methodology.

The methodology employed in the Decision RIS will estimate the net benefits of moving to a national harmonised work health and safety framework, relative to the implementation costs of such a move. This will be achieved by identifying the major problems under a non-harmonised system, and the advantages of reform, together with associated transition costs.

The methods for this RIS follow those developed in the model WHS Act RIS (Access Economics, 2009).

## **PRELIMINARY ANALYSIS OF ANTICIPATED CHANGE**

For consultation purposes, this RIS includes a preliminary assessment of the significance of the expected change to each jurisdiction arising from the proposed model WHS Regulations and Codes.

For each subject area of the model WHS Regulations, the anticipated change to existing arrangements has been assessed as “minimal change”, “some change” or “considerable change”. The rationale is based on detailed benchmarking and policy analysis undertaken by the Agency, discussion by the Strategic Issues Group on OHS (SIG-OHS), and consultation with key stakeholders.

There are seven areas where businesses are likely to face considerable changes. These are in regard to:

- requirements relating to RCDs which may require RCDs to be installed in certain circumstances
- the requirement for an annual notice of plant maintenance and payment of a fee on an annual basis where this currently does not occur
- requirements for notification of construction excavation
- the scope for Major Hazard Facilities regulations
- the definition of “notifiable incident” for Major Hazard Facilities
- requirements for asbestos assessor licensing; and
- in some jurisdictions further regulation of asbestos management and removal.

Further changes that are likely to occur and need to be further analysed are the costs of retraining; changed notification, record keeping and administration procedures. Public comment is sought on these matters and analysis will be reflected in the Decision RIS.

For some jurisdictions a considerable change will be that they are no longer required to keep records of risk assessments undertaken for all hazards and risks. As a general principle, risk assessment and associated record-keeping requirements have not been required within the model regulations except where the complexity of the hazard is such that appropriate decisions about control are not likely to be made without conducting a systematic analysis.

The above matters are discussed further in Part 6 Anticipated Impact of the Consultation RIS.

A summary of the anticipated changes from a national perspective is below.

Public comment is sought on these anticipated changes, and on the additional safety benefits, particularly in those areas of considerable change.

## Anticipated change - model WHS Regulations subject areas

| Minimal Change   | Some Change   | Considerable Change  |
|--|---|--|
| <b>General Workplace Management</b><br>General Working Environment:<br>- Entry, Exit and Movement<br>- Floors and Surfaces<br>- Lighting<br>- Ventilation<br>- Heat and Cold<br>Personal Protective Equipment<br>First Aid | <b>Representation and Participation</b><br>Health and Safety Reps<br>Issues resolution<br>Consultation<br><b>General Workplace Management:</b><br>General Working Environment<br>- Work Areas and Space<br>- Essential Services<br>- Facilities<br>- Remote and Isolated<br>Emergency Plans<br><b>Hazardous Work</b><br>Hazardous Manual Tasks<br>Confined Spaces<br>Falls<br>High Risk Work Licensing<br>Abrasive Blasting<br>Electrical Work<br>Diving Work<br><b>Plant and Structures</b><br>Amusement Devices<br><b>Construction</b><br>Construction – general<br>High Risk Work<br>Construction Induction<br><b>Chemicals</b><br>Labelling<br>Inorganic lead | <b>Hazardous Work</b><br>Electrical work - RCDs<br><b>Plant and Structures</b><br>Plant Registration<br><b>Construction</b><br>Excavation Notification<br><b>Chemicals</b><br>Asbestos Removalist Licensing<br>Asbestos Assessor Licensing<br><b>Major Hazard Facilities (MHF)</b><br>Major Hazard Facilities<br>MHF Licensing |

It is noted that information gathered during the public comment period may result in changes to analysis currently contained within the Consultation RIS and this will be reflected in the final Decision RIS.

### PRELIMINARY ANALYSIS OF COSTS AND BENEFITS

For consultation purposes, a preliminary analysis of the anticipated costs and benefits of introducing the model WHS Regulations and Codes in support of the model WHS Act has been included in this Consultation RIS.

## Costs and benefits to business

There are significant drawbacks of multiple work health and safety regimes. This issue has been discussed in the National Review into Model Occupational Health and Safety Laws (National OHS Review) (2009) and the RISs for the Model WHS Act. Differences noted between jurisdictions include:

- the definitions of primary duty holder (resulting in lack of clarity and operation in differing jurisdictions);
- variations in registration arrangements (impacting on free movement of plant across state borders);
- differing confidentiality requirements that impede the transfer of information between applicant and regulator across borders due to differing requirements; and
- inconsistent training and licensing arrangements (as with asbestos assessors and removalists).

All of the above contribute to increased operational costs. The proposed model regulations have the potential to address these issues with positive safety and financial benefits.

Several Parts of the model WHS Regulations have been based on existing National Standards that have been supported by previous RIS processes. In these cases there is already evidence that any increase in regulation should be offset by increased benefits for businesses as demonstrated in the previous RIS processes undertaken. Increased safety can afford gains such as higher productivity, lower staff turnover and reduced workers' compensation premiums.

In addition, specific risk controls in the model WHS Regulations have been selected on grounds that they provide clear guidance for duty holders, are generally performance based and are well established in most jurisdictions. The intention of this approach is to minimise the regulatory impact of the model WHS Regulations and Codes.

The main costs to business are expected to arise as a result of adapting to new regulations, especially for single state businesses which will not reap the offsetting benefit of reduced complexity.

As outlined above, risk assessment and associated record-keeping are no longer mandatory except where the complexity of the hazard means that appropriate decisions about control are not likely to be made without conducting a systematic analysis. This may decrease the regulatory burden on employers in most states and would apply equally to single and multi jurisdiction businesses. This may equate to significant compliance savings for employers in most jurisdictions and represents a significant reduction in the total administrative burden for business.

Industry groups have raised concerns that in those areas where record keeping and additional administration is required that this will increase and add to the regulatory burden.

Due to the extent of differing views on this issue, a detailed analysis of the changes to record keeping provisions will be undertaken within the Decision RIS for the model regulations.

### **Costs and benefits to workers**

It is anticipated that there are unlikely to be any substantial costs to workers. The cost of training and of additional safety equipment will be paid for by employers.

Nationally consistent work health and safety regulations and codes will contribute to the ease with which workers, particularly self employed contractors, can move between jurisdictions by allowing for mutual recognition of work health and safety licences across jurisdictions.

Modelling the health impact of changed regulations is challenging, and the impacts of work health and safety regimes on safety outcomes are not readily quantifiable across jurisdictions. There is greater certainty comparing changes in safety outcomes within a given jurisdiction when there has been a considerable change in its work health and safety regime. Accordingly, the survey for this Consultation RIS asks participants about their experiences when similar regulations were previously introduced in their jurisdictions.

### **Costs and benefits to Governments**

Initially there will be up front costs to update guidance material and to train staff and provide education to businesses on the model WHS Regulations and Codes of Practice. Following this initial period the anticipated costs to regulators are not likely to be substantial, as jurisdictions are continually rolling out changes to work health and safety regulations with commensurate education and advice costs. Industry groups have raised concerns that additional costs to Government may be recovered by increases in workers' compensation premiums in those jurisdictions that are funded through the workers' compensation system.

It should be noted that adoption of the model WHS Act in each jurisdiction would require considerable reworking of each jurisdiction's WHS Regulations regardless of whether the model WHS regulations as proposed were adopted or not. Adoption of the model WHS Act without consequential change to jurisdictional regulations is not a possibility.

Benefits to regulators are likely to be more significant in the long term due to the reduction of duplication, as future legislative reviews and development of regulations and codes will be undertaken at the national level.

### **REVIEW PROVISIONS**

The Agency is developing an evaluation plan in consultation with the Research Evaluation and Data Advisory Group (a tripartite group established to advise Safe Work Australia regarding research and statistical work). The evaluation will look at the impact of the model work health and safety legislative framework and the outcomes of its implementation. The plan proposes work to begin in the 2010-11 financial year.

### **CONCLUSION**

The adoption of model WHS Regulations and Codes (Option 2) consolidates many existing elements of state and territory work health and safety regulations and codes and reflects a process of harmonisation rather than reform.

As a result of the preliminary analysis, it is not expected that there will be substantial change or considerable cost benefit and/or impacts with the proposed implementation and adoption of model WHS Regulations and Codes. At this stage it is not possible to provide an overall costing of the package, without further quantitative data being gathered and available. This will be explored further in the Decision RIS for the model regulations.

The results of the preliminary analysis may be subject to change following the provision of information from stakeholders in the public comment process and the development of a Decision RIS.

At this stage, Access Economics expects that model WHS Regulations and Codes will confer an overall small net benefit.

## Introduction

In July 2008, the Council of Australian Governments (COAG) formally committed to the harmonisation of work health and safety legislation by signing an Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA).

The IGA outlines the commitment of the Commonwealth and the states and territories to work together to develop a nationally consistent harmonised framework for work health and safety laws. These laws would take the form of a Model WHS Act; model WHS regulations and model Codes of Practice. In signing this agreement each jurisdiction has committed to implementing the new harmonised framework by 1 January 2012.

The IGA also provided for the establishment of a new independent body to progress the development of the model work health and safety legislation. The Workplace Relations Ministers' Council (WRMC) endorsed the creation of Safe Work Australia on 3 April 2009.

Safe Work Australia was formally established on 1 July 2009, with a primary focus to progress the harmonisation of model work health and safety laws in partnership with the states and territories, employer and worker representatives, who are all members of Safe Work Australia.

The Strategic Issues Group for Occupational Health and Safety (SIG-OHS), a tripartite body made up of industry, union and State and Commonwealth representatives was then established by Safe Work Australia to oversee the development and implementation of the model legislation, which includes the *Model Work Health and Safety (WHS) Act* and model WHS Regulations and Codes of Practice. The Agency of Safe Work Australia (the Agency) assists Safe Work Australia and SIG-OHS with this work.

On 11 December 2009 the WRMC endorsed the model WHS Act subject to technical and drafting changes. The development of regulations and Codes of Practice is an important element of the regulatory framework and will assist duty holders to comply with their respective duties of care,

On the 2 December 2010, Safe Work Australia members endorsed and agreed to release an exposure draft of the model WHS Regulations and Codes of Practice for public comment. The exposure draft is accompanied by a Public Discussion Paper and this Consultation Regulation Impact Statement (Consultation RIS).

## The Regulatory Impact Statement (RIS) Process

Under COAG requirements, a RIS is required for all agreements and decisions made by COAG, Commonwealth-State Ministerial Councils and national standard setting bodies.

The development of a COAG RIS is a two stage process involving a Consultation RIS and a Decision RIS. The RIS includes issues which have given rise to the need for action, the desired objectives, and the options for achieving these.

The purpose of a Consultation RIS as part of the COAG RIS process is to advise the regulatory options for consideration, and to gather information to inform the cost benefit analysis to be undertaken in the Decision RIS. The Consultation RIS aims to gather views from affected

parties on potential impacts of the options, prior to the development of final recommendations presented in the Decision RIS.

## Purpose of this Consultation RIS

This Consultation RIS is one element of the development process and addresses the package of model WHS Regulations and Codes of Practice that have been developed to support the model WHS Act.

This Consultation RIS is intended to complement the RIS undertaken for the model WHS Act and not intended to cover those matters already covered by the RIS for the model WHS Act.

Many of the provisions that are addressed by way of the model WHS Regulations and/or the model Codes of Practice have previously been the subject of agreement through policy arrangements under the Australian Safety and Compensation Council (ASCC) or the National Occupational Health and Safety Commission (NOHSC), (i.e. as in National Standards and Codes of Practice for which RISs have been undertaken). It is not proposed to revisit those issues and policy decisions for which a RIS has previously been completed.

However, some of the provisions of the draft model WHS Regulations and Codes of Practice may impose additional costs to business.

Codes of Practice are developed to provide practical guidance in relation to the subject matter of the Code on how to implement provisions contained within the model WHS Act or Regulations. Codes of Practice are not mandatory and if the person conducting a business or undertaking can find an equivalent means of providing the same level of health and safety as provided for in the Code of Practice then that is an acceptable course of action. However, Codes of Practice do have evidentiary status in court and as such, in accord with COAG's guidelines to best practice regulation (2007), are subject to the COAG review (RIS) process.

The purpose of the Consultation RIS is to set out the issues, objectives and options for the development of the model WHS Regulations and Codes of Practice package, so as to assist in gathering comment during the public comment process. The information received by respondents will then be used to inform the cost benefit analysis to be undertaken in the Decision RIS. A preliminary analysis of the anticipated costs and benefits of introducing the model WHS Regulations and Codes of Practice in support of the model WHS Act has been included in this Consultation RIS.

This Consultation RIS sets out the issues, objectives and options for the model WHS Regulations and Codes of Practice. The methodology for the RIS is outlined in Appendix E.



## Report Structure

This RIS is structured as follows, noting that Chapters 4 through 7 are likely to be expanded and modified substantially between the Consultation RIS and Decision RIS phases.

- **Chapter 1** states the problem that the harmonisation of work health and safety legislation and regulation is seeking to address and provides an overview of current work health and safety legislation.
- **Chapter 2** describes the objectives of the work health and safety reforms and outlines the current process of harmonising work health and safety Regulations and Codes of Practice, the inconsistencies that exist under the current system, and how the harmonisation process aims to address these.
- **Chapter 3** presents the options on which the Consultation RIS is based, in the context of the model WHS Act and based on the May 2009 WRMC recommendations.
- **Chapter 4** examines the commonalities and differences between current jurisdictional regulations and Codes of Practice, and those proposed under work health and safety harmonisation.
- **Chapter 5** provides information on the public consultation process and an initial qualitative analysis of the effects of harmonisation on business, workers, and regulators. This chapter will be substantially expanded for the final Decision RIS after consultation is complete.
- **Chapter 6** presents an initial summary of the anticipated quantitative impact of harmonisation – including the anticipated costs and benefits to business, workers and governments. This chapter will be substantially expanded for the final Decision RIS after the select focus groups and survey phases are complete.
- **Chapter 7** summarises the anticipated findings of the Consultation RIS and puts forward an initial conclusion regarding the recommended option. This chapter is also currently incomplete, awaiting inputs from the survey, public discussion paper, focus groups and the consultation process for the final Decision RIS.
- **Chapter 8** sets out the review provisions planned for evaluation of the implementation of the Regulations and Codes of Practice.
- **Chapter 9** provides a summary of the impacts anticipated.
- **Appendices A, B, C, D, E, F, and G:**
  - Appendix A – outlines Australia’s work health and safety performance and trends in workplace injury and incidence rates in Australia.
  - Appendix B – provides an outline of the history of work health and safety harmonisation in Australia.
  - Appendix C – provides a review of the relevant literature; in particular the RISs that have been undertaken that are related to the model WHS Regulations and Codes of Practice.
  - Appendix D – provides a copy of the survey to be distributed to ABS and Safe Work Australia mail lists of stakeholders and workplaces.

- Appendix E - summarises the methodology agreed between Safe Work Australia and the Office of Best Practice Regulation (OBPR), that Access Economics will adopt in conducting the impact analysis and finalising the RIS, including a summary of data and literature sources and the rationale for the survey and select focus group approach to new primary data collection.
- Appendix F - presents a summary of the questions in Part 4.
- Appendix G – gives detailed references of publications within the Consultation RIS.

# 1 Statement of the Problem

## 1.1 Background

All Australian work health and safety legislation is based on the same set of principles, known as the Robens model, which was adopted in the 1970s in a period of widespread reform following recommendations made by the Robens Committee in the UK (Lord Robens, 1972). With the adoption of the Robens model, work health and safety laws shifted from detailed, prescriptive standards to a more self-regulatory and performance-based approach.

However, while similar in intent, there are differences in how each state and territory has interpreted these principles, and considerable variance in substantive matters continues to exist between jurisdictions, particularly in regard to duties of care, consultation and risk control mechanisms, compliance regimes and penalties.

Over the last 20 years there has been significant work undertaken at the national level to make the application of work health and safety regulations more consistent by developing National Standards and National Codes of Practice. However, there has not been a binding obligation on jurisdictions to adopt these National Standards and Codes of Practice. In addition, adoption of National Standards has been inconsistent, for example, with jurisdictions reworking the clauses and definitions of a National Standard to align with their respective work health and safety legislation.

Differences across jurisdictions can impose substantial costs to businesses operating in multiple work health and safety environments; and multiple regulatory regimes are a cost to government due to duplication and inefficiencies in the provision of policy and regulatory and support services.

In response to this, Australian governments through COAG have committed to harmonising work health and safety laws, via the development of a model WHS Act, model WHS Regulations and model Codes of Practice, and compliance and enforcement policies.

The first step in this harmonisation process has been the commitment by the states and territories to the IGA, followed by the development of, and agreement to a model WHS Act. Through the IGA, jurisdictions have committed to commence the model legislation by 1 January 2012.

The next step in this process is the development of, and agreement, to model WHS Regulations and Codes of Practice which will support the model WHS Act. Model WHS Regulations and Codes of Practice clarify duties and provide practical information about the implementation of the new model WHS Act for regulators, workers, and persons conducting a business or undertaking.

## 1.2 Overview of current work health and safety arrangements

All states and territories have responsibility for making and enforcing their own work health and safety legislation. Australian governments have taken a broadly similar approach to regulating for safer workplaces, which includes:

- a principal work health and safety Act codifying common law duties of care

- detailed regulations and Codes of Practice, and
- a system of education, inspection, advice, compliance activities and, where appropriate, prosecution.

With nine different jurisdictions, there are multiple laws relating to health and safety in the workplace. These include ten specific work health and safety statutes (i.e. six state Acts, two territory Acts and two Commonwealth Acts), and over 50 other legislative instruments applying to activities, including offshore petroleum, mining, construction, public health (e.g. radiation, agriculture and veterinary chemicals), public safety (e.g. amusement equipment, electrical safety, plumbing and gas safety, machinery, scaffolding and lifts), and statutes relating to explosives, transport of dangerous goods and radioactive materials.

From an international perspective, Australia's work-related fatality rates are among the best performing countries. Australia's incident rates over recent years have generally decreased at a greater rate than the best performing countries. Appendix A outlines Australia's work health and safety performance (see Chart 2).

Across the jurisdictions there are differing regulatory bodies and structures, inspectorate regimes and legislative content. As noted, multiple work health and safety regimes increase the costs borne by governments, while economies of scale and scope may be achieved through shared production of work health and safety policy across the jurisdictions (Quigley, 2003).

Other issues associated with multiple work health and safety regimes include:

- that inconsistent safety standards across jurisdictions lead to confusion and complexity which has negative impacts on the safety of workers
- that inconsistent safety standards across jurisdictions cause confusion, complexity and duplication for businesses
- similar breaches in different jurisdictions being subject to different enforcement activities and significantly different penalties
- the incentive for industry to move to jurisdictions with less stringent or costly regulation
- jurisdictions competing against one another to attract business by reducing the levels of safety (Johnstone, 2008), and
- disincentives for businesses to participate in multiple markets across jurisdictions - resulting in reduced competition.

### **1.3 Current process of harmonising work health and safety legislation**

In July 2008 the Australian Government committed to working with all states and territories to harmonise work health and safety legislation by 1 January 2012, and replaced the Australian Safety and Compensation Council (ASCC) with a new independent body, Safe Work Australia.

At its meeting on 1 February 2008, the WRMC agreed that the use of model legislation is the most effective way to achieve harmonisation of work health and safety laws. Ministers supported the Australian Government's intention to initiate a review to inform the development of model legislation and agreed to settle the terms of reference for the review.

On 4 April 2008, the Minister for Employment and Workplace Relations announced a National Review by an advisory panel that would report to the WRMC on the optimal structure and content of a model WHS Act capable of being adopted in all jurisdictions.

In July 2008, COAG signed an IGA (COAG, 2008) which commits all of the jurisdictions to adopt model work health and safety legislation by 1 January 2012. The IGA sets out the principles and processes for co-operation between the states and territories and Commonwealth governments to implement uniform work health and safety legislation, complemented by consistent approaches to compliance and enforcement.

In October 2008, the first report of the National Review into work health and safety legislation was released. It made recommendations on:

- duties of care, including the identification of duty holders and the scope and limits of duties; and
- the nature and structure of offences, including defences.

The second report, which was released in January 2009, made recommendations on:

- scope and coverage, including definitions
- workplace-based consultation, participation and representation provisions, including the appointment, powers and functions of health and safety representatives and committees
- enforcement and compliance, including the role and powers of work health and safety inspectors, and the application of enforcement tools including Codes of Practice
- regulation making powers and administrative processes, including mechanisms for improving cross-jurisdictional co-operation and dispute resolution
- permits and licensing arrangements for those engaged in high risk work and the use of certain plant and hazardous substances
- the role of work health and safety regulatory agencies in providing education, advice and assistance to duty holders, and
- other matters the National Review panel identified as being important to health and safety that should be addressed in the model WHS Act.

The two reports from the National Review can be found at <http://www.nationalohsreview.gov.au>.

A history of workplace health and safety harmonisation in Australia is at Appendix B.

## 1.4 Regulatory inconsistencies under current arrangements

The current inconsistencies in work health and safety legislation between jurisdictions have led to significant problems that are summarised below:

**Multi-state employers and Red Tape** – the most prominently reported cost of the current arrangements arises from the issue of red tape. This is the cost to employers who operate in more than one jurisdiction, in complying with more than one jurisdiction's work health and safety legislation. Red-tape and system duplication requires an increased effort to meet the differing requirements of jurisdictions to meet essentially the same work health and safety ends. The processes are necessary to support the work health and safety framework in each

jurisdiction, but the differences shift an employer's work health and safety focus from improving safety in the workplace, to dealing with paper work.

Although multi-state business make up less than 1 per cent of businesses, generally they are larger firms and account for nearly 29 per cent of employment.

The Regulation Taskforce (2006) (the Taskforce) found the most visible costs to business from over regulation generally is the paperwork burden and related compliance costs, which derives from:

- providing management and staff time to fill in forms and assist with administrative requirements such as audits
- recruiting and training additional staff to meet compliance burdens
- purchasing and maintaining reporting and information technology systems
- obtaining advice from external sources (such as accountants and lawyers) to assist with compliance, and
- obtaining licences and/or attending courses to meet regulatory requirements.

Evidence provided to the Taskforce indicates that these costs can be significant. For example:

- the NSW State Chamber of Commerce submission stated that the average business in NSW spends up to 400 hours per year (the equivalent of nearly \$10 000), complying with regulations or meeting its legal obligations, and
- QBE Insurance Group estimated that, in total, it spends \$60 million per year on compliance matters.

The Taskforce identified work health and safety as a cross-jurisdictional regulation 'hot-spot' requiring urgent attention.

Many submissions to the Productivity Commission (2004) *Inquiry into Workers' Compensation and Occupational Health and Safety Frameworks* reported that the cost for multi-state employers of complying with multiple arrangements can be considerable, sometimes amounting to millions of dollars per year. Although most employers were not able to give precise estimates of the costs faced, a few provided estimates relating to particular costs.

**Government and Taxpayers** – Taxpayers, via remit to state, territory and Commonwealth government revenue funds, pay for the development, implementation and review of work health and safety legislation – a process which is currently duplicated periodically in each jurisdiction, using different schedules. These differing schedules increase inconsistency; creating an environment of perpetual change.

**Community Costs** - The Taskforce noted in their report (2006 p15) that: 'Where regulation increases business costs, these are often passed on to consumers in the form of higher prices for goods and services. Some regulations may also unnecessarily restrict consumer choice'.

Further, regulation that increases business costs or restricts business opportunities may jeopardise not only the profits of owners, but also the job security and wages of their workers.

**Reduced mobility of the workforce** - The necessity to be trained and certified as competent for some types of work under separate arrangements in each jurisdiction, limits workforce mobility. The Taskforce noted that:

‘the ability of Australian businesses to attract skilled workers and the mobility of skilled workers across Australian jurisdictions underpin a well-functioning labour market and productivity growth. A common theme across a range of submissions was the way various occupational licensing regimes effectively undermine these requirements. The two key areas of regulation are those governing Australia’s national training system and occupation licensing regimes.’

**Inequity** – Different safety standards across jurisdictions create inequities for employers and employees. For example, some states require physical fall protection for workers at two metres, others at three, and others do not specify a height at all (leaving it to employers to assess the risk in each situation).

**Confusion, errors, and distraction** - The Productivity Commission (2004) reported that the need to focus on complying with differences between jurisdictions is seen as a distraction for management, away from focussing on developing a company-wide culture of preventing injury and illness. It quoted a submission from *Pacific National* that ‘rather than being proactive and developing better prevention and implementation strategies, internal safety management safety staff must spend time training and researching jurisdictional differences.’ The Productivity Commission (2004) also quoted from *Pacific Terminals* that there was an:

‘increased risk of overlooking or misinterpreting a requirement as a result of the differences in state legislative framework. Small to medium sized enterprises are required to spend a disproportionate amount of time on work health and safety and workers’ compensation administration.’

### Examples of Regulatory Inconsistencies

Some examples of regulatory inconsistencies, the additional burdens imposed under current work health and safety regulations, and the practical benefits of harmonised regulations are outlined below.

- A registration regime imposes a prohibition on the use of some plant until certain legal requirements have been met. This involves an information transfer between the applicant and the regulator and in most cases the imposition of a cost in the form of registration fees. The significance of this interaction is amplified where the duty holder is faced with different requirements in different jurisdictions. The harmonised WHS Regulations and Codes of Practice have the potential to significantly simplify these differing processes.
- All jurisdictions currently require asbestos removalists to have undertaken training in order to be issued with a licence. Mandatory training for licensed asbestos removalists varies across the jurisdictions. The approaches vary from competency based VET sector training to regulator ‘approved’ private sector developed courses. With no nationally recognised training for asbestos removal or mutual recognition of asbestos removal licences; when businesses are operating across borders, applications must be made with each regulator. Development of nationally endorsed units of competency for asbestos removal workers, asbestos removal supervisors and licence applicants would reduce burden on businesses operating close to state and territory borders by increasing both workforce mobility and flexibility, and the ability for businesses to operate either side of the border. It would also enable the same standard of competency to be enforced across Australia.

## 2 Objectives of harmonisation of work health and safety reform

The IGA states that the fundamental objective of work health and safety reform is to produce the optimal model for a national approach to work health and safety regulation and operation which will:

- enable the development of uniform, equitable and effective safety standards and protections for all Australian workers
- address the compliance and regulatory burdens for employers with operations in more than one jurisdiction
- create efficiencies for governments in the provision of work health and safety regulatory and support services, and
- achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

The harmonisation of work health and safety legislation is part of the COAG National Reform Agenda aimed at reducing regulatory burdens and creating a seamless national economy. These reforms aim to deliver more consistent regulation across jurisdictions and to reduce excessive compliance costs on business. They also aim to reduce restrictions on competition, and distortions in the allocation of resources in the economy. The harmonisation of work health and safety legislation is intended to contribute to:

- creating a seamless national economy through reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions
- enhancing Australia's longer-term growth, and improving workforce participation and overall labour mobility
- expanding Australia's productive capacity over the medium term through competition reform, enabling stronger economic growth
- improving compliance for multi-state jurisdictions
- assisting the development of future Regulations and Codes of Practice as knowledge regarding practices improves
- the smoother transition of goods and equipment between jurisdictions, and
- the transfer of processes between jurisdictions.

The development of the model WHS Act has been completed for adoption in jurisdictions by 1 January 2012. Work health and safety harmonisation has four components:

- harmonisation of principal work health and safety Acts
- harmonisation of work health and safety regulations
- development and adoption of Codes of Practice, and
- nationally consistent compliance and enforcement policies.

The objectives of harmonising work health and safety legislation, Regulations and Codes of Practice are as outlined in the *COAG National Partnership Agreement to Deliver a Seamless National Economy* (2008) as follows:



- **Reducing compliance costs for business.** For multi-state business, national consistent Acts should equate to lower compliance costs. For single-state business the outcome is not clear.
- **Improving efficiency for regulatory agencies.** Rather than having ten regimes (including Seacare) being reviewed every five years (i.e. at least one per year on average), under harmonisation, there should effectively only be one national regime reviewed every five years.
- **Improving safety outcomes.** The reduction of red tape and greater certainty for duty holders should allow business to focus more pro-actively on health and safety improvements, rather than on mere compliance. Regulatory efficiencies should also allow more scope for regulators to actively improve safety in workplaces. In addition, the model WHS Act applies to a broader range of modern employment relationships and thus aims to protect all types of workers from hazards and risks arising from work.
- **Model Regulations and Codes of Practice assist with the harmonisation of work health and safety legislation.** The model WHS Regulations support the model WHS Act by setting out mandatory obligations on specific matters. These regulations are written in terms of process or outcomes that people conducting a business or undertaking must follow or achieve to meet their general duties under the Act in relation to these matters. The work health and safety Codes of Practice provide practical guidance to support the model WHS Act and model WHS Regulations and have evidentiary status but non-compliance is not in the first instance a breach.

### 3 Options for model WHS Regulations and Codes of Practice

This chapter presents the options on which this Consultation RIS is based, in the context of model WHS Regulations and Codes of Practice based on the model WHS Act.

- Option 1 is the retention of the status quo (non-harmonised legislation and non-harmonised regulation), and
- Option 2 is adoption of the recommendations of the WRMC for model WHS Regulations and Codes of Practice by all jurisdictions, implemented by 1 January 2012.

In December 2009 States and Territories agreed to the model WHS Act subject to technical and drafting changes, based on a Decision RIS. This Consultation RIS process focuses on the model WHS Regulations and Codes of Practice package that will support the model WHS Act.

In consultation with the Agency and the Office of Best Practice Regulation (OBPR), these two options were agreed as the basis for the Consultation RIS. This agreement took into account the extensive consultation undertaken during development of the regulations package and progress of national work health and safety harmonisation including the development of the agreed model WHS Act. Further analysis would be undertaken for areas of 'considerable' change.

The mapping process in the following chapters presents analysis of proposed model WHS Regulations where there is 'minimal', 'some' or 'considerable' change above and beyond the status quo. Where evaluation has found there is likely to be change and significant measurable costs and/or benefits associated with changing from the status quo (Option 1) and moving towards adopting the recommendations from the WRMC (Option 2), this is further discussed in Chapter 4 and Chapter 6.

The analysis in the following chapters will identify incremental changes. Incremental costs and benefits are defined as those costs or benefits considered to be unique to Option 2. That is, this RIS will not reconsider costs and benefits already imposed by the model WHS Act (for example, removal of reversed onus of proof). Rather, new and additional requirements imposed by model WHS Regulations and Codes of Practice will be discussed. For example, while all jurisdictions already have legislation pertaining to the licensing of asbestos removalists (except the Commonwealth which defers to state and territory legislation), standardisation across Australia regarding national competency-based training units will result in training courses being revised by Registered Training Organisations (RTOs), resulting in changes to existing practices.

Similarly, where an existing National Standard or Code of Practice and associated RIS (see Appendix C for details of these) have previously been agreed and have been used as the policy basis for model regulations, it is only the incremental change and impact beyond that previously assessed, which will be considered as part of Option 2.

As noted, all states and territories have agreed to enact model work health and safety legislation based on the model WHS Act. Option 2 consolidates existing elements of state and territory work health and safety regulations and Codes of Practice in a consistent manner (reflecting more a process of harmonisation than reform). As a result, for the most part, neither substantial changes, nor large costs or benefits are expected to be associated with the

implementation and adoption of these model WHS Regulations and Codes of Practice. (This assessment may change in the Decision RIS, after final public comment is considered).

Implementation of Option 2 has implications for governments, businesses and workers.

It is anticipated that benefits will mostly reflect small gains – in particular associated with businesses operating cross-jurisdictionally, as well as financial savings from greater harmonisation and safety improvements related to businesses and entities having better compliance with the model WHS Act, once it is supported by common standardised regulations and Codes of Practice. There are also initial costs expected to businesses in adjusting to new regulations, and to regulators in drafting and implementing these changes.

This impact analysis examines activities covered by the proposed model WHS Regulations and Codes of Practice and attempts to gather views from governments, businesses and workers. The cost benefit framework and the mapping process outlined in the following chapters are primarily designed to evaluate the incremental differences between Option 1 and Option 2. To further determine the cost effectiveness of Option 2, additional data will be required and gathered as part of the public comment process that includes a survey and targeted focus groups to be conducted by Access Economics with key stakeholders.

## 4 Anticipated change from proposed model WHS Regulations and model Codes of Practice

This section examines the commonalities and differences for each of the draft model WHS Regulations and Codes of Practice that have been proposed for consideration under the harmonisation process. As previously noted, prior to the model WHS Act, states and territories have had a common set of principles that their work health and safety legislation is based on. However, the manner in which these principles were implemented through regulations has not been consistent and has varied over time.

As noted, previous reviews and regulatory impact statements have been completed and agreed on, and used as the policy basis for national standards. These reports, produced by Commonwealth, state and territory agencies and independent organisations, have identified the costs and impacts of introducing various regulations and guidance material relevant to the national work health and safety harmonisation process.

Aspects of these publications which concern the adoption of national model WHS Regulations and Codes of Practice are summarised in Appendix C.

The previous RISs outlined in Appendix C are an important part of the Consultation RIS process. They provide a base line for determining additional change and impact that may arise in the course of developing the model WHS Regulations and Codes of Practice. All jurisdictions have previously agreed to the outcomes of these RISs. As such, whether they have implemented any or part of the regulation assessed, they represent the base from which the proposed model WHS Regulations or Codes of Practice have been assessed.

The model WHS Act agreed by the WRMC has been the subject of a RIS process. The draft model WHS Regulations and Codes of Practice that have been developed in support of the model WHS Act now provide the detail for duty holders to meet their responsibilities under the model WHS Act (e.g. primary duty of care and duties in relation to authorisations).

The following chapter examines the draft model WHS Regulations and Codes of Practice considered for harmonisation, including an assessment of the significance of the change to each jurisdiction, and discussion on the expected national impact of these changes. This chapter is set out using a similar framework to the draft model WHS Regulations (Table 1).

This discussion has been based on detailed benchmark analysis. This has included an analysis of the likely extent of change anticipated to achieve the nationally harmonised framework of model WHS Regulations and Codes of Practice. It includes a preliminary assessment indicating the extent of change for each jurisdiction, provided for consultation purposes.

Industry groups have raised the likelihood of indirect costs in most areas as a result of implementing the model WHS Regulations and Codes of Practice. While it has not been possible to address this in the Consultation RIS, to enable further quantitative and qualitative assessment, public comment is sought from industry on the extent and nature of these indirect costs.

Where existing National Standards and/or Codes of Practice are in place Safe Work Australia agreed to use these as the basis for harmonisation. This includes processes that were undertaken as part of their development.

Table 1 provides an outline of the structure of model WHS Regulations and Codes of Practice.

Table 2 summarises the likely extent of the anticipated changes by jurisdiction and subject. This is based on information provided from previous RIS processes, benchmarking and policy analysis by the Agency of Safe Work Australia, and discussion by SIG-OHS and with key stakeholders.

**Table 1: Structure of consolidated draft model WHS Regulations and Codes of Practice**

| <b>Model WHS Regulations</b>            | <b>Authorisations</b>   | <b>Codes of Practice</b>                           |
|---|---|--|
| <b>Representation and Participation</b> |   | How to Manage Work Health and Safety Risks         |
| <b>General Workplace Management</b>     |   | How to Consult on Work Health and Safety           |
| General Working Environment:            |   | Managing the Work Environment and Facilities       |
| Entry, Exit and Movement                |   |  |
| Work Area and Space                     |   |  |
| Floors and Surfaces                     |   |  |
| Lighting                                |   |  |
| Ventilation                             |   |  |
| Heat and Cold                           |   |  |
| Essential Services                      |   |  |
| Facilities                              |   |  |
| Remote and Isolated Work                |   |  |
| Personal Protective Equipment           |   |  |
| First Aid                               |   |  |
| Emergency Plans                         |   |  |
| <b>Hazardous Work</b>                   |   |  |
| Noise                                   |   | Managing Noise and Preventing Hearing Loss at Work |
| Hazardous Manual Tasks                  |   | Hazardous Manual Tasks                             |
| Confined Spaces                         |   | Confined Spaces                                    |
| Falls                                   |   | How to Prevent Falls at the Workplace              |
| High Risk Work                          | Licensing of High Risk Work<br>General Licensing<br>Accreditation of Assessors<br>Registration of Assessors |  |
| Abrasive Blasting                       |   |  |
| Electrical work                         |   |  |
| Diving work                             |   |  |



Considerable change to current practice

“2” - indicates considerable change for duty holders in complying with the model WHS regulations. Currently compliant duty holders will need to introduce new, or extensively modify existing practices or procedures in order to comply with the new requirements. This could include no longer needing to carry out compliance activities relevant to a particular subject area.

The following indicators have also been used in Table 2.

+ Indicates an existing National Standard and/or Code of Practice.

++ Indicates that in addition to an existing National Standard and /or Code of Practice, a RIS has previously been undertaken and approved.

Other factors that have been taken into consideration in the development of this table are that in some cases there may be existing regulations under other legislative frameworks (e.g. electricity), that have similar regulatory requirements and therefore represent no additional regulatory change.

It should be noted that the anticipated changes identified in Table 2 may reflect either an increase or decrease in the regulatory burden. Also, in this instance, the changes identified are not weighted to account for differences in the size of each jurisdiction or the degree of regulatory burden imposed by each subject area.

Information gathered during the public comment period may result in further changes to this table. This will be reflected in the final Decision RIS.

**Please note that this table has been developed in consultation with jurisdictions for the public comment process as a summary of the anticipated changes. If you believe the ratings are inappropriate, please advise in your submission, including your reasons for the change.**

The following examples provide further detail on how the anticipated ratings in Table 2 were derived.

#### **Example of a “minimal change” rating**

A jurisdiction has regulations for occupational noise setting out the national exposure standard for noise and has a Code of Practice consistent with the *National Code of Practice for Management and Protection of Hearing at Work – 3rd Edition* [NOHSC:2009(2004)]. The duty holder would not need to undertake any additional compliance activity to meet the requirements set out in the model WHS regulations.

#### **Example of a “some change” rating**

A jurisdiction may currently have regulations specific to emergency plans. A regulation for emergency plans is included in the model WHS Regulations as a result of the harmonisation process, which requires additional information to be included in the emergency plan. In order to comply the duty holder would need to update their existing emergency plan to include the additional information.

### Example of a “considerable change” rating

A jurisdiction is introducing new competency based asbestos licensing arrangements as a result of the harmonisation process, where previously there were no requirements for this. This would be a considerable change from existing regulations and to the compliance practice required of duty holders.

**Table 2: Summary of anticipated changes by jurisdiction and subject**

| Subject                                 | Tas | NT | Qld | SA | ACT | WA | Vic | NSW | C'wth |
|---|-----|----|-----|----|-----|----|-----|-----|-------|
| <b>Representation and Participation</b> |     |    |     |    |     |    |     |     |       |
| Health and Safety Reps/Work Groups      | -   | 1  | 1   | -  | -   | 1  | -   | 2   | 1     |
| Issues Resolution                       |     | 2  | 2   | 1  |     | 1  |     |     | 1     |
| Consultation                            | -   | -  | 1   | 1  | -   | 1  | -   | 1   | -     |
| <b>General Workplace Management</b>     |     |    |     |    |     |    |     |     |       |
| General Working Environment:            | -   | -  | -   | -  | -   | 1  | -   | -   | 1     |
| Entry , Exit and Movement               | -   | -  | -   | -  | -   | -  | -   | -   | 1     |
| Work areas and space                    | 1   | 1  | -   | -  | -   | 1  | -   | -   | 1     |
| Floors and Surfaces                     | -   | -  | -   | -  | -   | -  | -   | -   | 1     |
| Lighting                                | -   | -  | -   | -  | -   | -  | -   | -   | 1     |
| Ventilation                             | -   | -  | -   | -  | -   | 1  | -   | -   | 1     |
| Heat and Cold                           | -   | -  | -   | -  | -   | -  | -   | -   | 1     |
| Essential Services                      |     | 1  |     | 2  |     | 1  |     |     | 1     |
| Facilities                              | -   | -  | -   | -  | -   | 1  | -   | 1   | 1     |
| Remote and Isolated Work                | -   | -  | 2   | 1  | -   | 1  | -   | 1   | 1     |
| Personal Protective Equipment           | -   | -  | -   | -  | -   | -  | -   | -   | 1     |
| First Aid                               | -   | 1  | -   | -  | -   | -  | -   | -   | 1     |
| Emergency Plans                         | -   | 1  | 2   | -  | -   | -  | 2   | 1   | 1     |
| <b>Hazardous Work</b>                   |     |    |     |    |     |    |     |     |       |
| Noise++                                 | -   | -  | -   | -  | -   | 2  | 1   | 1   | 1     |
| Hazardous Manual Tasks++                | -   | -  | 1   | -  | -   | -  | -   | 2   | -     |
| Confined Spaces                         | -   | -  | -   | -  | -   | -  | 2   | 1   | 1     |
| Falls                                   | 1   | 1  | 2   | 1  | 1   | 2  | -   | 1   | 1     |
| High Risk Work - Licensing              | -   | -  | -   | 1  | -   | -  | -   | -   | -     |
| Abrasive Blasting                       | 1   | -  | 1   | -  | 1   | 1  | 1   | -   | 1     |
| Electrical Work                         | 1   | -  | -   | -  | 1   | 1  | 1   | 1   | 1     |
| Electricity -RCDs                       | 2   | 2  | -   | -  | 2   | -  | 2   | 2   | 2     |
| Diving Work                             | -   | -  | -   | 1  | -   | 2  | 1   | 2   | 1     |



| Subject  | Tas | NT | Qld | SA | ACT | WA | Vic | NSW | C'with |
|--|-----|----|-----|----|-----|----|-----|-----|--------|
| <b>Plant and Structures</b>                        |     |    |     |    |     |    |     |     |        |
| Plant++  | -   | 1  | 1   | 1  | 1   | 2  | -   | 2   | -      |
| Scaffolding  | 1   | -  | -   | -  | -   | -  | -   | -   | -      |
| Amusement devices                                  | 1   | 1  | 1   | -  | 1   | 1  | 1   | 1   | 1      |
| Plant Registration++                               | -   | -  | -   | -  | 1   | 2  | 2   | -   | 1      |
| <b>Construction</b>                                |     |    |     |    |     |    |     |     |        |
| Construction – General                             | 1   | 1  | 1   | 1  | -   | 1  | 1   | 1   | 1      |
| Construction –High Risk                            | -   | -  | -   | -  | -   | 1  | -   | -   | -      |
| Construction – Excavation Notification             | -   | -  | 2   | -  | -   | 2  | -   | 2   | 2      |
| Construction – Induction +                         | 1   | -  | -   | 1  | -   | -  | -   | -   | 1      |
| <b>Hazardous Chemicals</b>                         |     |    |     |    |     |    |     |     |        |
| Chemicals – General++                              | -   | -  | 2   | 2  | -   | 2  | -   | -   | 1      |
| Chemicals – Labelling++                            | -   | -  | -   | 1  | -   | 2  | -   | 2   | 1      |
| Chemicals - Safety Data Sheets++                   | -   | -  | -   | -  | -   | 2  | -   | -   | 1      |
| Chemicals - Fire or Explosion                      | -   | -  | -   | -  | -   | 1  | 1   | -   | 1      |
| Inorganic lead                                     | -   | -  | 1   | 1  | -   | 1  | -   | 2   | 1      |
| Asbestos Removal and Management                    | -   | 2  | 2   | -  | -   | 2  | -   | -   | 2      |
| Asbestos Removalist Licensing                      | 1   | 1  | 1   | 1  | 1   | 2  | 1   | 1   | 2      |
| Licensed Asbestos Assessor                         | 2   | 2  | 2   | 2  | 2   | 2  | 2   | 2   | 2      |
| Certified SMS for Class A removal licence          | -   | 2  | 2   | -  | 2   | 2  | -   | 2   | 2      |
| <b>Major Hazard Facilities (MHF)</b>               |     |    |     |    |     |    |     |     |        |
| Major Hazard Facilities (MHF)++                    | -   | 2  | 1   | 2  | -   | 1  | -   | 2   | 1      |
| Major hazard facilities – licensing/registration++ | -   | 2  | 1   | 2  | -   | 1  | -   | -   | 1      |

## 4.2 Summary of ratings at a National level

National ratings for anticipated changes across model WHS Regulations subject areas are listed on page 27. The list provides a summary of subjects rated as “minimal”, “some” or “considerable” change expected as a result of the draft model WHS Regulations and Codes of Practice at a national level. Indicators relating to National Standards and/or Codes of Practice and RIS processes are also included where appropriate.

The national ratings of “minimal change”, “some change” and “considerable change” have been determined in consultation with and input from key stakeholders. The jurisdictional ratings provided by stakeholders in Table 2 have been used as a guideline to obtain the national ratings. In addition to this, to determine the three ratings, qualitative feedback from the jurisdictions; available quantitative data which is regarded on reasonable grounds can be substantiated; and Safe Work Australia policy analysis have all been taken into consideration.

Note that all ratings will be considered further during the public consultation period with the aim of verifying the suitability of the rating from stakeholder feedback during the public comment phase. All ratings are subject to change in the final Decision RIS.

### **Minimal Change**

Where there are a majority of “-” (“minimal”) ratings in Table 2, these hazards have generally been rated nationally as “minimal change”. A subject area may have one or two number “1” ratings identified which do not result in change in current practice but may give rise to either more or less detailed prescription than currently exists in jurisdictional regulations. Where this has occurred the rating has been moderated to “minimal change”, taking into account the overall impact across all jurisdictions.

### **Some Change**

Where there are more than a majority of “1” (“some”) ratings in Table 2, these hazards have been rated as “some change”. It is possible that a small jurisdiction may have a “2” rating but its occurrence may impact on a relatively small sector of the national economy or national workforce, or the change may be easily introduced, or there is doubt that the basis of the rating will be substantiated. Where there are a majority of “minimal” change ratings and a “2” rating, this may be moderated as a national rating to “some change”.

### **Considerable Change**

Where there are three or more “2” (“considerable”) ratings for a hazard identified in Table 2, a rating of “considerable change” has been allocated; or where two or more ratings with a widespread economic and workforce impact is anticipated then a “considerable change” rating has been given.

## **Examples of National Ratings**

### **Minimal Change**

Noise has been rated nationally as “minimal change” as there has been a long history of consistent adoption of the National Standards and Codes of Practice for noise and there has been little change to existing practice. Although in this case one jurisdiction rated this as a “considerable” change, their reasoning for this i.e. the “requirement for hearing tests”, is not consistent with the draft Model WHS regulations, which do not in fact mandate audiometric testing. In this instance, with these factors taken into account, and given that little economic or widespread impact is expected, a “minimal change” national rating has been given.

### **Some Change**

Confined Spaces has been rated nationally as “some change” as, although the majority of jurisdictions rated the change as “minimal” (and have existing provisions based on either the Australian Standard for confined spaces or the previous National Standard/Australian Standard), two jurisdictions rated this as “some” change, and for one jurisdiction a rating of “considerable” was given. The “considerable” rating was largely due to the draft Model WHS regulation definition of a confined space, which in their view will have an impact as it expands the scope that the regulation will apply to.

### Considerable Change

Plant item registration has been rated nationally as a “considerable change” as two larger jurisdictions identify this as a “considerable” change and it also represents an expected potential economic impact in larger jurisdictions where plant registration is currently required less frequently than on an annual basis. In consideration of this, and of the scope and number of items required to be registered, the national rating for plant item registration has been moderated to a “considerable change” rating.

#### National ratings for anticipated change - model WHS Regulations subject areas

| Minimal Change   | Some Change   | Considerable Change   |
|--|---|---|
| <b>General Workplace Management</b><br>General Working Environment:<br>- Entry, Exit and Movement<br>- Floors and Surfaces<br>- Lighting<br>- Ventilation<br>- Heat and Cold<br>Personal Protective Equipment<br>First Aid<br><b>Hazardous Work</b><br>Noise++<br><b>Plant and Structures</b><br>Scaffolding<br><b>Hazardous Chemicals++</b><br>Fire or Explosion<br>Safety Data Sheets+ | <b>Representation and Participation</b><br>Health and Safety Reps<br>Issues resolution<br>Consultation<br><b>General Workplace Management:</b><br>General Working Environment<br>- Work Areas and Space<br>- Essential Services<br>- Facilities<br>- Remote and Isolated<br>Emergency Plans<br><b>Hazardous Work</b><br>Hazardous Manual Tasks++<br>Confined Spaces+<br>Falls (existing Code for Construction)++<br>High Risk Work Licensing<br>Abrasive Blasting<br>Electrical Work<br>Diving Work<br><b>Plant and Structures</b><br>Plant++<br>Amusement Devices<br><b>Construction</b><br>Construction – general<br>High Risk Work<br>Construction Induction+<br><b>Chemicals</b><br>Labelling+<br>Inorganic lead+ | <b>Hazardous Work</b><br>Electrical work - RCDs<br><b>Plant and Structures</b><br>Plant Registration<br><b>Construction</b><br>Excavation<br>Notification++<br><b>Chemicals</b><br>Asbestos Removalist<br>Licensing<br>Asbestos Assessor<br>Licensing<br><b>Major Hazard Facilities (MHF)</b><br>Major Hazard Facilities++<br>MHF Licensing |

### 4.3 National analysis of subject areas

The information produced in the remainder of this chapter outlines anticipated changes by subject area as a result of the introduction of draft model WHS Regulations and Codes of Practice.

In addition to the rationale provided in Section 4.1 this analysis also takes into account the number of jurisdictions that may be impacted by the change.

Where some change has been identified, a summary of the anticipated change is provided. Where considerable change is anticipated, further analysis has been provided in Part 6 Anticipated Impact Analysis.

It should be noted that where National Standards and Codes of Practice are in place and RIS processes have been undertaken these have been used as the starting point for the impact analysis.

### 4.4 Preliminary

This Part of the draft model WHS Regulations sets out basic information about the draft Regulations including the title of the Regulations, commencement date(s) and the definitions of key terms used throughout the Regulations. It also includes the application (how the regulations will apply), and incorporated documents, which explains how external documents cited in the draft model WHS Regulations including Australian Standards are incorporated into the Regulations.

### 4.5 Representation, participation, consultation

From a national perspective some change is anticipated with the introduction of these draft model WHS Regulations and Codes of Practice as while some jurisdictions expect minimal change, for others there would be various changes in practice, as outlined below.

This Part prescribes certain matters in relation to representation and participation processes under the model WHS Act. It deals with administrative matters relating to work groups established or to be established under the model WHS Act and regulations that are made to deal with administrative matters under the model WHS Act including:

- the negotiation and variation of work groups, including matters to be taken into account in negotiations
- procedures for the election of health and safety representatives (HSRs), including requirements that a person conducting a business or undertaking (PCBU) must not delay an election
- procedures for the removal of a HSR by a majority of workgroup members
- training requirements for HSRs
- default procedures for issue resolution
- training requirements for work health and safety entry permit holders

- what is included in work health and safety entry permits and requirements for entry notices, and
- requirements relating to the publishing of a register of work health and safety entry permit holders.

The draft Code of Practice 'How to consult on work health and safety' provides guidance on the consultation duties provided in the WHS Act and includes details on:

- what effective consultation involves
- how to establish consultation arrangements, including with HSRs and committees
- when to consult, and
- how to consult, co-operate and co-ordinate activities with other duty holders.

This code will be supported by additional guidance material on workers representation requirements. NSW have indicated some change as many NSW PCBUs will need to modify their existing consultation provisions.

NSW have advised that there will be considerable change to existing practice in NSW due to the extension of work groups to non-employees (i.e. volunteers), the increased role for HSRs and additional training requirements (i.e. increased duration and refresher training).

Queensland has indicated that these requirements will result in some change. Whereas the Queensland legislation currently allows workers to elect one workplace HSR per workplace, the draft model WHS Regulations allow the formation of multiple work groups and therefore the election of more than one HSR per workplace. As such, duty holders will need to modify existing practices to comply with the new requirements.

In regard to issues resolution, Queensland has indicated that these requirements will result in considerable change. This would be a new regulation for Queensland requiring duty holders to extensively modify existing practices to comply with the new requirements, such as establishing an issue resolution procedure, providing it in writing, communicating it to all workers and allowing for representation of workers to resolve issues.

Regarding consultation, Queensland has indicated that these requirements will result in a some change. Under the current Queensland legislation, the duty holder is required to conduct limited consultation with HSRs on specific issues. The new regulations will impose broader consultation requirements on the duty holder to introduce consultation processes, to share information, and to take the views of workers into account in the resolution of work health and safety issues, which will require that they modify existing practices to comply with the new requirements.

Western Australia has noted that it does not currently have work groups or mandatory refresher training for HSRs. These will therefore be new workplace arrangements and will have some change for duty holders. For issue resolution and consultation there is an increased level of prescription and record keeping involved which also will mean some change for duty holders.

Some industry groups have indicated that as consultation has been formalised with the model WHS Regulations and has requirements that may increase the scope of consultation this may increase the indirect costs in areas such as training.

Public comment is sought on the practical change that will arise from the model WHS Regulations.

## 4.6 General workplace management

### 4.6.1 General working environment

This Part of the draft model WHS Regulations makes provision for management of matters common to all workplaces including the general working environment. It requires persons conducting a business or undertaking (PCBUs) to ensure that the working environment is without risks to health and safety through:

- the unobstructed movement of persons at the workplace, including entry, exit and movement around work areas
- the design, installation and maintenance of floors and other surfaces
- the provision of adequate lighting and ventilation, and
- protecting workers from extremes of heat and cold.

This Part also includes requirements for:

- ensuring essential services do not pose a risk to workers
- facilities for the welfare of workers, including toilets, drinking water, hand washing and eating facilities, and
- ensuring effective communication with workers carrying out remote or isolated work.

The draft Code of Practice 'Managing the work environment and facilities' provides guidance on the working environment and facilities at the workplace and includes details on:

- providing a safe and healthy physical work environment including lighting, workspace and ventilation
- the types of facilities that should be provided for the welfare of workers, such as toilets, drinking water, dining areas, change rooms and personal storage
- managing the risks of remote and isolated work, and
- preparing emergency plans.

The model WHS Act places a primary duty on the PCBU to provide a safe workplace for workers. The proposed work health and safety regulatory provisions for general workplace management provide clarification of this duty.

All jurisdictions (except Victoria and the Commonwealth) have regulations dealing with aspects of the general working environment. Some change is anticipated in some jurisdictions with the introduction of model WHS Regulations and Codes of Practice covering this. For clarity, the

specific topics covered by the proposed regulation and how these are dealt with across the current jurisdictional regimes, is provided below.

Western Australia has noted that for those topics with a rating above 'minimal change', it is of the view that the model regulations represent an increase in the amount of stipulated requirement which will represent an impact on duty holders. WA is of the view that the contents of the 'Managing the work environment and facilities' Code is somewhat prescriptive and while intended as guidance will need to be applied as a benchmark in the workplace as a consequence of sections 274 & 275 of the model WHS Act.

The Commonwealth has advised that, as noted above, it currently has no specific regulations and only limited references in its Codes of Practice to the matters covered under the General Working Environment Regulation and Code. As such, it expects that there will be some change in compliance activity for duty holders to meet the requirements set out in the regulation and Code.

As general workplace management covers a wide range of issues, and both existing provisions within jurisdictions and the degree of change expected varies, principle hazards are listed below to allow discussion of these variations.

#### **Entry, exit and movement within the workplace**

From a national perspective minimal change is anticipated with the introduction of model WHS Regulations and Codes of Practice as this is already regulated in most jurisdictions and does not add to the current duty of care or requirement to manage risks to the health and safety of workers.

Eight jurisdictions (NSW, Queensland, Victoria, SA, WA, NT, Tasmania and the ACT) regulate exit and entry (or access and egress) in general provisions. The Commonwealth covers entry and exit requirements in specific regulations such as construction and plant. Also the *National Standard for Construction Work* and the *National Standard for Plant* each stipulate requirements for providing adequate access and egress.

Five jurisdictions (NSW, SA, WA, NT and the ACT) have provisions covering movement in the workplace. These impose an obligation on employers to ensure that people can move around the workplace freely and unobstructed. Victoria has a compliance Code of Practice on workplace amenities and work environment which includes the movement in the workplace.

#### **Work areas and space**

From a national perspective some change is anticipated with the introduction of these draft model WHS Regulations and Codes of Practice as there are jurisdictions that currently do not regulate this at all.

Six jurisdictions (NSW, Queensland, SA, WA, NT and the ACT) have regulations covering work areas and space. These all require that there be sufficient space to work so that there is no risk to workers' health. The Queensland and SA regulations provide specifications for the application of regulations for work area and space. Victoria has a compliance code, which covers workplaces. Tasmania and the Commonwealth currently do not have regulations or a Code of Practice which requires work areas in the workplace to have space for work to be carried out without risk to health and safety.

### Floors and surfaces

From a national perspective minimal change is anticipated with the introduction of model WHS Regulations and Codes of Practice due to the general terms of the proposed workplace provisions and to the fact that this is already regulated in most jurisdictions.

Five jurisdictions (NSW, SA, WA, NT and the ACT) have requirements within either general or hazard-specific regulations relating to floors and surfaces. The other jurisdictions cover floors and surfaces in Codes of Practice or guidance material i.e. Victoria covers this in its compliance code on workplace amenities and work environment; Queensland has guidance material on preventing slips, trips and falls in the workplace; and Tasmania has a checklist on the topic. The Commonwealth has no regulation or code.

### Lighting

From a national perspective minimal change is anticipated with the introduction of model WHS Regulations and Codes of Practice due to the fact that this is already regulated in most jurisdictions.

Seven jurisdictions (NSW, Queensland, SA, WA, NT, ACT and the Commonwealth) regulate for lighting either in their general provisions or in hazard-specific regulations. Victoria covers lighting in a Compliance Code.

Three jurisdictions reference two Australian Standards related to lighting. The *Interior Lighting* series has a number of standards that detail specific requirements for lighting in buildings and workplaces. The *Emergency escape lighting and exit signs for buildings* series of Australian Standards provides guidance on the use of lighting in emergency situations.

### Ventilation

From a national perspective minimal change is anticipated with the introduction of model WHS Regulations and Codes of Practice due to the current jurisdictional coverage and the general terms of the proposed provision.

Ventilation at the workplace is about workers having the ventilation that enables them to carry out their work without risk to their health and safety.

Ventilation is regulated in six jurisdictions (NSW, Victoria, WA, Queensland, NT, SA and the ACT), either in general workplace provisions or in hazard-specific regulations such as mining or confined spaces. Tasmania has not identified any issues or any change that will be required to adopt ventilation regulations. However, ventilation is covered under a range of other regulations such as building regulations and Australian Standards 1324.1 *Air Filters for Use in General Ventilation and Air-Conditioning* and Australian Standard 1668.1 *Use of Ventilation and Air Conditioning in Buildings* and is a standard method of control that would be required by businesses to meet their OHS obligations in relation to matters such as chemical exposure and air quality. As such it would be expected that setting out requirements for ventilation in regulation to have minimal change and impact on business. The covering of current practice by WHS Regulation does not necessarily represent a need to change current compliance practice in the workplace. Further comment is sought on this matter.



### Heat and cold

From a national perspective minimal change is anticipated with the introduction of these draft model WHS Regulations and Codes of Practice and their implementation. Provisions for heat and cold exist in the majority of jurisdictions, and the proposed regulation does not add to the current duty of care or requirement to manage risks to the health and safety of workers.

Given that provisions for heat and cold exist in many jurisdictions, impact and implementation issues should be minimal. South Australia, WA, NT and the Commonwealth require that workers exposed to heat and cold parts within a plant should be monitored and managed. Three jurisdictions (NSW, SA, WA) stipulate that the provision of emergency lighting, safety doors and alarm systems are necessary if access to hazardous hot and cold plant is required as part of normal operation e.g. cold storage room.

Five jurisdictions (NSW, SA, WA, NT and the ACT) regulate for working in extreme conditions of heat and cold. Victoria has indicated the model WHS Regulations will have minimal effect. The Commonwealth has indicated that they currently have no regulation in this area.

### Work in relation to essential services

From a national perspective some change is anticipated with the introduction of model WHS Regulations and Codes of Practice.

All jurisdictions have provisions covering work in relation to essential services; mostly contained within regulations for specific hazards such as confined spaces (e.g. Victoria, NT and the ACT), or construction. In the case of construction, working near essential services is classed as high risk work (e.g. in Victoria and the Commonwealth). South Australia has rated this proposed provision as a considerable change.

The *National Standard for Construction Work* provides a definition that sets out work near essential services under requirements for high risk work that could come into contact with services. The *National Standard on Safe Working in Confined Spaces* includes provisions on the isolation of services.

### Facilities

From a national perspective some change is anticipated with the introduction of model WHS Regulations and Codes of Practice as while most jurisdictions regulate this already, for NSW there are expanded obligations on duty holders.

Seven jurisdictions (NSW, Queensland, SA, WA, NT, Tasmania and the ACT) have regulations addressing workplace facilities generally, and the Commonwealth refers to the provision of amenities and facilities in construction and plant regulations. Victoria has a Compliance Code on workplace amenities and work environment.

NSW has identified that this results in some change for NSW as the model WHS Act has a broader definition than the NSW WHS Act. The extension of scope of coverage of the legislation arises as a consequence of the duty holder structure set out in the model WHS Act and was a matter dealt with in the RIS for the model Act. However, Greater prescription within the regulation does not mean a change in practice per se and no further detail has been provided by NSW.

The *National Standard for Construction Work* requires that there be access to amenities for construction workers.

### **Remote and isolated work**

From a national perspective some change is anticipated with the introduction of these draft model WHS Regulations and Codes of Practice as some jurisdictions will need to review current working arrangements.

This regulation requires the implementation of measures that include effective communication with workers undertaking work in remote or isolated circumstances. Four jurisdictions (SA, WA, Tasmania and the ACT) have regulations for remote or isolated work. Although five jurisdictions (Victoria, NSW, Queensland, NT and the Commonwealth) do not have specific regulations for remote or isolated work, they nevertheless have general duties of care, and risk management provisions within their current work health and safety legislative requirements. SA have indicated it will have an impact on current practice.

NSW have advised that this new requirement will require some change as NSW duty holders will need to review their current work arrangements.

Queensland has indicated that these requirements will result in considerable change. The Queensland regulations do not currently contain any specific requirements regarding remote and isolated work. As such, if duty holders do not currently have measures for effective communication with workers in place, then they will need to introduce new practices and procedures in order to comply with the new requirements.

### **4.6.2 Personal protective equipment (PPE)**

From a national perspective minimal change is anticipated with the introduction of the draft model WHS Regulations and Codes of Practice as PPE is regulated across all jurisdictions except Victoria, and in a similar way.

This Part applies if PPE is provided to workers or other persons at workplaces. Specific requirements are included for air supplied respiratory equipment, signs, and duties for workers to use PPE in accordance with training and instructions.

PPE should only be provided if all other options for eliminating or minimising risks have been exhausted because PPE is generally the least effective risk control measure that can be used to control risks in the workplace.

There is a duty to provide PPE in all jurisdictions and the risks must be controlled in accordance with the hierarchy of controls. The use of PPE to control risks is the last option that can be used where all other reasonably practicable means of control are not sufficient to reduce risks to an acceptable level. PPE is also addressed in specific hazard Codes of Practice.

Jurisdictional work health and safety regulations for PPE are provided either in general provisions that would apply to all workplace activities and hazards or in provisions within hazard specific regulations including asbestos removal, abrasive blasting, confined spaces, construction, electrical work, electroplating, falling objects, flotation devices, foundry work, hazardous substances, heat and cold climate, lead, mining, spray painting, supply of respirators, and welding.

Australian Standards are referenced in some regulations for PPE. However, the referencing of Australian Standards across the jurisdictions is inconsistent.

### **4.6.3 First Aid**

From a national perspective minimal change is anticipated with the introduction of model WHS Regulations and Codes of Practice due to the current coverage across all jurisdictional regimes and the general terms of the proposed provisions.

This part requires PCBUs to:

- provide first aid equipment and facilities and ensure workers have access to them, and
- ensure an adequate number of workers are trained to administer first aid.

In order to assess how to best provide for first aid in a workplace, these Regulations specify that a PCBU must have regard to the nature of the work and workplace. This includes taking into account the size, location, number of workers and other people at the workplace.

A Code of Practice is being developed to provide guidance on:

- the types of equipment and facilities that should be provided for various workplaces
- contents of first aid kits
- first aid policies and procedures, and
- training requirements for first aid personnel.

First aid is regulated in all jurisdictions. Six jurisdictions (NSW, Queensland, WA, SA, NT and the ACT) regulate first aid under general provisions and others regulate first aid within specific regulations such as construction, confined spaces, falls or hazardous substances. Victoria has a Compliance Code in this area.

### **4.6.4 Emergency plans**

From a national perspective some change is anticipated with the introduction of model WHS Regulations for emergency plans. Under these regulations it is mandatory to prepare emergency plans and duty holders will need to revise their current emergency plans.

This part requires PCBUs must ensure that:

- an emergency plan is prepared which includes emergency procedures (including effective response to an emergency, evacuation procedures, notification of emergency services at the earliest opportunity, medical treatment and assistance, and effective communication for coordinating the emergency response)
- emergency procedures are tested, and
- workers are trained in the implementation of the plan.

This matter is also dealt with in the draft Code of Practice 'Managing the work environment and facilities'.

Five jurisdictions (NSW, SA, WA, Tasmania and the ACT) have general provisions for emergency procedures. The other jurisdictions have provisions for emergency procedures within hazard-specific regulations such as falls, mining, and major hazard facilities.

Victoria has indicated the requirement for small businesses to implement an emergency evacuation plan and train workers in the emergency plan may have a significant impact on small businesses. Currently, Victoria only has emergency procedure requirements in relation to falls, confined spaces, asbestos, Major Hazard Facilities and mining.

NSW have advised that there is some change for NSW as new requirements on duty holders will need them to review their emergency planning arrangements.

Queensland has indicated that these requirements will result in considerable change. The Queensland regulations do not currently contain any specific requirement for a PCBU to prepare work health and safety emergency plans, and as such duty holders will need to introduce new practices and procedures in order to comply with the new requirements.

## 4.7 Hazardous work

This section outlines the draft model WHS Regulations which deal with eliminating hazards or minimising risks associated with certain kinds of hazardous work.

### 4.7.1 Noise

From a national perspective minimal change is anticipated with the introduction of model WHS Regulations and Codes of Practice as the model WHS regulations do not include mandatory audiometric testing (rather, information on audiometric testing is included in the Code of Practice). This will result in a change in Tasmania and Victoria and some additional requirements in NSW and WA.

This part requires PCBUs to ensure that a worker is not exposed to noise at the workplace that exceeds the exposure standard for noise. The part requires a person conducting a business or undertaking to eliminate the source of noise, or if that is not reasonably practicable, to implement control measures to minimise the exposure to below the exposure standard for noise by substituting quieter plant or processes, or using engineering controls, administrative controls or, as a last resort, personal hearing protectors.

The draft Code of Practice 'Managing noise and preventing hearing loss at work' provides guidance on:

- how to identify hazardous noise
- how to assess the risks of hearing loss, and
- the types of control measures that can be implemented to eliminate or reduce exposure to noise in the workplace.

All jurisdictions have Codes of Practice consistent with the National Code of Practice for Management and Protection of Hearing at Work – 3rd Edition [NOHSC:2009(2004)] and the National Standard for Occupational Noise [NOHSC:1007(2000)] (National Standard). Victoria and Tasmania have elevated some noise management elements, e.g. audiometric testing, into their respective noise regulations.

Only Victoria and Tasmania have provisions in their regulations to provide audiometric tests for workers who are supplied with hearing protectors. Victoria and Tasmania require

audiometric testing for workers at the commencement of employment and at least every two years thereafter unrelated to noise levels in excess of the exposure standards. The model WHS regulations do not include mandatory audiometric testing, (this is included in the Code of Practice) and this will result in a change in practice in these two jurisdictions.

NSW has indicated that the draft model WHS Regulations will have some impact due to the more specific requirements around audiometric testing in the code of Practice, which will require reviews of PCBU noise policies.

WA has rated the proposed regulations for noise as 'considerable' change due to the 'requirement for hearing tests'. However, as noted above, this is not a regulatory requirement. In addition, WA already has audiometric testing in its code of practice.

The model noise regulations only provide a noise exposure standard, control and review measures, therefore the level of impact is assessed as minimal given all jurisdictions have implemented the National Standard. For Victoria and Tasmania there is a reduction in the regulatory requirements but it is retained in the Code of Practice.

Other noise specific matters are included in the draft model Code of Practice e.g. health surveillance (audiometric testing and audiological examinations). These guidelines may impose an additional cost to industry, the community and governments in those jurisdictions that currently do not undertake these activities. However, as all the jurisdictions currently have noise management elements in their guidance material, including Codes of Practice, it is expected that these costs will be minor.

#### **4.7.2 Hazardous manual tasks**

From a national perspective some change is anticipated with the introduction of model WHS Regulations and Codes of Practice as some jurisdictions such as Queensland and the ACT do not have provisions contained within their Regulations (although it is covered under Codes or Acts); or there are changes to risk assessment for jurisdictions, such as in NSW.

This Part requires PCBUs to eliminate or if that is not reasonably practicable, minimise the risk of musculoskeletal disorders arising from hazardous manual tasks. The model WHS Regulations include:

- control measures to minimise the risk
- factors that must be considered when determining control measures, and
- when it is necessary to review and revise control measures.

This draft Code of Practice 'Hazardous Manual Tasks' that accompanies this part provides guidance on preventing musculoskeletal disorders caused by hazardous manual tasks. It includes information on:

- how to identify hazardous manual tasks
- risk factors associated with musculoskeletal disorders
- how to control risks, and
- the role of design in eliminating or minimising risks.

The draft model Code of Practice will be supported by additional guidance material for manual tasks in specific industries.

In 2007, a RIS identified the impact from the revision of the *National Standard for Manual Tasks (2007)* and the *National Code of Practice for the Prevention of Musculoskeletal Disorders from Performing Manual Tasks at Work (2007)*. The model WHS Regulations and the model Code of Practice incorporate the revised National Standard and Code and as such, a minor impact is anticipated. However, the extent of injuries and claims in this area is such that amendments to the standard and Code of Practice by national harmonisation has potential for minor administrative benefits for businesses operating across borders, in implementation of a national standard and Code of Practice.

All jurisdictions (with the exception of Queensland) have either adopted the National Standard in full or have provisions consistent with the standard. Two jurisdictions (Tasmania, and the Commonwealth) stipulate compliance with current or previous National Standards in their regulations; Tasmania with the *National Standard for Manual Tasks (2007)* and the Commonwealth with the previous *National Standard for Manual Handling [NOHSC:1001(1990)]*. Five jurisdictions (NSW, Victoria, SA, WA, and NT), although they have not adapted the National Standard, have regulations with provisions consistent with the National Standard. The ACT, while not prescribing risk management in its regulations, does so at the level of its *Work Safety Act 2008*. In addition, the ACT has adopted the National Standard as its Code of Practice for manual tasks. Queensland has developed guidance material for specific industries including, road freight, construction, packing industries and the cleaning industry.

Analysis reveals that there is close overlap regarding objectives, definitions, duty holders and duties and risk management amongst the current regulatory provisions.

NSW have advised that removal of requirement for risk assessment is a significant change and several risk factors currently present in NSW legislation are omitted. The requirement that a risk assessment does not have to be undertaken in all circumstances is a change that has the potential for savings to businesses.

Queensland has indicated that these requirements will result in some change. This will be a new regulation for Queensland as there is currently no regulation covering manual tasks in this state, and as such duty holders will need to introduce new practices and procedures in order to comply with the new requirements.

### **4.7.3 Confined spaces**

From a national perspective some change is anticipated with the introduction of model WHS Regulations and Codes of Practice as there are some differences around the definition of confined spaces and the record keeping requirements for some jurisdictions.

The model WHS Regulations sets out general requirements for managing risks associated with working in 'confined spaces' (as defined) and sets out specific controls including requirements for:

- risk assessments
- confined space entry permits

- ensuring that atmospheres in confined spaces are safe and without risks to health or safety
- communication systems, including communication with a standby person, and
- emergency procedures.

The model WHS Regulations also sets out 'up-stream' duties for designers, manufacturers and suppliers of structures or plant that contain, or will contain, a confined space and special rules for emergency workers who enter confined spaces in emergency situations.

The draft Code of Practice for confined spaces provides guidance on identifying confined spaces, assessing and controlling risks and includes details on:

- isolation controls; atmospheric testing and monitoring; fire and explosion; entry permits; stand-by persons; signs and barricades,
- emergency rescue procedures, record-keeping, providing information, instruction and training, and
- a sample confined space entry permit.

The Code of Practice will also provide information on hazards that are unique to confined spaces (e.g. biological and environmental, the effective use of respiratory protective equipment, and includes a sample confined space entry permit).

There are currently some variations across jurisdictions, and with the introduction of model WHS Regulations these differences will be removed. NSW and Victoria restrict the duty to minimise the need to enter a confined space to designers, manufacturers and suppliers of plant. South Australia, the ACT and the Commonwealth explicitly require employers to first identify any confined space at the workplace. Victoria and the Commonwealth make provision for generic hazard identification. All jurisdictions except the Northern Territory include a requirement for stand-by person(s), signage and barricades in their confined spaces. NSW and the ACT require the employer to ensure appropriate atmospheric testing and monitoring is carried out in a confined space.

The regulations in most states and territories are based on *AS/NZS 2865:2001 Safe Work in a Confined Space*. Queensland, Western Australia and Tasmania directly reference the Australian Standard in regulations. *AS/NZS 2865* has recently been revised and released as *AS/NZS 2865:2009* in September 2009. Because this document is so recent, it has not yet been adopted into regulation in any jurisdiction.

The definitions of a confined space used across the regulations contain subtle differences that have implications for the scope of the regulations. NSW have advised that changes to definition of confined spaces will require duty holders to re-assess many confined spaces in NSW.

In Victoria's view the definition in the regulations will widen the scope from that currently applied in Victoria and believe that it may now include cold rooms, shipping containers etc. In Victoria's view this will have a considerable impact.

Application of the risk management/permit to enter provision to these spaces could be considerable to businesses including farm and retail sector.



Victoria is of the view that there will be an increase in regulatory burden due to:

- Regulations will encompass engulfment of liquids;
- Requirement for risk assessment (which differs to the 'hybrid risk assessment' model in the Victorian Regulations 2007 – see R 3.4.7)
- Record-keeping requirements (risk assessment and training records).

The Commonwealth has advised that for confined spaces, there will be some change based on the changed record keeping requirements e.g. an entry permit is required to be kept for two years; an increase from 3 months.

Jurisdictions currently differ in how they include requirements for managing risks associated with confined spaces. While the general approach taken in regulations development is to not mandate hazard identification and risk assessment, confined spaces are considered dangerous enough to have these prescribed in the model WHS Regulations for confined spaces.

A number of matters in relation to confined spaces cross-over with hazardous chemicals, and any decisions made in relation to hazardous chemicals will be reflected in the model WHS Regulations for confined spaces. In particular, this relates to decisions about flammable gases and vapours, the appropriate exposure standards to be used, and controls for fire and explosion.

#### **4.7.4 Falls**

From a national perspective some change is anticipated with the introduction of model WHS Regulations and Codes of Practice as the removal of the 2 metre height threshold and the extending of the detailed hierarchy to all falls will result in change in some jurisdictions.

This part regulates fall hazards across all industries and from any height, including falling or being hit by a falling object.

The Part requires PCBUs to identify and control risks of persons falling by applying the hierarchy of controls. Risks must be identified and controlled by firstly arranging for work to be carried out on the ground or a solid construction through to implementing administrative controls or other reasonably practicable measures to ensure health and safety.

This Part also sets out measures for minimising risks of persons being hit by falling objects, including requirements for safe means of raising and lowering objects, securing barriers to prevent objects from falling freely and in some circumstances using PPE.

PCBUs are also required to keep records in some circumstances and implement emergency procedures in relation to fall hazards.

The draft Code of Practice 'How to prevent falls at the workplace' provides guidance on how to identify, assess and control the risk of persons and objects falling in the workplace. Guidance is provided on the hierarchy of control mandated under the model WHS Regulations including examples of various fall prevention devices and work positioning systems.

Eight of nine jurisdictions currently have regulatory provisions for the prevention of falls. Tasmania's regulations reference falls only in relation to brittle roofing.



All jurisdictions, except Tasmania and Victoria, have provisions related to falling objects in their work health and safety regulations. The requirements of these provisions vary, with some providing detailed requirements for controlling the risk of falling objects.

Victoria's Occupational Health and Safety Regulations 2007 expressly exclude certain types of work, including work that involves theatre performances, stunts, horse-riding and motorbike-riding from the requirements in the Regulations.

NSW have advised that the falls hierarchy is more specific and NSW duty holders will need to review risk assessments and other compliance arrangements and as such this is a some change rating for NSW. SA has also indicated some change.

Queensland has indicated that these requirements will result in a considerable change. The Queensland regulations only regulate falls in the construction industry, while the model WHS Regulation will apply to all industries. As such, duty holders will need to introduce new practices and procedures in order to comply with the new requirements. In addition, the model WHS Regulation for falling objects represents a significant reduction in regulation for duty holders in the construction industry; this change will result in certain duty holders no longer needing to carry out compliance activities relevant to falling objects.

WA has indicated that the proposed requirements regarding falls will result in a considerable change due to the extension of falls regulations beyond construction.

Some industry groups have indicated concerns at the removal of the 2m threshold in some jurisdictions and what the impact of extending the detailed hierarchy to all falls will have on business.

Some change is anticipated with the introduction of draft model WHS Regulations for Falls and Codes of Practice as most jurisdictions currently require the risk of a fall to be controlled, and in some cases require a higher level of protection, such as the mandatory use of physical fall protection for specific circumstances.

There is currently no national standard for the prevention of falls in all workplaces. However, the prevention of falls in the Construction industry is addressed in the *National Code of Practice for the Prevention of Falls in General Construction (GFC)* and the *National Code of Practice for the Prevention of Falls in Housing Construction (HFC)*. The GFC and the HFC apply a hierarchy of control to eliminate or minimise the risk of a fall consistent with the model WHS Regulations, and also include a 2 metre height threshold for physical fall protection to be implemented where reasonably practicable.

Data will need to be gathered from this RIS's survey and consultation process before any detailed assessment of costs relating to the model WHS Regulations for Falls can be undertaken.

#### **4.7.5 High Risk Work**

##### **Licensing of High Risk Work**

From a national perspective some change is anticipated with the introduction of these draft model WHS Regulations and Codes of Practice due to changes in notification and licensing of some classes of work.

This part provides for licensing of high risk work, which is defined in a Schedule to the Regulations and includes for example, scaffolding, rigging, dogging and the operation of cranes, hoists, forklifts and pressure equipment. Penalties for breaching high risk work licensing requirements are provided for under Part 4 of the model WHS Act.

The National Standard for Licensing Persons Performing High Risk Work (the Standard) was declared in April 2006 by the ASCC. The Standard was supported by a RIS, which was endorsed in August 2005. The RIS provided a cost benefit analysis (CBA) for several administrative changes. Minor revisions to the licence class structure have occurred during the development of the model WHS Regulations.

The Standard has been incorporated into OHS legislation by all states and territories. The Commonwealth has also given effect to parts of the Standard that are relevant to its jurisdiction; it also recognises State and Territory issued licenses. Heads of Workplace Safety Authorities (HWSA) established the Licensing Standard Implementation Group (LSIG) to ensure the consistent adoption of the Standard across the jurisdictional regulations.

In 2008, COAG committed to develop a national licensing system, which included the following characteristics: Cooperative national legislation; and National governance arrangements to handle standard setting and policy issues to ensure consistent administration and compliance practices.

Work health and safety has been identified as a first tier priority area for competition reform within the COAG commitment. The proposed model licensing regulations will address the COAG commitment in relation to work health and safety licensing. Work health and safety licensing matters covered by these regulations will be considered as addressed and not further considered within the COAG process.

The classes of high risk work have been reviewed and the High Risk Work Licensing schedule, class definitions and class descriptors, will remain as per the national Standard, excepting that: reach stackers will be included as a new separate licence class - some jurisdictions already licence reach stackers under 'non-slewing mobile cranes' and the new class may increase the number of operators that require a licence; and all concrete placing booms, not just vehicle mounted, are included in the scope of the 'concrete placing boom' licence - this may increase the number of operators that require a licence.

In addition, it was confirmed that load shifting equipment will not be licensed and this should result in a reduction in licensing requirements in those jurisdictions that currently require licences for the operation of various types of load shifting equipment, being Queensland, NSW and the ACT.

Overall, the revision of the classes of high risk work and the class descriptors, including for those classes listed above, will only require jurisdictions to make minor adjustments to align with the High Risk Work Licensing Schedule in the model WHS Regulations. Therefore it is envisaged that there would not be considerable impact with harmonisation.

### Registration of assessors

From a national perspective some change is anticipated with the introduction of model WHS Regulations and Codes of Practice.

This Part sets out a process for accrediting assessors to in order to allow them to assess workers' ability to carry out high risk work for licensing purposes under the Part. It requires accredited assessors to meet certain standards in carrying out assessments.

*Access Economics would be interested in your views on the following matters:*

- *Are you able to provide information on any impact these new high risk work licensing regulations may have, if any, on your business (either positive or negative)?*
- *Would the possible licensing of reach stackers, as a separate class of high risk work, have an impact on the cost of running your business?*
- *How would the reduction of boiler operation classes of high risk work, from three classes to [two or one], impact on your business?*

#### 4.7.6 Abrasive blasting

From a national perspective some change is anticipated with the introduction of the draft model WHS Regulations and Codes of Practice as use of a harmonised list of restricted substances and concentrations may mean that in some jurisdictions, alternate blasting material may need to be sourced,

This part in the draft model WHS Regulations sets out work health and safety requirements for carrying out abrasive blasting, including:

- a requirement that, so far as reasonably practicable, abrasive blasting be carried out using a blasting cabinet or chamber
- if that is not reasonably practicable, alternative control measures to protect workers and others at the workplace from risks arising from abrasive blasting
- requirements for controlling risks associated with ventilation, residue and waste material, and
- requirements for the provision of washing and decontamination facilities.

Abrasive blasting is a high risk activity. The main hazards in abrasive blasting arise from the dust created by the abrasive itself or from the surface debris being removed; from the noise of the equipment; from the physical forces of air or water jets; and from the blasting plant and equipment. Some of these hazards are regulated through specific provisions in the regulations, for example chemicals regulations in relation to exposure to dust and other chemicals, and noise regulations. The use of some hazard materials for blasting has been restricted.

The key provisions in the model WHS Regulations specific to abrasive blasting are: the use of a blasting cabinet or chamber (where reasonably practicable), the use of ventilation for blasting carried out outside a blasting chamber (where reasonably practicable), and the provision of washing and decontamination facilities for workers involved in blasting activities. The

regulations also prohibit the use in abrasive blasting of substances that contain certain hazardous impurities.

Six (Commonwealth, NSW, Queensland, NT, SA and WA) of nine jurisdictions already have either regulations or Codes of Practice for abrasive blasting. *AS 1627.4–2005 Metal Finishing – Preparation and Pre Treatment of Surfaces - Abrasive Blast Cleaning of Steel* sets out the standard for the abrasive blast cleaning of steel. Appendix C of that document sets out safety considerations. It also refers to *AS 4361.1 Guide to lead paint management – Industrial Applications* for environmental issues relating to containment of debris, and to other Australian Standards relating to personal protective equipment (PPE) and air quality. For those jurisdictions without codes or regulations, most hazards are already regulated (e.g. noise, chemicals/dust, confined spaces). In addition, the use of blast chambers and ventilation (where practicable) is already covered by the general duty of care, so minimal changes are expected.

### **Use of blasting cabinets and chambers and ventilation**

The use of blasting chambers is mandated in regulations in NSW and WA (where reasonably practicable) and recommended in Codes of Practice in other jurisdictions. Although it could be argued that imposing requirements to use blast chambers and ventilation would be a considerable regulatory burden in seven jurisdictions (ACT, Commonwealth, NT, Queensland, SA, Tasmania and Victoria) without this regulatory requirements, and a moderate regulatory impact in those jurisdictions with Codes of Practice or guidance on abrasive blasting which recommend use of a blast chamber, this is not considered to be the case.

Regardless of whether specific regulations or Codes of Practice exist for abrasive blasting, all jurisdictions already require risks to be controlled. This is generally achieved through control measures within the hierarchy of controls, namely elimination, substitution, engineering controls, administrative controls and use of PPE. A principle of the hierarchy of controls is that higher order controls should be used where practicable to do so, ahead of lower order controls.

Consequently, the proposed model WHS Regulations, by identifying appropriate control measures to use where practicable, are consistent with existing regulations in all jurisdictions that utilise the hierarchy of controls. The regulations are therefore expected to impose only a minor regulatory impact overall.

### **Provision of washing and decontamination facilities**

The use of washing and decontamination facilities is intended to prevent exposure to dusts when removing clothing and equipment once blasting operations have ceased. Hazardous substances regulations in all jurisdictions already require risks from chemicals (which includes dusts) to be controlled, although no specific reference is made to these facilities. The requirement to provide washing and decontamination facilities are not expected to impose a considerable impact.

### **Restriction of use of certain substances in abrasive blasting**

The regulations restrict the use of certain substances for abrasive blasting, generally when present as impurities in the blasting medium. These are based on the prohibited substances and concentrations in several jurisdictions' regulations. Currently there is considerable variation across jurisdictions of the substances and concentrations listed, that have developed

as a result of the lack of national policy in this area. Use of a harmonised list of restricted substances and concentrations may mean that in some jurisdictions, alternate blasting material may need to be sourced, potentially adding a cost for businesses. However, restriction of use of these known hazardous chemicals may result in reduced costs from avoidance of health related injury and disease costs.

#### **4.7.7 Electrical work**

From a national perspective some change is anticipated with the introduction of the draft model WHS Regulations and Codes of Practice as some jurisdictions do not have provision for electrical work under WHS regulations and the regulations provide for mandating of Residual Current Devices (RCDs) .

The exception is requirements for installation of RCDs which may be regarded as considerable change in some jurisdictions. This is discussed further in Chapter 7.

The draft model WHS Regulations includes general rules for ensuring electrical safety at the workplace including:

- requirements for controlling electrical hazards at the workplace
- requirements for dealing with unsafe electrical equipment and rules for ‘testing and tagging’ certain high risk equipment
- prohibiting electrical work on energised electrical equipment unless pre-requisites for carrying out the work are met, and
- requiring use of residual current devices (RCDs) to protect socket outlets at workplaces, and
- work that is carried out near overhead electric lines.

The Regulations are not intended to apply to the works of an electricity supply authority used for the generation, transmission or distribution of electricity for the public (however described), as these types of authorities are generally regulated under jurisdictional electricity laws.

Seven jurisdictions (NSW, WA, SA, ACT, NT, Tasmania and the Commonwealth) have provisions relating to electrical work in their work health and safety regulations. Queensland addresses both work health and safety and technical electrical safety requirements in their *Electrical Safety Regulation 2002*. Victoria does not include specific requirements for electrical work under their work health and safety regulations, but relies on the general duties of their work health and safety legislation to address these hazards.

As certain safety requirements for electrical work are being prescribed in the draft model WHS Regulations (for example control measures for live work), this will result in ‘some’ change. The draft model WHS Regulations are generally consistent with current jurisdictional requirements applied under electrical safety legislation, Australian Standards, or current industry practice. However, changes affecting jurisdictions would include new requirements relating to work on energised electrical equipment, testing requirements, or work near overhead electric lines. Nevertheless, as noted, these are already required somewhere within the broader regulatory framework and reflect currently accepted safe work practices.

However, there may be impacts associated with the proposed requirements for RCDs. Four jurisdictions (SA, WA, NT and Queensland) currently include requirements relating to RCDs in their work health and safety Regulations. Five jurisdictions (NSW, Victoria, Tasmania, ACT and the Commonwealth) currently do not include such requirements. However the use of RCDs is generally addressed in Codes of Practice in these jurisdictions and via the requirements of *AS/NZS 3000 Wiring Rules*, which is generally called up in jurisdictional electricity safety legislation and by some current work health and safety laws.

Currently, NSW regulations only mandate RCDs for construction and building sites under an approved industry code of practice. However, NSW WorkCover announced on 12 December 2010 that new regulations will be introduced to mandate RCDs in all workplaces. Under the changes, workplaces using higher risk moveable electrical equipment or equipment in higher risk environments must ensure that either non-portable or portable RCDs protect users of that equipment by December 2011. By December 2014, all businesses will be required to protect workers with RCDs where reasonably practicable.

Data will need to be gathered from this RIS's survey and consultation process before any final detailed assessment of costs relating to RCDs can be undertaken. Further discussion on RCDs is contained under Part 6 Impact Analysis.

*Access Economics would be interested in your views on the following matters:*

- *Do you / your business / your employer use residual current devices in your workplace?*
- *In what situations/for what work activities are residual current devices used in your workplace?*
- *Do you think the requirements for residual current device to protect socket outlets in the model Regulations will result in a cost or benefit to you / your business / your employer? If so, what do you estimate the cost or benefit to be per annum?*

#### **4.7.8 Diving work**

From a national perspective some change is anticipated with the introduction of model WHS Regulations and Codes of Practice as some jurisdictions do not have this under regulation, it extends to areas beyond construction and it proposes a risk management approach rather than a prescriptive model.

This part requires a PCBU to:

- prevent workers from carrying out underwater diving work unless they are medically fit and competent through either qualifications and/or experience
- identify hazards and conduct risk assessments, control risks (including a dive supervisor, for construction diving and a stand-by diver), and review risk control measures, including when there is a change to conditions or work
- prepare a diving plan, and
- establish and maintain a dive safety log.

This part also includes requirements that apply to diving work using breath hold techniques.

All jurisdictions except Victoria currently have some form of specific regulation for occupational diving or respiratory equipment relevant to occupational diving. Six jurisdictions (NSW, Queensland, SA and WA) have specific regulations for underwater construction work. Four jurisdictions (NSW, Queensland, SA and WA) reference *AS/ZS 2299 Occupational Diving Operations* in their regulations. Victoria references *AS/NZS 2299* in recreational diving guidance and the Tasmanian Notification of Diving Construction Work form refers to part 1 of the Australian Standards: *Occupational Diving Operations*. One jurisdiction (NT) refers to Australian Standards covering underwater protective devices (*AS/NZS 1715:2009 Selection, use and maintenance of respiratory protective equipment* and *AS/NZS 1716:2003 Respiratory protective devices*). Victoria only has guidance material and a reference in Victoria's Construction regulation, and as a result the safety requirements prescribed in the model WHS Regulations will result in some change. WA has also indicated that the requirements of the model WHS Regulations will result in some changes to current practice.

Two jurisdictions (Queensland and the Commonwealth) have Codes of Practice relating to occupational diving generally, and two jurisdictions (SA and Tasmania) have Codes of Practice relating to harvesting involving diving. SA has indicated it will result in some change.

NSW have advised that a move to a risk management approach instead of a prescriptive approach combined with the removal of the need for ADAS qualifications and changes in application of AS2299 will mean duty holders will have to considerably modify their existing arrangements. Instead of the prescriptive requirements that currently apply where the risk is essentially identified and solutions prescribed within the regulatory framework, NSW are of the view that business will now need to determine the level of risk and the appropriate level of control to be implemented. It is believed that in most cases, the existing practices in NSW would meet the requirements for safety, but the different approach will likely require a different approach to assessing each dive and documentation of the controls.

WA has rated the proposed regulations for diving as 'considerable' change due to the diving regulations extension beyond construction to numerous diving activities with varying technical attributes/requirements.

## 4.8 Plant and Structures - Overview

From a national perspective, some change is anticipated with the introduction of model WHS Regulations and Codes of Practice regarding the regulation of plant. This is largely due to change in practices resulting in a lessening of regulatory burden via mutual recognition and the resultant reduction in administration, and design and item registration now required for some additional types of plant.

From a national perspective provisions covering plant registration are seen as a considerable change in a number of jurisdictions given the change from a multi year to a single year registration process.

The Chapter includes requirements for:

- PCBUs with control or management of relevant plant or structures
- designers, manufacturers, importers, suppliers and persons installing, constructing or commissioning relevant plant or structures, and



- risk controls for specific plant including powered mobile plant, roll-over protection on tractors, protective structures on earthmoving machinery, inspection of registered mobile cranes and tower cranes, industrial lift trucks, plant that lifts or suspends loads, lifts, scaffolds, pressure equipment, Industrial robots, lasers and amusement devices.

The regulations in this Part do not apply to plant that relies exclusively on *manual power* for its operation and is designed to be primarily supported by hand, for example, a hammer.

The model WHS Regulations for Plant are largely based on the *National Standard for Plant [NOHSC: 1010 (1994)]* (National Standard). The draft model WHS Regulations require certain plant designs and high risk plant to be registered and set out the registration process. The categories of plant requiring design registration and items of plant required to be registered are based on Schedule 1 of the National Standard. Changes compared with the list of plant in the National Standard are that self-erecting tower cranes and concrete placement units with delivery booms will now require both design registration and item registration and pre-fabricated formwork will require design registration.

The model WHS Regulations set out the specific duties on persons with control or management of plant or structures, and upstream duty holders such as designers, manufacturers, importers, suppliers and persons installing, constructing or commissioning plant or structures. They also include requirements for certain risk controls based largely on the National Standard and that apply to plant that falls within the scope of the Regulation, which includes both registrable plant and non-registrable plant.

Specific controls are set out for scaffolding and specified plant, such as amusement devices, powered mobile plant, plant that lifts or suspended loads, industrial lift trucks, pressure equipment, industrial robots, and lasers.

A Code of Practice will be developed to provide guidance for each duty holder on how to manage the risks associated with plant throughout its life cycle, aligned with the requirements in the draft model WHS Regulations. Additional Codes of Practice or guidance material will provide further guidance for specific types of plant and for the safe design of plant.

Plant related incidents can result from inappropriate design, manufacture, alteration, maintenance and/or use of plant. The total estimated annual economic cost of the estimated 47 300 plant related incidents annually is \$2.0 billion, which represents a significantly negative impact on the Australian economy. Approximately 13,380 serious compensated claims, per financial year, arise from the use of machinery, fixed and mobile plant. Over the five financial years 2002-03 to 2006-07 there have been 133 compensated fatalities resulting from the use of machinery, fixed and mobile plant.

A RIS<sup>1</sup> prepared for translation of the Victorian Occupational Health and Safety (Plant) Regulations 1995 identified plant related injuries as accounting for 12 per cent of the total compensation expenditure on workplace injuries in that state in the period 2004-05.

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<sup>1</sup> Background and Review of Plant Regulations VWA 12/12/06



Western Australia has advised that there are ‘numerous’ issues which will have impacts on duty holders (e.g. plant registration annual notification and requirements for amusement devices).

### **National Standard for Plant**

NSW, WA, SA and NT have adopted regulations that mirror the intent of the National Standard, while other jurisdictions have implemented the National Standard less consistently. For example, the ACT includes plant safety requirements in a Code of Practice. Tasmania currently has plant regulations and as listed in Table 2 it is a minimal change. The impact is minimal for Tasmania as plant listed in the National Standard for Plant Schedule already requires registration under existing plant regulations. The adoption of the model WHS regulations will achieve the consistency originally sought by the National Standard.

Procedures are in place in all jurisdictions for the registration (in some form or other) of items of high hazard plant. The nature of change in the regulations is in bringing about a consistent approach, particularly in relation to frequency of notification that the plant has been maintained to meet safety requirements. There is no proposed change to the current practice regarding notification of modified registered plant designs that may introduce new risks, which aligns with the National Standard for Plant.

The National Standard was declared by the NOHSC in July 1994. The National Standard aims to protect the health and safety of people from hazards arising from plant, and systems of work in the use of plant. Since the declaration of the National Standard there have been many attempts to ensure that the key elements of the National Standard are effectively adopted and implemented as law nation-wide to achieve consistency in the prevention of plant related injury and death.

In 2003, NOHSC commenced a review of the National Standard with a view to resolving a number of issues identified since the declaration of the National Standard for Plant, and to address a number of emerging issues relating to importation of plant, the free movement of plant between jurisdictions, and Australia’s obligations under a range of treaties and trade agreements.

The national OHS review determined that, although there is some variation, ‘plant’ is consistently defined in a number of work health and safety Acts in an inclusive manner to enable it to be interpreted broadly.

The model WHS Act has adopted the review recommendation that plant be defined as per the *Victorian Occupational Health and Safety Act 2004* (s5) as follows:

- any machinery, equipment, appliance, implement and tool
- any component of any of those things, and
- anything fitted, connected or related to any of those things.

The model WHS Act specifically addresses the duties of designers, manufacturers, suppliers, importers and owners of plant. The model WHS Act also imposes a duty on third parties. This duty is taken to include people conducting a business or undertaking, who deliver verification services (including who must ‘ensure, so far as is reasonably practicable, the health and safety

of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking' [Part 18 -2]).

Retrofitting or modification of plant is not required as a consequence of the model plant regulations.

NSW has advised there may be significant extension of design obligations as the provisions now extend to structures, changes in concepts around engineering principles, and changes in inspection and record keeping obligations.

Queensland has indicated that these requirements will result in a some change, as the model WHS Regulation places more emphasis than the current Queensland regulations on ensuring plant is maintained in accordance with design specifications. Duties regarding specific plant and guarding requirements will require that existing practices are modified to comply with the new requirements.

#### **4.8.1 Scaffolding**

From a national perspective minimal change is anticipated with the introduction of the draft model WHS Regulations and Codes of Practice as all jurisdictions currently cover aspects of scaffolding in their principal regulations.

No major implementation issues are expected as the proposed model WHS Regulation for scaffolding does not differ from current jurisdictional approaches.

Scaffolding is typically considered high risk work with potentially fatal consequences if the scaffolding is inadequate or if the work is not performed safely. Scaffolds are a common means of providing a safe work platform for working at height. Therefore, falls from scaffolding pose a high risk of fatalities or serious and/or disabling injuries.

There were 11 fatalities during the six years from 2000-01 to 2006-07 related to scaffolding work, with an average compensation payment of \$152 000. The average scaffolding related worker's compensation claims requiring a week or more off work is 600 claims annually. This number equates to approximately 0.5 per cent of the total number of accepted annual workers' compensation claims.

An average case costs \$6,800 in direct worker's compensation payments and results in 5.5 weeks of absence from work. Scaffolding related compensable cases total \$23.5 million annually in direct worker's compensation payments. It is estimated there are 2 100 scaffolding related cases each year. The estimated total economic cost for serious incidents involving scaffolding is \$140 million annually.

All jurisdictions currently cover aspects of scaffolding in their principal regulations, under plant, construction or licensing provisions. SA, WA, the NT and the Commonwealth include specific obligations on upstream duty holders for scaffolding in their Regulations. Victoria, NSW, Queensland, SA, WA, NT and the Commonwealth all impose specific obligations for employers. Queensland has the most detailed guidance material on the selection of, and control measures for, certain types of scaffold. NSW, WA and SA include consideration of scaffold used in demolition work in their regulation. The ACT utilise the *Scaffolding and Lift Regulations 1950* and advise there will be minimal impact. Tasmania does not have any

specific WHS scaffolding regulations but do have other regulations requiring licensing and the registration of prefabricated scaffolds. In Tasmania, scaffolds will have to be certified and regularly inspected under the model WHS Regulations. However, the impact in Tasmania is considered to be minor on two levels; firstly, certification and regular inspection is already a requirement for scaffolding (which must be erected to the requirements of AS/NZS 4576-1995 Guidelines for Scaffolding - any scaffold from which a person or object can fall 4 metres), and under building regulations; and secondly, due to the scale of construction activity there and therefore number of businesses affected.

Under the model WHS Act, scaffolding is defined as a piece of plant. Specific regulations covering types of scaffolding, its erection and inspection by a competent person before use, and its safe management, are contained in the model WHS Regulations.

#### **4.8.2 Amusement devices**

From a national perspective some change is anticipated with the introduction of the draft model WHS Regulations and Codes of Practice as most jurisdictions currently have a lesser regulation requirement and it proposes an annual reporting of plant conditions.

The model WHS Regulations for plant contain specific requirements applicable to the design, manufacture, operation and maintenance of amusement devices. These requirements are generally consistent with those that currently apply in South Australia. It is understood that most operators of mobile amusement devices generally register them in the jurisdiction with the most rigorous regulatory requirements of those in which they operate. This enables them to meet the requirements of each of the jurisdictions. A national approach may deliver savings to those operators that transport their devices across state and territory borders through better mutual recognition of requirements.

Jurisdictions that have a lesser registration requirement than that existing in SA will have to adjust their process to match the new requirements. For those jurisdictions that do not require an annual or periodic reporting of plant condition (VIC, WA, TAS, ACT) the change will impose an additional administrative burden (this is discussed further under Plant Registration).

Given that most owners of mobile or portable amusement devices already register their equipment in the jurisdiction with the most stringent requirement, the additional cost burden should only extend to any fee imposed for annual notification. However, there may be an impact for operators who do not currently adopt this approach. For owners of static devices in WA, VIC, SA, TAS and ACT the annual fee will be a new cost.

Western Australia has indicated that an issue which will have impacts on duty holders is the requirement for a professional engineer to inspect amusement devices. With a shortage of local engineers available and willing to undertake that task it may be difficult to implement.

#### **4.8.3 Plant item registration**

From a national perspective considerable change is anticipated with the introduction of the draft model WHS Regulations and Codes of Practice in regards to plant item registration as it proposes an annual registration process rather than a multi year model used in some jurisdictions.

Victoria has indicated that this will result in considerable change given the proposed move from a 5 year registration process to a 1 year annual notice of plant maintenance with an associated fee.

The Commonwealth has advised that it has rated the change to Plant Registration as requiring some change because the regulations will require adjustment to some aspects of their registration process.

Western Australia has indicated that the plant registration annual notification requirement will constitute a considerable increase in regulatory burden for WA industry.

The items of plant requiring registration and re requirements for registration are somewhat consistent across the jurisdictions. However, the fees applied to initial registration and to renewal of registration, and the period of registration, vary considerably across the jurisdictions.

Another issue is the restricted mobility of plant arising from the non-recognition of interstate registrations and the need to register the same design/item of plant in a number of jurisdictions, and the impact this variability has on fees paid by businesses operating across borders.

In addition, indirect or hidden costs such as the time spent in managing variable regulations, the need to obtain and maintain advice on the regulations of each jurisdiction, and potentially the cost of duplicating personnel to manage this process, add to the regulatory burden for industry. Such costs are spread disproportionately across duty holders, with smaller employers carrying a greater share of this regulatory burden.

This is discussed further in Part 6 Anticipated Impact Analysis.

The proposed model WHS Regulations for Plant will maintain the current standards outlined in the National Standard but also capture some additional registrable plant. Static concrete placement booms (not just truck-mounted concrete placing units with booms) have been included as they are now frequently used within industry. Self-erecting tower cranes will also be included.

Under the model WHS regulations, plant registration will be mutually recognised nationally and a national annual notice of plant maintenance is proposed to ensure consistency across all jurisdictions and ensure continued compliance of registrable plant with its original design/item registration. The mutual recognition process should result in a reduced registration burden for businesses operating the same item of plant in multiple jurisdictions.

A RIS by Access Economics in 2006 considered a number of revisions to the National Standard for Plant. The RIS projected that a revision that achieved a consistent approach across all jurisdictions would result in lower costs to business. An analysis of administrative requirements reveals that a range of fees and charges may need to change which could result in some cost shifting. Victoria has indicated that if an annual notification system was implemented this will result in a significant increase in burden on the regulator.

If the definition of plant contained in the model WHS Act remains without exceptions, it will represent an increase in the regulatory burden for some jurisdictions as it would include hand-held powered plant.

Further discussion on plant registration is contained under Part 6 Impact Analysis.

## 4.9 Construction work

From a national perspective some change is anticipated with the introduction of these draft model WHS Regulations and Codes of Practice as there is a change in the definition of “construction work”, and the threshold dollar value for notification varies from that currently in some jurisdictions.

This Part makes provision for ensuring health and safety in relation to construction work, including requirements for:

- designers of structures and persons who commission construction work
- determining risk controls for construction work
- safe work method statements for 'high risk construction work'
- 'principal contractor' duties in relation to construction projects valued \$200 000 and above, including requirements for work health safety management plans and co-ordinating safe work method statements for construction projects
- notifying certain kinds of excavation to the regulator, and
- obtaining relevant information about underground services before any excavation work is carried out.

The proposed definition of 'construction work' determines the kind of work that is regulated. This part also specifies requirements for safe work method statements, WHS management plans and general construction induction cards.

This part regulates construction work on 'structures' which is defined under the model WHS Act to mean anything that is constructed, whether fixed or moveable, temporary or permanent and including:

- buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels)
- any component of a structure, and
- part of a structure.

In this part additional 'principal contractor' duties would apply to construction projects where the cost of the construction work is \$200 000 or more.

The Facilities for Construction Sites draft code sets out the minimum standard of facilities for construction sites including change rooms, meal rooms, toilets and sanitation, washing, showers, drinking water, safe keeping tools and personal belongings. The impact of the provisions of this code will be assessed in the Decision RIS.

Queensland, WA, the NT and the Commonwealth have adopted the *National Standard for Construction Work (NOHSC) 1016:2005* (National Standard). South Australia has adopted key elements of the National Standard. The ACT has adopted the National Standard for the housing sector but has not adopted the key elements of the National Standard for the general construction sector. However, the ACT supports the changes as part of the harmonisation process and advised there should be minimal impact. NSW, Victoria and Tasmania have adopted or intended to adopt the key elements of the National Standard excepting for some specific client or designer responsibilities. Noting the broad duty holder responsibilities that apply under jurisdictional WHS Acts, the model WHS Regulations are expected to have a minor impact, generally due to the range of definitional inconsistencies that currently exist.

There are a number of proposed amendments to the definition of 'construction work' that was originally included in the National Standard. However, it is expected that these changes will only have a minor impact.

The model WHS Regulations provide for a threshold requirement at which point the work undertaken requires a principle contractor to be appointed to manage the risk. The amount proposed is \$200,000 a figure between those that currently exist in jurisdictions.

Western Australia has indicated that for those areas with a rating above 'minimal change' it is of the view there are numerous issues which will have impacts on duty holders as indicated. Examples include, the \$200,000 threshold, authorisation requirement for principal contractors, the construction work definition and the level of excavation notifications that duty holders will now need to provide in WA which is a new requirement.

### **High Risk Construction Work**

From a national perspective some change is anticipated with the introduction of these model WHS Regulations and Codes of Practice as there are variations to jurisdictional definitions of "construction work".

One jurisdiction (NT) has adopted the National Standard in its entirety as part of its OHS regulations, thereby adopting this definition of 'high risk construction work'. Five other jurisdictions (NSW, Victoria, Queensland, WA and the Commonwealth) have definitions of high risk construction work which broadly conform to the National Standard definition but which do not necessarily include all of the elements included in the National Standard definition exactly as they appear in the National Standard. Tasmania, SA and the ACT do not currently have a definition of 'high-risk construction work', but they do include requirements in their OHS regulations similar to those that derive from the definition of 'high risk construction work'.

The draft model Regulations generally reflect the high risk construction work provisions contained in the National Standard. Changes from the National Standard relating to what is defined as high risk construction work are:

- a narrowing of the scope of demolition to only include the demolition of 'an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure'; and
- the inclusion of 'shipping lane or other traffic corridor used by traffic other than pedestrians' in addition to 'roadways and railways'.

In the proposed regulations when high risk construction work is to be undertaken, a person conducting a business or undertaking must, before high risk construction work commences, ensure that a safe work method statement for the proposed work is completed.

### **Notification of Excavation**

From a national perspective considerable change is anticipated with the introduction of the model WHS Regulations and Codes of Practice as some jurisdictions have no regulations in this area and there will significant changes to notification requirements in other jurisdictions. Notification of excavation will take the place of various other reports currently required across the jurisdictions.

Excavation is currently regulated across all jurisdictions, with seven jurisdictions (NSW, Queensland, Victoria, NT, SA, ACT and WA) having excavation specific provisions. A number of jurisdictions include excavation as a high-risk construction activity (NSW, Victoria, Queensland, WA, NT and the Commonwealth).

Three jurisdictions (Victoria, SA and NT) have regulations regarding the notification of excavation work. Two jurisdictions (Queensland and SA) have regulations regarding site reports and approvals to undertake excavation work. Queensland identifies high risk excavation work but this does not currently include a shaft or tunnel and does not require notification to the regulator, unless the cost exceeds \$80,000. Although WA's definition of high risk excavation work is similar, WA does not currently require the notification of any excavation work. It should also be noted that some jurisdictions have excavation notification/approval/permit requirements in building regulations.

Five jurisdictions (NSW, Queensland, SA, NT and the Commonwealth) specifically refer to requirements for obtaining information about underground (essential) services. In addition to regulations, two jurisdictions (NSW and WA) have approved codes of practice for excavation.

Queensland, the Commonwealth, NSW and WA have advised that the requirement to notify the regulator of high risk excavation is a new and considerable requirement and will require duty holders to set up arrangements to identify if/when they are going to undertake high risk work excavation and provide advance notification of planned high risk excavation work. Duty holders will need to adopt new procedures for notifying the regulator, which will essentially comprise submitting a form containing details of the excavation to the regulator.

### **Construction induction**

From a national perspective some change is anticipated with the introduction of model WHS Regulations and Codes of Practice. This rating is primarily due to the existence of a National Code of Practice which is already being implemented in all states and territories.

This Part establishes the framework for general construction induction, which is a general construction health and safety induction course delivered by Registered Training Organisations (RTOs). This part requires all persons who propose to carry out construction work to have completed general induction training. If workers have been out of the construction industry for two years or more then, under this Part, they must be re-trained in general construction induction before carrying out construction work.

The Part includes:



- requirements for PCBUs to ensure that general construction induction training is provided to relevant workers
- provisions establishing a scheme of general construction induction cards, which may be administered by the regulator or the registered training organisations (RTOs) that conduct general construction induction training
- arrangements for replacing and cancelling general construction induction cards in certain circumstances, and
- a requirement that workers carry their general induction training card or prescribed equivalent documentation while carrying out construction work.

Transitional provisions will be made to recognise current general induction cards held by workers and to make it clear that re-training will not be required on commencement of the new laws.

The current details on the requirements for work health and safety induction training are included in the *National Code of Practice for Induction for Construction Work* (National Code of Practice for Construction Induction), declared by the ASCC in April 2007. The National Code of Practice for Construction Induction has been implemented or is in the process of being implemented in all states and territories.

The RIS for the National Code of Practice for Construction Induction considered four options for addressing the issues identified. The analysis in the RIS indicated that mandating a requirement for general construction induction training was the most effective regulatory intervention. There was no evidence to support mandating site and task specific training.

The National Code of Practice for Construction Induction provides guidance on the recommended work health and safety induction training required to ensure construction workers gain awareness and understanding of common hazards on construction sites and how these should be managed.

The change to work health and safety induction training delivery will be minimal given regulators will retain their current delivery method in relation to security and anti-fraud control measures regarding on-line delivery and assessment of the National Unit of Competency. While face-to-face training and assessment is considered to be ideal, most stakeholders consider that it would not be practicable to mandate it.

Since most jurisdictions have moved to implement the National Code of Practice, the impact of introducing model WHS Regulations for construction induction will be minor in practice.

## 4.10 Hazardous Chemicals

This part deals with hazardous chemicals in the workplace. It also includes provisions on inorganic lead and asbestos.

### 4.10.1 Chemicals

From a national perspective some change is anticipated with the introduction of these draft model WHS Regulations and Codes of Practice as it will put into practice the policy agreement



on Globally Harmonised System of Classification and Labelling of Chemicals affecting labelling requirements; some jurisdictions will need to introduce notification and authorisation process for use of scheduled carcinogens which may increase the regulatory burden on businesses; some jurisdictions will have to impose restrictions on use of chemicals for spray painting; and the system of notification of dangerous goods rather than licensing or registration will be a change for some.

This part deals with hazardous chemicals and includes requirements for:

- importers and manufacturers—relating to safety data sheets, the disclosure of ingredients, and packing and labelling of hazardous chemicals
- suppliers—relating to safety data sheets, packing and labelling of hazardous chemicals and restrictions on supply of certain hazardous chemicals that are carcinogenic
- owners, builders and operators of certain pipelines
- identifying hazards and controlling risk associated with hazardous chemicals. Including requirements for the storage and handling systems for hazardous chemicals, labelling containers and pipework, safety data sheets, warning placards, registers and manifests of hazardous chemicals
- control measures for hazards associated with ‘hazardous atmospheres’ and the accumulation of flammable and combustible material
- health surveillance in certain circumstances
- prohibitions on certain hazardous chemicals, for example, certain carcinogens except in specified circumstances, and
- information, training and supervision.

All jurisdictions currently regulate workplace use of hazardous substances and dangerous goods.

The proposed chemicals regulations reflect the policy decision made in July 2009 on the National Standard for the Control of Workplace Hazardous Chemicals. The policy decision made by Safe Work Australia in 2009 on the "national standard for the control of workplace hazardous chemicals" was to use the standard as the basis for the chemicals part of the model WHS regulations. As such jurisdictions agreed to adopt this as part of the current WHS reforms rather than as a separate reform.

The regulations will merge the existing NOHSC regulatory instruments for hazardous substances and dangerous goods into a single system, with introduction of the United Nations' Globally Harmonised System of Classification and Labelling of Chemicals as the basis for chemical hazard classification and hazard communication on labels and safety data sheets. Transitional provisions are proposed to minimise costs and allow businesses to move to the new classification and hazard communication requirements.

The Labelling of Workplace Hazardous Chemicals draft Code of Practice provides guidance on labelling chemicals supplied or used in the workplace which are classified as hazardous under the WHS Regulations in accordance with the United Nations Globally Harmonised System of Classification and Labelling of Chemicals.

The Preparation of Safety Data Sheets for Hazardous Chemicals draft Code of Practice provides guidance for manufacturers and importers of hazardous chemicals on how to prepare a Safety Data Sheet (SDS) and the type of information that should be provided under each section required in an SDS.

NSW and WA have advised that adoption of the GHS will involve considerable change in areas such as modification of labelling requirements; extension of some requirements to pesticides, drugs and poisons is a new requirement (these were previously exempt in NSW under arrangements relating to Australian Pesticides and Veterinary Medicines Authority and the Standard for the Uniform Scheduling of Medicines).

Queensland has indicated that these requirements will result in a considerable change. The model WHS Regulation on emergency plans is more extensive than the current Queensland legislation with a new requirement that the duty holder gives a copy of an emergency plan to the primary emergency services authority and adopts any recommendations provided by the primary emergency services authority. This new regulation will require the duty holder in Queensland to modify existing practices extensively to comply with the new requirements.

Although there is considerable practical change the policy change from the agreed policy position in 2009 to the current proposed regulation is small. The policy position in 2009 was agreed after consideration of the Chemicals RIS (see Appendix C) prepared for this purpose. The National Policy has been adapted as part of the national harmonisation process and jurisdictions have been waiting for the progression of the harmonisation process, in order to implement. The RIS demonstrated a net benefit for the proposal. This previous work will not be revisited or considered further as part of this RIS process.

Some aspects of the proposed regulations will introduce other changes for several jurisdictions and these are described below.

#### **Restrictions on use of certain carcinogenic substances**

The chemicals regulations restrict use of certain listed carcinogenic substances. The carcinogenic chemicals restricted for use are based on the policy decision made by NOHSC in 1995 and reflected in the NOHSC *National Model Regulations for the Control of Workplace Hazardous Substances – Part 2 – Scheduled Carcinogenic Substances*.

Although the NOHSC instrument was declared in 1995, the ACT, Queensland, SA and Tasmania have not given effect to this instrument, while Victoria has imposed a licensing system for use of scheduled carcinogens. As a consequence, ACT, Queensland, SA and Tasmania will need to introduce notification and authorisation process for use of scheduled carcinogens which may increase the regulatory burden on businesses. This increased regulatory burden is expected to be offset by cost savings through avoidance of health related injury and disease costs that could result from exposure to known high risk carcinogens.

#### **Restrictions on use of certain substances for specific uses**

The regulations also restrict the use of certain substances for specific uses that were not part of existing NOHSC instruments. Specifically these relate to abrasive blasting (see discussion below) and spray painting. Only three jurisdictions (NSW, Tasmania and NT) impose restrictions on use of chemicals for spray painting and as a consequence the restriction will

impose an increased regulatory burden on business in the remaining six jurisdictions. Nevertheless, the chemicals proposed for restriction in spray painting are not considered to be extensively used in Australia.

Polychlorinated biphenyls (PCBs) are restricted for use in workplaces in the Commonwealth, WA and NT and the proposed chemicals regulations reflect the restrictions in those jurisdictions.

PCBs are persistent organic pollutants and are listed in Annex A of the Stockholm Convention on Persistent Organic Pollutants (POPs). The Australian government is a signatory to the Stockholm Convention and has therefore already committed to eliminating the production and use of PCBs. Australia has banned the production of PCBs and is phasing out the use of PCBs consistent with Australia's National Implementation Plan and PCB Management Plan. Restriction of the use of PCBs in the model WHS Regulations will therefore present no regulatory impact.

### **Removal of dangerous goods licensing in some jurisdictions**

The draft regulations do not include any licensing requirements for dangerous goods, consistent with the previously agreed national policy approach in the NOHSC *National Standard for the Storage and Handling of Workplace Dangerous Goods* that was declared in 2001. The regulations instead require notification to the authority where threshold quantities of dangerous goods are exceeded.

Despite this, some jurisdictions utilise a licensing or registration system for storage and handling of dangerous goods (licensing in WA, NT, SA and Queensland; registration in ACT). The licensing and registration systems are not applied consistently across these jurisdictions, for example some licensing systems capture all dangerous goods, whereas others capture only a limited number of dangerous goods classes.

In those jurisdictions that have licensing or registration, this will mean a considerable regulatory change. The experience in NSW and Victoria of moving from a licensing to a notification regime suggests that such a change would not have an adverse effect on work health and safety. It is also expected that the transition to notification will free up resources for the Regulator and reduce the compliance burden on business.

### **Thresholds of dangerous goods triggering placarding, manifests and notification**

The regulations incorporate a revised table of placarding and manifest threshold levels for dangerous goods (Schedule 11) compared to what is presently used in all jurisdictions. This change was developed to simplify the existing requirements which were seen as being complicated, difficult to interpret and therefore difficult to comply with. The revised table does not substantially change threshold levels, there are some changes and this will mean that businesses will need to re-assess whether placards, manifests or notifications are required at their workplace. However, costs associated with this reassessment are expected to be negligible on the basis that reassessment and re-notification of storage quantities is already required every one or two years in most jurisdictions.

In the nationally agreed approach to notification for dangerous goods, the notification threshold is set at the manifest threshold level. Two jurisdictions (ACT and Tasmania) however require notification at the lower placarding threshold level. By aligning the notification

requirement at the higher manifest threshold, fewer businesses would be required to notify the authority, therefore resulting in a reduced regulatory burden in those jurisdictions.

*Access Economics would be interested in your views on the following matters:*

- *How many of your premises will need to placard for class 2.1 flammable gases that currently do not need to (i.e. how many premises store between 200 and 500L of flammable gases).*
- *What restricted substances do you use and in what quantities for spray painting or abrasive blasting in your workplace currently? - Are alternatives available? - What is the difference in cost of sourcing alternative materials compared to ones currently used?*
- *When decommissioning an underground tank will the requirement to notify the authority represent an increased regulatory burden (noting that other regulations eg building regulations, environmental regulations may already apply in some jurisdictions)? How many tanks are decommissioned each year? Would regulators anticipate inspecting the decommissioning process if they receive a notification?*
- *If the placarding threshold for gas is changed from 500L to 200L what additional costs will you incur as a consequence of compliance with this placarding threshold?*

#### **4.10.2 Fire or explosion**

From a national perspective minimal change is anticipated with the introduction of model WHS Regulations and Codes of Practice as similar requirements in jurisdictional legislation currently exist.

The proposed model work health and safety legislation places an obligation on persons in control of a workplace to ensure flammable and combustible substances are kept to the lowest practicable quantities, in order to reduce the risks arising from a fire, explosion or implosion. This regulation applies not only to hazardous chemicals, but to all combustible materials.

The requirement to minimise risks to health and safety as far as reasonably practicable is prescribed in the model WHS Act. Similar requirements in jurisdictional legislation exist. For example Victorian regulations on confined spaces and dangerous goods storage and handling already deal with fire and explosion. As a consequence, this regulation is expected to result in no increased regulatory impact. Very little change is expected also from the inclusion of the management of risks associated with an unintended implosion, as three jurisdictions (Victoria, Northern Territory and Queensland) already include reference to a risk of implosion in their legislation therefore it is anticipated that the national impact would be minor.

#### **4.10.3 Inorganic lead**

From a national perspective some change is anticipated with the introduction of these draft model WHS Regulations and Codes of Practice. Main changes include:

- the removal of mandated notification requirements for pregnant women;
- a change to the definition of “lead risk work”, in particular the introduction of lower blood lead levels for females of reproductive capacity;

- At the AIG's request, a regulation permitting workers to refuse blood lead level monitoring has been included. This may impact on health surveillance programs.

This part includes deals with inorganic lead and includes requirements in relation to:

- 'lead processes'—requirements to provide workers and prospective workers information about any health and safety risks relating to working with lead and requirements for biological monitoring
- health surveillance in certain circumstances, which must commence before the worker commences the relevant work for the first time
- arrangements for biological monitoring including arrangements for dealing with a worker's refusal to have blood lead level monitored
- triggers for removing a worker from and returning them to a lead risk job, including requirements for medical examinations, and
- specific control measures, including: contamination containment; cleaning methods; prohibitions on eating, drinking and smoking; providing changing and washing facilities; laundering and disposal of clothing.

The *National Standard for the Control of Inorganic Lead at Work* [NOHSC: 1012 (1994)] (the National Lead Standard) was declared by the (then) NOHSC in October 1994 and has not been revised. The National Standard promotes a uniform approach to control exposure to inorganic lead in the workplace. All Australian jurisdictions (except for the Commonwealth) have either adopted the National Lead Standard in its entirety, or implemented some or most of the key elements into their regulations. There are no specific regulations for Inorganic lead in the Commonwealth it is dealt with in hazardous substances Part and refers to the Inorganic lead standard only for the removal level. The Commonwealth has an Inorganic lead Code of Practice that has been developed from the NOHSC Standard. The draft model WHS Regulations will require the Commonwealth to apply the same exposure standards as all other jurisdictions.

A second important national standard also applies to inorganic lead at work, as it does to all workplace hazardous substances – the *National Standard for the Control of Workplace Hazardous Substances* [NOHSC:1005(1994)] (National Standard). Lead is a hazardous substance. The provisions of this National Standard apply to lead and must be taken into account in considering lead regulations. Some states leave certain aspects of the National Lead Standard to be dealt with under the law relating to hazardous substances; in particular those relating to MSDS (NSW, WA and SA) and risk assessments (NSW and SA). The National Lead Standard proposed more specific requirements to control inorganic lead at work and was intended to be adopted without limiting the generality of the provisions of the model WHS Regulations.

The change in the definition of "lead risk work" and subsequent drop in the blood lead level for females of reproductive capacity to the Victorian value 10µg/dL (0.48µmol/L) from the national standard value of 20µg/dL (0.97µmol/L) nationwide will increase safety of females of reproductive capacity in lead-risk work across Australia and may capture additional jobs previously not classified as 'lead-risk', but should not impose significant costs on employers.

NSW have advised that arrangements will need to be modified to allow for a person to refuse blood tests and remove existing arrangements for pregnant and breastfeeding employees to notify their employer.

Queensland has indicated that these requirements will result in some change, as the model WHS Regulation adopts a lower blood lead monitoring level than under current Queensland legislation and provides for a worker to refuse an intrusive medical procedure, which will require that duty holders modify existing practices to comply with the new requirements.

- *Access Economics would be interested in your views on the impact of the regulation to permit workers to refuse blood lead level monitoring*

#### **4.10.4 Asbestos**

From a national perspective considerable change is anticipated in several jurisdictions as the regulations will introduce new requirements or propose changes to existing regulations. Considerable change is identified in Asbestos Removal Licensing provisions, particularly in relation to the new Asbestos Assessor Licensing system.

Asbestos is a major occupational health problem in Australia, causing asbestosis, lung and stomach cancer, mesothelioma and other related health effects. It is estimated that by 2020, there will be 40 000 diagnosed cases of asbestos-related lung cancer in Australia, and an additional 13 000 Australians will have developed mesothelioma. Unlike many occupational diseases, there is a long latency period before the asbestos related disease manifests. This may extend to 20 or 30 years or, in the case of mesothelioma, as long as 40 or 50 years. In Australia, annually there is an average of 100 non-fatal workers compensation claims cases with a week or more off work and an average of 41 compensated fatalities. A typical non fatal case costs between \$70 000 and \$100 000 in direct workers' compensation payments resulting and a total of \$28.1 million annually in payments for all asbestos claims.

Although the incidence rates of asbestosis and mesothelioma appear to be slowing as a result of lower levels of usage, exposure to asbestos will continue for many years until all asbestos products are eliminated from the built environment. There remains a considerable risk to persons disturbing asbestos products remaining in buildings. Recent research (Safe Work Australia 2010b) provides evidence for concern about tradespersons not fully aware or equipped to protect themselves while working around asbestos products.

This Part in the draft model regulations maintains the existing agreed national prohibitions relating to use of asbestos—that is, the manufacture, supply, sale, transport, storage, removal, use, installation, handling, treatment, disposal or disturbance of asbestos—subject to specified exceptions.

The Part requires PCBUs to eliminate workers' exposure to asbestos, and if elimination is not reasonably practicable, to minimise exposure so far as is reasonably practicable and to always ensure that workers are not exposed to asbestos above the exposure standard.

The Part also requires PCBUs with management or control of a workplace to manage *in situ* asbestos, including naturally occurring asbestos at workplaces, by:

- identifying asbestos at the workplace, maintaining an asbestos register and asbestos management plan and conducting and reviewing a risk assessment, and
- informing persons at risk from asbestos exposure, providing health surveillance for certain workers, ensuring relevant workers are trained about asbestos and ensuring that certain power tools and equipment are not used on asbestos.

This Part in the draft model regulations also includes requirements and controls for asbestos removal work and sets out licensing requirements for asbestos removalists and asbestos assessors.

Two model Codes of Practice are proposed. The draft code on *How to manage and control asbestos in the workplace* covers the process of identifying the presence of asbestos in the workplace, including those materials that contain asbestos, assessing associated risks and implementing controls to eliminate or minimise the exposure to asbestos. It also sets out what should be included in the asbestos register and plan.

The draft code on *How to safely remove asbestos* provides specific guidance for asbestos removalists on the process of safely removing asbestos. It should be read in conjunction with the draft code *How to manage and control asbestos in the workplace*.

The two codes are largely based on the two existing NOHSC codes for asbestos.

In the NT there is no current requirement at law to have an asbestos register, to notify others at the workplace if working on asbestos, to have a clearance inspection, or a management plan. The NT has adopted the NOHSC codes.

Queensland has indicated that these requirements will result in a considerable change. The impact is assessed as considerable as requirements under the model WHS Regulations are not currently specified in Queensland's asbestos regulations. These include the following:

- the requirement for clearance inspection and certificate by an independent licensed assessor (for A class work) or an independent competent person (for B class work). This is a new licence category for individual 'asbestos assessors' for clearance inspections, clearance certificates and air monitoring
- the introduction of national units of competency for asbestos removal (friable and non-friable) and for asbestos supervisors
- the requirement for PCBUs to provide health surveillance for certain workers
- the requirement to check for the presence of asbestos prior to demolition and to ensure as far as is reasonably practicable that the ACM is removed before demolition
- the requirement to notify the regulator of asbestos removal work involving more than 10m<sup>2</sup>.

WA has noted that the proposed requirements for asbestos are more prescriptive than their current requirements.

The Commonwealth has advised that it has given the rating of 'considerable' for Asbestos Removal and Management and Asbestos Removalist Licensing because previously there were no regulatory requirements imposed on duty holders in respect of these matters.



## Current national policy status<sup>2</sup>

Although Australia's asbestos laws at jurisdictional level are broadly consistent with the International Labour Organisation Convention 162 (1986), which the Commonwealth is proceeding to ratify, there is no existing National Standard for the regulation of asbestos. However, some degree of standardisation across jurisdictions has been reached by declaration of two National Codes of Practice (listed below). Although there are differences in details of regulatory requirements, jurisdictions are broadly in agreement as to the controls necessary. Since 1988, the NOHSC has provided detailed National Codes of Practice to provide advice on how to meet an employer's duty of care to minimise occupational exposures to asbestos. This material was revised in 2005 by the NOHSC and includes the *National Code of Practice for the Safe Removal of Asbestos* 2nd Edition (NOHSC, 2005) and the *National Code of Practice for the Management and Control of Asbestos in the Workplace* Management Code. There is also a Guidance Note on the *Membrane Filter Method for Estimating Airborne Asbestos Fibres* 2nd Edition (NOHSC, 2005).

The *National Standard for the Control of Workplace Hazardous Substances* (NOHSC, 1994) included asbestos on the NOHSC List of Hazardous Substances. This National Standard does not provide for the unique controls required to ensure exposure to asbestos is minimised at work and so is supplemented in jurisdictional regulations by specific controls for asbestos. A National Exposure Standard of 0.1 fibres per ml is in place for exposure to all forms of asbestos and mixtures thereof.

There are three considerable changes proposed as a result of preparing model asbestos regulations described below:

### Competency-based training for licensed asbestos removalist and licensed asbestos assessors

Safe Work Australia was been tasked by the WRMC with harmonising the requirements for asbestos removalist licences through the model WHS Regulations process and VET sector competency based training ahead of the National Licensing Scheme. While all jurisdictions administer two categories of asbestos removal licence, one for high risk friable asbestos and one for the lower risk bonded asbestos products, licensing requirements are not the same, particularly in the competencies and training required. The harmonisation of requirements for asbestos removal licences would accord with the mutual recognition arrangements for other building industry licences.

All states require a person to hold authority for the performance of asbestos removal work. NSW and SA require licences to obtain additional authority before commencement of each asbestos removal work. All States and Territories establish appropriate asbestos removal licence classes. Seven out of eight jurisdictions (WA, ACT, NSW, SA, Tasmania, Victoria and Queensland) have two classes of authority for asbestos removal licensing. The ACT requires a person to get building approval for the removal of asbestos from a residential building in addition to an asbestos removal licence. The Commonwealth requires removal or disposal in accordance with a law of a State or Territory.

All jurisdictions:

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<sup>2</sup> The licensing of asbestos assessors is discussed in Section 6



- have assessing grounds to determine eligibility of a person for licence applications
- have a set framework for licence application processes
- require applicants to submit application forms in designated format
- have established licensing fee structures for administrative costs recovery, and
- require applicants to demonstrate appropriate competency for granting a licence.

A RIS for asbestos removal was completed in April 2005 as part of the development of the two NOHSC codes of practice relating to asbestos management and removal.

A tripartite asbestos model WHS Regulation Temporary Advisory Group (TAG) was formed for the purpose of providing Safe Work Australia with expert advice on aspects of the policy approach taken in the asbestos model WHS Regulations. Advice on training and development of training competency standards was also sought from Construction and Property Services Industry Skills Council and Department of Employment, Education and Workplace Relations.

Training courses for asbestos removalists are run by a range of organisations including state and territory work health and safety regulators, through construction training, or private sector. The approaches to training vary considerably from competency based Vocational Education and Training sector training to regulator 'endorsed' or private sector courses. The standard and content of the training provided can vary considerably across jurisdictions. Under the model regulations RTOs will be providing training to meet the requirements of nationally endorsed competency units. This will mean standard, and consistent training for asbestos removalists, will enable mutual recognition of asbestos removal licences and reduce burden on businesses operating over state and territory borders.

The Construction and Property Services Industry Skills Council has been engaged by Safe Work Australia to develop nationally approved Units of Competency for Class A and Class B licensed asbestos removal workers and asbestos removal supervisors. These will need to be endorsed by Safe Work Australia members as the agreed competency units to meet the licensing requirements. The development of nationally endorsed units of competency for asbestos removal will allow all regulators to become engaged in the process of determining the training needs, competencies and assessment instruments.

The impact of these changes will be that RTOs will have to review and revise their asbestos removal licensing training courses to ensure they meet the endorsed units of competency.

### **Certified Safety Management System for Class A Asbestos Removal Licence**

There are also differences in the approaches to the requirements for obtaining an asbestos removal licence. Victoria, Queensland and Tasmania require an applicant for a Class A (friable) removal licence holder to have a certified safety management system. A certified safety management system is not required in the other jurisdictions but has been proposed in the draft model asbestos regulations.

It is estimated this will require 261 additional Class A removalists to obtain such certification (approximately \$2 500 each) during the regulatory transition period from 2012. It is proposed current licence holders will be grandfathered into the new licence scheme.

The Commonwealth has advised that it has given the rating of 'considerable' in regard to the certified safety management system for a Class A removal licence because previously there were no regulatory requirements imposed on duty holders in respect of this under Commonwealth legislation.

### Revised Codes of Practice

The NOHSC asbestos removal and asbestos management Codes of Practice have been adopted using different mechanisms across the jurisdictions. Queensland regulations directly reference both Codes of Practice in regulation. The regulations place obligations to comply with the Codes of Practice on the relevant person under the *Queensland Work Health and Safety Act*. In 2007, Victoria, recently implemented new work health and safety legislation and developed a Compliance Code which contains similar content to the NOHSC Codes of Practice, however it is more comprehensive. The Tasmanian regulations closely mirror Victoria's but call up the NOHSC removal Code of Practice in relation to all asbestos removal work.

These two draft model Codes of Practice have been revised consistent with the asbestos model WHS Regulations and will become model Codes of Practice for adoption by all jurisdictions.

### Licensing - Asbestos Assessors

The WRMC also tasked Safe Work Australia with improving the competency of consultants who provide advice and risk assessments i.e. asbestos assessors. This had been prompted by several high profile incidents whereby buildings declared clear of asbestos were demolished and serious asbestos contamination resulted. The ACT's regulatory scheme for licensed asbestos assessors was considered by Safe Work Australia during development of the model WHS Regulations. All consultants undertaking clearance inspections and monitoring will be required to undertake competency-based training if they are not already occupational hygienists or possess other relevant skills, in order to be licensed to carry out this work.

The proposed new licensed asbestos assessor under harmonisation is a change for all jurisdictions, even the ACT. There are two tracks to becoming a licensed asbestos assessor:

- doing a certificate of competency (yet to be developed) plus asbestos removal industry experience (to be assessed by the licensing authority); or
- being an occupational hygienist or other scientist (detailed in the regulations) plus asbestos monitoring experience (to be assessed by the licensing authority).

Although it is not clear at this stage how this will be undertaken, it is proposed there be a transition period to give people time to complete their unit of competency and also grandfathering people already doing the work. There will be training and licensing costs incurred for people to become licensed asbestos assessors.

From a national perspective considerable change is anticipated for licensing requirements with the introduction of model WHS Regulations and Codes of Practice.

Further discussion on asbestos assessor licensing is contained under Part 6 Impact Analysis.

*Access Economics would be interested in your views on the following matters:*

- *The model regulations will require that all workplaces have an asbestos management plan where asbestos has been identified. Do you currently have an Asbestos Register for your building/s, and if not, what do you anticipate would be the cost of developing one?*
- *The model regulations will require that Class A asbestos removalists hold a certified Safety Management System in order to be licensed. If you are a class A asbestos removalist and do not currently have one, what costs do you anticipate will be involved undertaking this. If you have a certified system, what did it cost?*

## 4.11 Major Hazard Facilities

From a national perspective some change is anticipated with the introduction of these draft model WHS Regulations as it represents a change in the scope for some jurisdictions; the definition of “major incident” is wider. The impact of adopting the National Standard was assessed in the MHF RIS (see Appendix C).

SA will be the only jurisdiction, for which this is a new regulatory scheme. However, SA was in the process of enacting major hazard facility (MHF) Regulations prior to the harmonisation process. The ACT also will have new regulations but the ACT do not currently have any licensable facilities.

This Part provides for the registration or licensing of Major Hazard Facilities (MHF). This Chapter applies the penalties provided for under clause 41 of the model WHS Act.

Under this part operators of facilities that have or are likely to have more than 10 per cent of the prescribed threshold quantity of certain hazardous chemicals must provide written notification of that fact to the regulator. Facilities with 100 per cent or more of the threshold quantity will automatically be an MHF. Facilities with less than 100 per cent of the threshold quantity may be determined to be an MHF if, following an inquiry, the regulator considers that there is a potential for a major incident to occur at the facility.

This part sets out the duties which apply to the operator of an MHF during the period of registration. The registration period is intended to allow the operator an opportunity to develop its safety case and apply for a licence. While the MHF may operate during this period, the operator is expected to be in close contact with the regulator while conducting its safety assessment and developing its safety case. The operator is also required to include workers in the hazard identification and risk assessment processes and consult workers on elements of its safety case (Part 8.5).

This part imposes duties on the operator and workers once a MHF is licensed. These duties are directed at ensuring that the operator tests, implements and maintains all aspects of the safety case on which its licence is granted and provides specified information to workers, visitors and the local community, and that workers comply with the safety case and immediately report any major incident hazards to the operator.

The proposed definition of a ‘major incident’ in the model WHS Regulations is not limited in such a way and will cover all sudden occurrences resulting from an uncontrolled escape,

spillage or leakage; or implosion, explosion or fire at an MHF which might include a wide range of possible occurrences.

The processes for applying to have a MHF registered and licensed are also contained in this Part.

### **Current national policy status**

Seven (all except ACT and SA) out of the nine jurisdictions have now introduced MHF regulations based on the National Standard. Of the remaining jurisdictions (SA and ACT), the ACT does not have any MHFs. SA was in the process of developing MHF regulations, but set aside this development pending the outcome of the national model WHS Regulations.

The level of impact of implementing model MHF regulations is therefore considered to be low in the states that have implemented the National Standard, (considering that there have been minimal changes to the approach of the current National Standard included in the model WHS Regulations).

Regulations are currently in operation in the Commonwealth, Victoria, Queensland, WA, NSW, NT and Tasmanian jurisdictions. SA was in the process of enacting MHF regulations, but will now wait to adopt the national model WHS Regulations.

NSW have advised that the proposed changes would be considerable if the definition of major incident as proposed was not corrected to mean the same as in the National Standard. The proposed WHS legislation does not limit the type of incidents to which MHF specific obligations apply to those involving the scheduled materials (although it does limit the type of event). This means that once a site is an MHF, operators must identify all escapes (of anything) that could expose a worker or any other person to a serious risk to the person's health and safety emanating from an immediate or imminent exposure to the occurrence. MHF operators must identify these hazards and then assess and manage the risks under the MHF provisions - including the documented safety management system. This is a significantly different obligation from that currently applying in NSW and operators will need to significantly revise documentation and processes.

Queensland has indicated that these requirements will result in some change. Under the model WHS Regulations, the MHF operator will have a new duty not required under current Queensland legislation to prepare, inform and consult with the local council and local community in each jurisdiction and with the primary emergency services authority in relation to the preparation and review of emergency plans required every 3 years. In addition, there is a new requirement on MHF operators to prepare and test a separate security plan in consultation with Queensland police at least once every 3 years. The model WHS Regulations will require the duty holder to modify existing practices to comply with the new requirements.

In South Australia, the model regulations will implement an entirely new licensing regime for major hazard facilities. This means that the regulator will need to implement internal administrative systems for licensing and assessment of safety cases, as well as a compliance and enforcement strategy and employ specialised staff. For industry, approximately 12 facilities are expected to be licensable as MHFs. These facilities will have to notify the regulator, develop a safety case, undertake a safety assessment, develop an MHF-specific emergency and security plan and pay licensing and registration fees.

The full cost impacts and benefits of implementation of the MHF National Standard was detailed in the RIS [refer to page 116?].

Northern Territory already licenses MHFs but under dangerous goods legislation. NT Work Health Authority will need to implement the new administrative arrangements that the proposed regulations require and grandfather existing facilities into the new regime. Many of the industry compliance requirements will stay the same but there may be costs associated with submitting a safety case to the Authority or revision of existing safety cases.

At present there are some differences in the regulatory requirements between the jurisdictions. Examples of these inconsistencies across jurisdictions are:

- Discretionary power in classifying a facility (defining what is a MHF) – The Queensland and WA regulations include a discretionary provision that allows a facility that meets or exceeds the threshold limits of scheduled chemicals to not be classified as an MHF where a risk assessment indicates that the potential for a major incident is low or acceptable. Such discretion is not allowed for in other jurisdictional MHF regulations. This means that similar facilities currently could be licensable as MHF licensed facilities in one jurisdiction and not in another. Such discretionary powers were not agreed as they are inconsistent with the national standard which bases a decision on whether a facility should be licensed solely on the basis of the hazard (quantity and type of chemical) of the scheduled chemicals), not a risk assessment.
- Differing licensing models - At present, different licensing approaches are being used across the jurisdictions. These differences range from terminology (licensing vs registration vs classification) to different fee structures and different licensing terms. The model WHS Regulations do not resolve lack of standardisation of licensing and assessment fees but will impose a registration and licensing scheme on all facilities. Current licensed facilities will be grandfathered to ensure minimal impact on business.
- Different regulatory scope - NSW have exempted mines and ports from the requirements of their regulations. It is likely that this will be continued in this jurisdiction due to administration of these workplaces under mines and ports legislation and regulatory authorities, rather than the work health and safety regulator. NSW will make equivalent arrangements in their mining legislation which is administered by a separate agency in this state.

The objective of the model WHS Regulation for MHFs will be to prevent major incidents arising from the hazards of large quantities of scheduled chemicals occurring at MHF and to protect persons at work and nearby from the effects of such major incidents.

There are several minor changes to Schedule 1 of the National Standard, resulting from correction of several small errors (as implemented in the model WHS Regulations via Schedule A), include raising the threshold level for Arsine from 0.01 tonnes to 1 tonne, and the addition of a qualifying concentration value for formaldehyde solutions of 90 per cent. It is expected that both of these changes will result in less facilities being captured as MHF.

The other proposed change to the schedule is alignment of the toxicity criteria contained within Table 3 of the schedule, with that of the 7<sup>th</sup> Edition of the *Australian Dangerous Goods Code (ADG 7)*. As well as providing simplified criteria, such alignment theoretically results in a slight increase in the values for dermal toxicity, and a decrease in the values for inhalation

toxicity. It is expected that the changes in these values will have little or no impact on the number of facilities captured as MHF.

In terms of scope of the model WHS Regulations, at the Plastics and Chemicals Industries Association's request the regulations contain conditional exemption be included for packaged chemical transport and distribution centres which, if an application by a facility operator is made and accepted by the regulatory authority, could reduce the number of facilities captured as MHF by several in each state. The exemption is to enable transport and distribution centres that handle seasonally-variable quantities of packaged chemicals escape licensing requirements, if they can prove to the regulator that they comply with all the model hazardous chemical regulations and have systems to minimise the transient exceedance of the thresholds for scheduled chemicals. This should reduce the impact on country agricultural chemical centres.

### **Licensing of Major Hazard Facilities**

From a national perspective some change is anticipated with the introduction of model WHS Regulations and Codes of Practice as there will be changes in licensing arrangements for some and new provisions for others. However, this will result in a standardised licensing approach for business.

The *National Standard for the Control of Major Hazard Facilities* does not prescribe requirements for the registration or licensing of MHF, however different licensing approaches are currently being used across those jurisdictions that have implemented MHF regulations. Discussions with the MHF TAG's predecessor (the tripartite MHF Technical and Reference Group) indicated unanimous support for a licensing approach to be included in proposed model WHS Regulations due to the high risk of such facilities. Existing licensed or registered MHF will be grandfathered under the model MHF regulations, as required in each jurisdiction. For SA and NT, the model WHS Regulations will be an entirely new set of regulations and cover several facilities currently not licensed as MHF, and as such it will be a considerable change for these jurisdictions. In Victoria this will be a minimal change.

Queensland has indicated that these requirements will result in some change. Under the model WHS Regulations, MHFs will be required to be registered and licensed under the model WHS Act, whereas the Queensland legislation currently requires MHFs to be classified. Licensing will require duty holders in Queensland to modify existing practices to comply with the new requirements.

The key steps in the proposed licensing arrangements are:

#### **Notification**

- the potential MHF must be registered.
- a potential MHF must notify the regulator if they hold 10% of the threshold quantity of the scheduled chemicals.
- the regulator will determine if the facility is a MHF for registration if the chemical facility holds 99% of the threshold quantity.
- notification must be given within 3 months after the operator becomes aware, or ought reasonably to have become aware, of the circumstance giving rise to the requirement to notify.

- notification includes a description of the facility, plan of the facility; operator details, hazardous chemicals at the facility, and the processes for which the chemicals are used.

#### Registration

- registration allows the facility to operate as a MHF until the facility has met the requirements for licensing. In particular it provides time for the MHF to prepare a safety case.
- a safety case outline must be provided within three (3) months of registration. The outline is to include:
  - a written plan for the preparation of the safety case
  - description of methods to be used in preparing the safety case
  - details of resources
  - description of consultation with workers
  - a draft emergency plan, and a
  - security plan .
- registration expires 30 months after issued by the regulator .
- the registration requires payment of a fee.

#### Licensing

- a licence application and the safety case must be provided 6 months before the expiry of the registration (at least 2 years after registration).
- a licence may include regulator imposed conditions.
- the safety case must be an integrated system with specific content including:
  - a summary of the safety assessment
  - identification conducted
  - emergency and security plans
  - a description of consultation with workers
  - a description of the safety management system.
- a licence expires 5 years after granted.
- the fee is based on the level of assessment required of the safety case.

Further discussion on major hazard facility licensing is contained under Part 6 Impact Analysis.

*Access Economics would be interested in your views on the following matters:*

- *The model MHF regulations require facilities where scheduled hazardous chemicals are present, or likely to be present, in quantities at or over 10% of the corresponding threshold or aggregate quantity, to notify the regulator of this fact. Is your facility already classified as a major hazard facility under existing MHF legislation? If not, do you expect you will now have to 'notify' and potentially be licensed under the model MHF regulations?*
- *The model regulations require MHFs to have emergency plans in place that have been developed in consultation with the relevant emergency services, and must include all of the*



*matters as specified in Schedule 5.4.2. For facilities storing and handling hazardous chemicals, it is thought that this requirement will result in upgrades to any existing emergency plan. What will it cost your business to comply with this requirement?*

#### 4.12 Matters not covered elsewhere

Some matters that have previously been under jurisdiction regulations are not covered by the model regulations. Issues raised to date are as follows:

- Clothing factory registration provisions within NSW WHS Regulation are not covered under the model WHS Regulations.
- Driver fatigue regulations are not covered under model WHS regulation. Some jurisdictions currently cover this via Transport regulations. NSW, WA and the Commonwealth cover it under WHS regulations.
- Demolition requirement provisions (including licensing, notification and permit requirements) previously covered in NSW WHS regulation are not contained within the model regulations.
- Major Hazard facilities provisions in the model WHS regulations covering mining workplaces - WA have indicated they will continue to utilise their existing discretion (under non WHS legislation) in classifying Major Hazard Facilities.
- Definition of worker and concept of person conducting a business or undertaking - the broader definition may impact on jurisdictions such as NSW where WHS regulation of charity organisations may not currently apply.
- Mining - A draft of this Chapter has not been released as part of the initial consultation phase. However, this draft will be made available for public comment shortly afterwards and be subject to a separate RIS process. The policy underpinning this Chapter is being developed in conjunction with the National Mine Safety Framework, an initiative of the Ministerial Council on Mineral and Petroleum Resources, which aims to establish a nationally consistent work health and safety regime in the mining industry. It is expected to provide for:
  - the appointment of mine operators, the key duty holder under this Chapter
  - risk control measures in mines, including special rules for principal mining hazards
  - safety management systems
  - emergency response plans, and
  - mine survey plans and mine records.
- Further Codes of Practice – Additional model Codes of Practice will be developed to support the implementation of the model WHS Regulations in 2012 and will be released for Public comment in 2011. These Codes of Practice are listed in the Issues Paper release as part of public consultation.

#### 4.13 General matters

The above chapters examined individual regulations in detail. However, there are some broader reforms that apply widely across regulations. These are discussed below.



### Administration - Fees and charges

There is no proposed change to the existing fees and charges costing model as a consequence of the model WHS Regulations. Most regulators have the policy position that regulatory fees should generally be set on a full cost recovery basis. For example, Victoria calculated fees on the basis of full cost recovery as recently as 2007 and would therefore expect those fees shall remain the same or similar.

Basic economic principles dictate that the price of any goods or services should be set at the cost of resources used in its production, and thus the status quo is optimal.

From an economic point of view, this is the best way to set such charges, and Access Economics recommends this policy be continued. However, should the Strategic Issues Group on OHS (SIG-OHS) or the WRMC decide on other alternatives, the impact of any such changes will be assessed in the Decision RIS.

SIG-OHS view is that the mechanism for settling licensing and other authorisation fees should be generally based on cost recovery; that the model WHS Regulations should provide for licensing fees to be set by each jurisdiction using their current procedures; that licensing fees should not change initially, but the long term objective should be to harmonise licence fees and that the mechanism for fees should allow some flexibility for fees to be set below cost recovery levels.

While the basis for fee-setting should not change under harmonisation, there may be changes in the number and types of activities subject to fees and charges in some jurisdictions. Once the regulations are settled, Access Economics will consult with regulators on this issue as part of developing the Decision RIS.

### Notification

The model WHS Regulations requires a person conducting a business or undertaking (PCBU) to notify the regulator of certain things or events. This includes notifying the regulator:

- if manifest quantities of certain hazardous chemicals are exceeded under Chapter 7
- if certain kinds of tanks are abandoned under regulation 7.1.52
- of certain matters in relation to plant under Chapter 5
- of certain excavation work under regulation 6.3.9
- of certain matters in relation to pipelines under regulations 7.1.67 and 7.1.68
- of 'lead risk work' under regulation 7.2.6
- of asbestos removal under regulation 7.3.40, and
- notification in relation to potential major hazard facilities under Chapter 8.

Notifications form part of the regulator's compliance initiatives. For example, a notification of a construction excavation would enable inspectors to visit the site while work is in progress to assist with implementation of safe work practices. While the annual notification of the maintenance of plant under regulation 5.2.37 will require the person with management or control of a registered item of plant to advise the regulator that the item has been maintained in a safe condition and is safe to operate.

Currently different approaches are taken by regulators concerning the matters required to be notified. In relation to the draft model WHS Regulations, consideration should be given as to whether compliance outcomes are being met without creating unnecessary regulatory burden and red tape. This will be considered further in the Decision RIS and public comment is sought accordingly.

### **Record-keeping requirements**

- The model WHS Regulations include a number of record-keeping requirements which are generally based on current Australian national standards, codes or work health and safety laws. This includes a person conducting a business or undertaking keeping records of:
  - training provided to workers under regulations 4.3.21, 7.3.19 and 8.4.7 etc
  - risk assessments under regulation 4.8.20
  - records relating to testing, inspection, maintenance etc., of specified plant under Chapter 5
  - safe work method statements under regulation 6.3.7 and WHS management plans under regulation 6.4.7, and
  - health surveillance results for workers under Chapter 7.

Regulations requiring the recording or transmission of information may be appropriate in order to ensure the health and safety of persons or to facilitate the discharge of duties by others. For example, where there is a demonstrated need for minimum data transfer to assist in the control of work health and safety risks. Requirements for records to be kept for longer periods of up to 30 years or more may be justified, for example, where work-related diseases have a long latency period.

Even if record-keeping requirements are not expressly prescribed, it may be necessary for persons to keep certain records of risk management processes to demonstrate compliance with the model WHS Act and Regulations.

When evaluating the record-keeping requirements contained in the model WHS Regulations, consideration should be given as to whether compliance outcomes are being met without creating unnecessary regulatory burden and red tape. For example, in some cases there may be a good argument that specifying a fixed time for keeping records actually removes uncertainty about how long records must be kept.

Access Economics has received conflicting advice as to whether the degree of record keeping will increase under the model WHS Regulations. Some industry groups indicating a considerable increase and jurisdictions advising a significant decrease due to change in risk assessment requirements (this is discussed further below).

This will be considered further in the Decision RIS and public comment is sought accordingly.

### **Reduced regulatory burden from risk assessment**

Risk assessment is the most common WHS activity carried out in workplaces of all sizes in all industries. As a general principle, risk assessment and associated record-keeping requirements have not been included except where the complexity of the hazard is such that appropriate decisions about control are not likely to be made without conducting a systematic analysis. This will considerably decrease the regulatory burden on employers in most states and would

apply equally to single and multi jurisdiction businesses. In addition, for persons conducting a business or undertaking this transfers the emphasis of duty to a focus on risk control rather than risk assessment. Improved safety outcomes may be expected as a consequence. Removal of prescriptive risk assessment requirements on common hazards such as manual handling and hand held plant may equate to significant compliance savings for employers in most jurisdictions and may represent a significant reduction in the total administrative burden for business. Removal of prescription in this area is not new for Victoria but will be a considerable change in nearly all other jurisdictions; a number of record keeping duties related to noise have also been rationalised and this will represent a compliance saving in Victoria as well as in other jurisdictions. For multi-state employers, the removal of mandatory risk assessment will produce the benefit of being able to develop 'whole of organisation' risk management processes.

### **Generic hierarchy of control approach rejected**

Many existing regulations have set down a general hierarchy of control that applies to all risks in the workplace. However the draft model regulations currently adopt the Victorian approach and take the view that hierarchies of control framed specifically for particular hazards are more likely to be effective. This approach is consistent with the view that regulations should maintain a strong focus on high risk activities and hazards. In addition the decision is consistent with the view that there is no single hierarchy of control applicable to every hazard or risk other than the over-riding principle enshrined in the general duty provision (eliminate so far as is reasonably practicable / minimise so far as is reasonably practicable).

## 5 Consultation

Consultation has been undertaken during the development of the draft model WHS Regulations and Codes of Practice to be provided for public comment. This consultation has included the establishment of Temporary Advisory Groups (TAG) for the following subject areas:

- Licensing
- Confined Spaces
- Major Hazard Facilities
- Chemicals
- Electricity
- Plant
- Asbestos
- General Workplaces
- Construction
- Manual Tasks

The role of these groups is to provide advice and assistance to the SIG-OHS to assist in the decision-making process. These groups are tripartite and include subject-specific technical experts. Approximately thirty TAG meetings were undertaken to clarify policy issues impacting on the development of model WHS Regulations and Codes of Practice.

In addition to this, three Safe Work Australia meetings and 16 SIG-OHS meetings have been held to oversee the development of the model WHS Regulations and Codes of Practice.

The model WHS Regulations and Codes of Practice have been considered by SIG-OHS and agreed to be released by Safe Work Australia members on 2 December 2010. No jurisdiction has indicated any intention of derogating from adoption of the model or final WHS Regulations and/or Codes of Practice.

Preliminary consultation was undertaken (with unions, industry and jurisdictional representatives) during the development of the Consultation RIS that accompanies the package of draft model WHS Regulations and Codes of Practice and the Public Discussion Paper published for public comment.

Work health and safety authorities, ACCI, the Australian Industry Group (Ai Group), and the Australian Council of Trade Unions (ACTU) were asked to provide comment on the methodology for the Consultation RIS. In addition, meetings with these stakeholders were also undertaken.

At the time these preliminary consultations were undertaken, all recipients qualified their comments by noting that the draft model WHS Regulations and Codes of Practice package was not completed at that time. As a consequence, the following comments that were received from stakeholders may change as a result of the finalised package released for public comment.

Further consultation with key stakeholders will be undertaken during the public comment stage and this comment will be reflected in the Decision RIS.

## 5.1 General views

Stakeholders commented that implementing the harmonisation package, including legislation, regulation, Codes of Practice and compliance policies, could have additional costs to regulators over the years, with flow on costs to business. These costs could arise from educating businesses about the new regulations, retraining inspectors and modifying IT systems. The smaller regulators also noted the difficulties encountered in processing the large volume of harmonisation material.

However, other views were that the harmonisation of regulations would have little impact on regulators, though some newly regulated industries would need one-off training. It was commented that harmonisation should make things easier for regulators, as states can pool resources to produce new guidance material etc. Also, it would be easier to recruit inspectors from other states and there should be greater consistency between inspectors' decision making.

Comments were also received that the change in approach to risk assessment may also provide savings and a greater emphasis on implementing control aspects of safety.

## 5.2 Safety and economic factors

Some stakeholders provided preliminary comments that while most of the benefits of regulatory reform will go to multistate businesses, the vast majority of businesses do not trade across borders, but will still bear adjustment costs under harmonisation.

Concerns were raised about the impact on current jurisdictional systems (for example NSW), which are set up so that a single incident notification will be sufficient for both work health and safety and worker's compensation authorities. However, if the harmonised regulations do not allow for this, hundreds of thousands of notifications would have to be replicated annually which would result in additional costs.

Other views were that there are no considerable impacts expected on the safety of workers, though there are concerns if high risk activities which are currently tightly regulated in most jurisdictions (for example confined spaces), are deregulated. Any changes to compliance and enforcement policies may also have an impact.

Some stakeholders also see large gains from future regulatory changes being undertaken at nationwide level under harmonisation. Jurisdictions could also save on implementation costs by sharing responsibilities, rather than every state producing guidance on every regulation.

It was commented that compliance and enforcement policies are where the impact really is. The harmonisation process does not deliver uniform prosecution regimes, and different courts and tribunals will still result in different outcomes. Some states prosecute against Acts, others regulations and others hold that if Codes of Practice are complied with, that is sufficient. Similarly, if fees and penalties differ across states, this will materially affect compliance, and this issue has not received enough focus.

Stakeholders commented that to some extent, business is prepared to live with less than optimal regulation if that is the price of consistency (subject to no reductions in safety.) Inconsistency reduces safety, because it means more effort has to be devoted to red tape,

which all else being equal, means less for compliance. Overall, it is preferable that harmonised regulations contain more agreed outcomes and fewer different prescriptive requirements.

It was viewed that one benefit of harmonisation is that it may reduce distortions in resource allocation. Previously, large firms would avoid setting up operations in jurisdictions with particularly harsh consequences for directors.

There were also concerns that while large multistate firms may be able to reduce their work health and safety costs, there was little in the way of benefits for small businesses to compensate them for their adjustment costs. It was commented that RIS calculations tend to focus on the marginal impact of regulations, not on the total impact, and industry surveys have indicated that three quarters of small businesses report work health and safety costs to be “moderate to substantial”.

### 5.3 Comments relating to changes to model WHS Regulations and Codes of Practice

Preliminary Comments were provided on the following subject areas:

- Plant - Plant regulation could become less burdensome under harmonisation.
- Emergency procedures - most large organisations already have emergency procedures, and similar levels of regulation for small business may not be necessary and would result in additional costs.
- Asbestos - harmonising national approaches to asbestos is a significant benefit of the harmonisation process, especially the standardised licensing of asbestos removalists and consistent registration of asbestos assessors. However, requirements for duty holders to maintain asbestos registers in addition to the current requirement for building owners will require more reporting, which may be duplicative.
- Noise – there was concern that the National Standard is nearly 20 years old. There may be a need to look at newly implemented regulations (for example Victoria).
- Falls - this is designed around Victoria’s current regulations. However, in Victoria the regulation only applies where there is a reasonable likelihood of a fall of two metres or more, whereas the harmonised regulation applies to work at any height.
- MHF – concerns were that smaller jurisdictions may not have the resources required to implement the very detailed and structure regulations. For example, South Australia does not currently have specific MHF regulations and covers such facilities through general work health and safety provisions and specific dangerous substances regulations. However, South Australia has been working with businesses towards introducing MHF regulations, with the process being delayed until harmonised MHF regulations are available to adopt, so the costs to businesses should not be large. Also, most South Australian MHFs are owned by either national firms, who would already have to deal with MHF regulation in other states, or firms that are large enough to take such changes in their stride (or both).
- Construction – concerns that a requirement to identify a principal contractor for construction projects in excess of \$200 000 would significantly increase the cost of building houses. Excavation notification requirements may also increase paperwork for businesses.
- Electricity – Queensland noted that it has the most up to date electrical regulations in the country, with one consolidated set covering everything from large industrial complexes to

small household jobs. If the harmonised regulations were to take a lowest common denominator approach and treat these workplaces differently, that would make it difficult for Queensland's electrical contractors.

It was also noted that elevating some policy matters from model Codes of Practice to work health and safety Regulations may increase the amount of regard employers pay to those matters, and thus their compliance with them e.g. remote or isolated work, heat and cold, and amenities.

## 5.4 Next steps

The consultation process has commenced with the release of the draft model WHS Regulations and Codes of Practice for public comment. This package of material is accompanied by this Consultation RIS and a Public Discussion Paper.

The Public Discussion Paper includes information on the package of draft model WHS Regulations and Codes of Practice and guidance for providing public comment. The Public Discussion Paper should be read in conjunction with this Consultation RIS and the model WHS Regulations and Codes of Practice.

A questionnaire in survey form is included at Appendix D of this document. The purpose of the questionnaire is to seek further information that will assist in quantifying the costs and benefits of the model WHS Regulations and Codes of Practice package. To ensure a broad demographic, a number of sources will be used for the survey. Access Economics has its own lists from previous similar surveys, and Safe Work Australia and other key stakeholders have offered to include links to the survey in their mail outs.

The survey is also available from the Safe Work Australia website.

In addition to the survey, Access Economics will continue to consult with key stakeholders during the public comment period. This will include undertaking select focus group meetings in every Australian capital city.

Comments received during the public comment process will be taken into consideration in the development of the Decision RIS that will accompany the package of model WHS Regulations and Codes of Practice when it is provided to the WRMC for agreement in 2011.

## 6 Anticipated Impact Analysis

This chapter undertakes an initial qualitative analysis of the effects of changes identified in Chapter 4. Chapter 7 examines the costs of achieving these effects, and their potential dollar benefits.

Access Economics prefers to conduct quantitative analysis where possible, but there are currently insufficient data to enable this assessment to be conducted robustly for either impacts or their associated costs and benefits. Accordingly, Access Economics will be conducting surveys and focus groups with key stakeholders as part of the public comment process to attempt to gather more data for inclusion in the Decision RIS. Until the public consultation phase is completed these chapters will remain incomplete. It is proposed that subjects and areas regarded as resulting in considerable change will be addressed in further detail in the final Decision RIS.

The harmonising of work health and safety regulations is a part of a coherent work health and safety framework. The model WHS Act was the first tier which describes the performance outcomes in a set of broad principles. Introducing model WHS Regulations and Codes of Practice is the second tier. Development of common compliance policies and enforcement activities across regulating bodies will be the third tier. Given that the development of the model WHS Regulations are mostly a consolidation of existing regulations, and largely based on already agreed national work health and safety standards, it is anticipated that the impact of this second tier may be less than that of the third for most jurisdictions.

### 6.1 Anticipated impact on business

For businesses that trade in multiple jurisdictions, it is expected that work health and safety harmonisation will reduce the absolute numbers of different regulations that affect them. Perhaps more importantly, it will also reduce the rate of growth of such regulations as there will no longer be nine jurisdictions developing their own streams of regulations in the future, but effectively only one.

The majority of Australian businesses only trade within one jurisdiction, although most of these enterprises are small businesses with attendant low levels of awareness of, or compliance with, work health and safety regulations<sup>3</sup> (see Table 3). While most changes are expected to have little or no impact industry and some jurisdictions have indicated that some will be considerable. Generally, where there are changes these are likely to be in the direction of overall lower regulatory burden (eg, less prescriptive risk assessment for manual handling) and/or increased worker safety (eg, greater use of RCDs).

The legislative impacts of harmonisation have already been captured in the RIS associated with the model WHS Act. This consultation RIS is only concerned with impacts that occur at a regulatory level. For example, all jurisdictions have legislation requiring some form of licensing for asbestos removal. Under regulatory harmonisation, those licence requirements will be common across the country. Assuming existing licences are recognised after harmonisation, the costs after initial implementation should be low as new applicants would have had to have

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<sup>3</sup> The Productivity Commission (2010) reported that the majority of small and medium enterprises were either only somewhat aware, or not aware, of their OHS responsibilities.



undergone some learning process regardless of harmonisation. A potential benefit will be that removalists will be able to move freely across the country to meet demand.

**Table 3: Impact of differences in work health and safety regulations across jurisdictions**

| Impact  | % of businesses |
|---|-----------------|
| Makes our costs higher than businesses in other states and territories                | 35              |
| Rules not set for each state  | 15              |
| Makes it harder to compete with businesses undertaking similar activities interstate  | 12              |
| Time consuming  | 8               |
| Results in cheaper prices for products and services from other states and territories | 7               |
| Financial impact  | 6               |
| Training  | 5               |
| Makes it a safer place to work  | 5               |
| Hard work to keep up to standard/hard to implement changes                            | 5               |
| Need to keep up to date   | 3               |
| Transport requirements  | 3               |
| Transferring information between states/companies                                     | 2               |
| Increased paperwork/admin   | 2               |
| Additional policies in place  | 1               |
| Increase in red tape  | 1               |
| Creates a more effective/productive environment                                       | 1               |
| We already do everything that is required/work to the highest standard                | 1               |
| It affects pricing  | 1               |

Source: Productivity Commission (2010).

WorkCover NSW considers that the requirement to have Health and Safety Representatives (HSRs) will impose a significant cost on NSW businesses. However, the requirement that all jurisdictions have provisions for HSRs was principally a legislative change brought about in the model WHS Act, not a regulatory change per se.

One possible impact on businesses may be from regulators' charges and fees. This is discussed separately under Section 6.1.4 dealing with impacts on regulators.

### 6.1.1 Multi-jurisdiction businesses

While dealing with multiple work health and safety regimes does impose significant costs on a number of businesses, only a small proportion of businesses are affected. The Productivity Commission (2004) estimated that 99 per cent of Australian businesses only operated within one jurisdiction in 1998.

- Even for large businesses with over 200 employees, the Productivity Commission (2004) reported that a small majority (58 per cent) still only operate within one jurisdiction. However, of the large minority that do operate across jurisdictions, most tend to have operations in five or more jurisdictions and thus face dealing with five or more sets of regulations (ABS, 2007).

Further, the odds are somewhat different if weighted by employees. While only 0.3 per cent of businesses have more than 200 employees, according to the Productivity Commission (2004), these businesses accounted for nearly half (44 per cent) of total private sector employment. Because of large businesses' higher propensity to operate across borders, and large employment share, this means that an estimated 29 per cent of private sector workers are employed in businesses that operate in multiple jurisdictions (Productivity Commission, 2004).

The Productivity Commission (2010) has recently conducted a survey on business work health and safety costs. While this survey was large (1800 responses), it did not seek to put a dollar value on harmonisation costs and benefits (Figure 1). However, it may still be of some use to triangulate responses from the survey for this RIS<sup>4</sup>.

**Figure 1: Productivity Commission OHS harmonisation survey questions**

**Part 3**

3a. Does your business buy or sell goods or services interstate? (Buy/Sell/Both/Neither)

3b. Does your business have employees or operations based interstate? (Yes/No)

3c. As you may be aware, different States and Territories may have different OH&S legislation. Does this impact on your business either positively or negatively? (Does impact/Does not impact)

3d. In what ways do the different OH&S laws impact your business?

- Makes it harder to compete with businesses undertaking similar activities interstate
- Makes our costs higher than businesses in other States and Territories
- Results in cheaper prices for products and services from other States and Territories
- Other impact (specify)

3e. Has your business incurred any costs through having to deal with differences in OH&S regulations in other states and territories? (Yes/No)

3f. What was the nature of these costs? Have you incurred...

3g. Can you rank in order the three highest costs that you face?

- Costs associated with obtaining information on the differences in OH&S?
- Training costs for staff to make them aware of the differences?
- Costs of additional inspections or audits?
- Added costs such as training when recruiting staff from interstate?
- Difficulties in ensuring machinery and equipment transferred or purchased from interstate complies with your state/territory OH&S laws?
- Any other costs? (specify)

3h. And would you say that the total costs associated with differences in OH&S regulations between States and Territories are...? (Small/Moderate/Substantial)

Source: Productivity Commission (2010)

### 6.1.2 Significant matters and sub-options

The following subsections consider in more detail the impact and sub-options for those matters initially identified as resulting in considerable change and having a significant impact. Further quantitative data is being sought during the public comment stage so that the impact can be further determined.

#### Electricity – RCDs

Currently, SA, WA and NT include requirements for RCDs in their work health and safety regulations. Queensland includes requirements in their *Electrical Safety Regulation 2002*. NSW

<sup>4</sup> Access Economics has sought access to data from the firm which conducted the Productivity Commission's survey, but has not received a response to date.

regulations only mandate RCDs for construction and building sites under an approved industry code of practice. However, NSW WorkCover announced on 12 December 2010 that new regulations will be introduced to mandate RCDs in all workplaces. The other jurisdictions do not include RCD requirements in the work health and safety legislation, and as such the RCD requirements in the model WHS Regulations may result in a considerable change for these jurisdictions.

RCDs are designed to prevent electrocution and work by measuring the difference between the current flowing out from a live conductor and that returning through a neutral conductor. If this does not sum to zero there is a leakage of electrical current to somewhere else (often through a person into the earth), and the RCD will break the electrical current. RCDs are designed to disconnect quickly enough to mitigate the harm caused by electrical shocks.

Annually, there are approximately 850 accepted workers' compensation claims relating to contact with electricity (Safe Work Australia, 2010). During the 2007-08 financial year there were 1130 accepted workers' compensation claims resulting from contact with electricity. An accepted claim for contact with electricity typically results in \$4800 in worker's compensation payments and three weeks in time lost from work (Safe Work Australia, 2010). Accepted claims for contact with electricity during the period 2001-02 to 2006-07 resulted in an average of \$10 million in direct workers' compensation payments and an estimated \$50 million annually in total economic costs (covering areas such as lost productivity, health care costs and loss of human capital) (Safe Work Australia, 2010).

The benefit of installing RCDs relate to the reduction in fatalities and injuries from electric shocks. A RIS regarding RCDs in community dwellings found that at least four lives would be lost per year due to preventable electrocutions in Queensland, with costs totalling \$80 million over 20 years (Office of Queensland Parliamentary Counsel, 2002). In addition, there is the potential to reduce costs associated with non-fatal injuries as well as the costs associated with damage to plant and infrastructure resulting from electrical faults. The Queensland RIS suggested that over a 20 year period, the estimated savings associated with non-fatal injuries is \$1.5m (Office of Queensland Parliamentary Counsel, 2002).

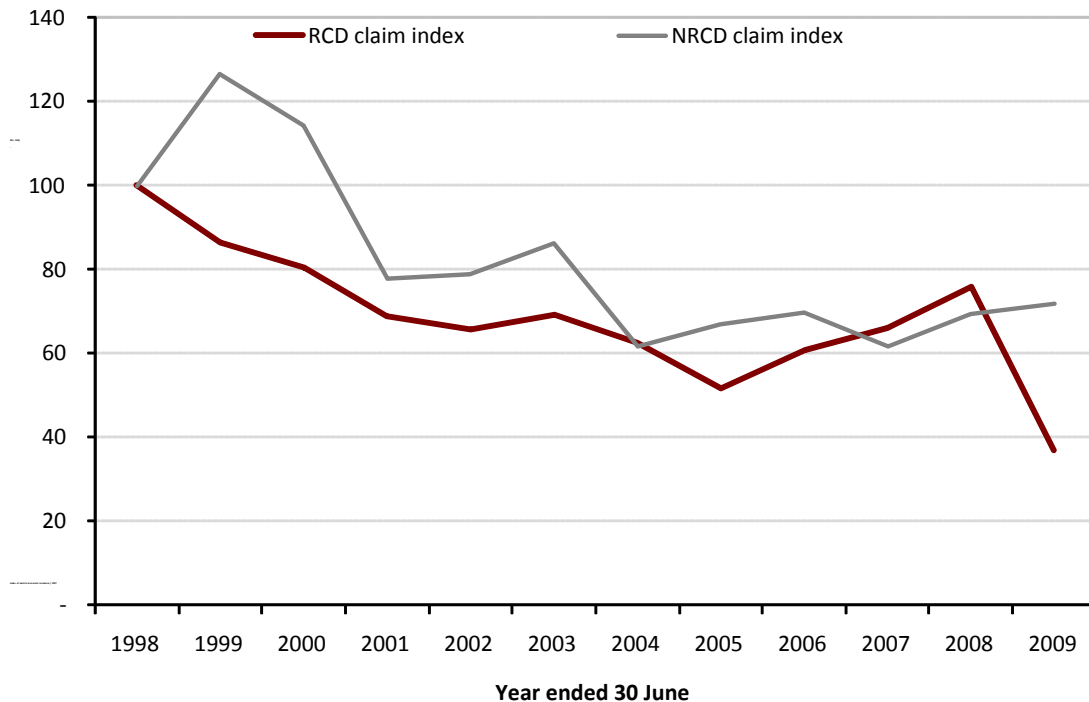
Commercial benefits can also be achieved as suppliers of RCDs will benefit from the increased use of RCDs and other necessary equipment. Further, there will be a gain of additional business by electrical contractors over the period of time when the RCDs are being installed. This may also provide a temporary boost to local employment.

Access Economics considers that data will need to be gathered from this RIS's survey and consultation process before any detailed assessment of costs can be undertaken. As a guide, however, the WA Department of Commerce suggests:

... it should cost no more than \$500 to supply and fit two single-phase RCDs in an average sized 4x2 home. Once installed the RCD will not deteriorate and only requires occasional testing. The cost of installing an RCD will depend on the number of circuits installed and whether homeowners decide to isolate particular circuits so if a fault occurs, they will not lose power from the remaining circuits. (Department of Commerce and Energy Safety, 2009).

It is possible to do some high level calculations of the cost effectiveness of RCDs (full calculations will need to await the result of the RIS survey<sup>5</sup>). States with RCDs currently have around one third (35 per cent) fewer electrical incidents than non-RCD states (Chart 1).

**Chart 1: Trends in electrical contact claims, 1997-98 to 2008-09**



Source: NDS

While it was noted above that RCDs have a very long life expectancy, it is usual in a RIS to value costs and benefits over 10 years, which would translate to around \$25 per year for an average installed RCD. By this calculation, if non-RCD states had to buy less than 127,000 RCDs to comply with the new model WHS Regulations, there would be a net benefit to society (= \$3.17 million /\$25). This could be possible, given that many businesses in non-RCD states may already use RCDs.

The draft model WHS Regulations proposes the following requirements for RCDs:

- In relation to each socket outlet at the workplace, the circuit must be protected by an RCD.
- Where reasonably practicable, the RCD should be incorporated before or as part of the socket outlet (i.e. be ‘non portable’).

*[Non-portable RCDs are permanent within an installation, and are either installed in the main switchboard or within the socket outlet. Portable RCDs do not provide fixed-wiring protection but can protect individual items of electrical equipment (portable plug type) or provide a number of protected socket outlets from one RCD unit (portable stand-alone unit).]*

<sup>5</sup> Not all electrocutions would be avoided by using RCDs, but it should also be noted that this estimate does not incorporate the benefit of non-fatal injuries avoided by RCDs.

- Certain types of electrical equipment must also be protected by RCDs (e.g. hand held electrical equipment).

The draft model WHS Regulations also requires compliance with Australian Standard AS/NZS 3012 *Electrical installations - Construction and demolition sites*. This Australian Standard requires all final sub-circuits to be protected at the switchboard by an RCD, providing protection for all socket outlets.

These proposed requirements are based on current jurisdictional regulations.

Consideration was given to the level of regulation required regarding RCDs. It was noted that RCDs are currently regulated in four jurisdictions and indirectly via AS/NZS 3000, (in conjunction with electrical safety laws), and have a significant positive impact on safety.

However, concerns have been raised that RCD requirements may result in cost impacts for those jurisdictions which currently do not regulate the use of RCDs, and also that regulations may require retrospective installation of RCDs in some situations. Depending on transitional arrangements this may have a significant impact on costs and needs to be further examined as part of the Decision RIS.

An alternative is to generally require RCDs to be used to, *so far as is reasonably practicable*, minimise risks associated with the supply of electricity through socket outlets. Further requirements could then be specified for the use of either a non-portable or portable RCDs in relation to certain kinds of electrical equipment (e.g. portable electrical equipment that is intended to be moved when in use). However, this may still result in a considerable change for those jurisdictions which currently do not require the use of RCDs or for those jurisdictions which only require RCDs be used in conjunction with certain types of electrical equipment.

A further alternative is to mandate non portable RCD for all new installations (installed either in the main switchboard or within the socket outlet); and the use of portable RCDs, where this is not practicable or on sites installations prior to a specified date.

This requirement may be considered onerous as portable RCDs are also effective protective devices, and the mandatory installation of a non-portable RCD may have significant cost impacts. This option is also inconsistent with current jurisdictional regulations, which allow the use of portable RCDs.

Public comment and further analysis will be undertaken on the alternative models during the public comment phase to assist in determining impact and cost benefit of the above issue and the appropriateness of the approach undertaken in the model regulations.

### **Construction – Excavation**

Maintaining current jurisdictional arrangements would result in the continuation of the disparate arrangements that exist in the jurisdictions, as well as the continuation of the administrative burden and confusion for multi-jurisdictional duty holders in understanding and meeting varying safety responsibilities across borders.

Alternatively, not having a notification process is not a realistic option as it would diminish safety outcomes in those jurisdictions that already require notification of some types of higher

risk excavation work. It would also create confusion among multi-jurisdictional stakeholders in relation to their safety responsibilities, as well as possibly impacting on other PCBU duties (e.g. the completion of a WHS Management Plan/SWMS, obtaining the underground essential services information prior to commencing excavation work).

The introduction of a nationally consistent notification process for specific excavation work (i.e. high risk excavation works more than 1.5 metres deep) will maintain safety outcomes in jurisdictions, while also aligning the type of excavation work that requires notification, and reduce the burden of red tape for multi-jurisdictional industry participants (i.e. same process nationally). For those jurisdictions that have no notification process or for person conducting a business or undertaking in a single jurisdiction there may be additional administrative requirements offset by a positive effect on safety.

The impact for industry given the nationally consistent approach and restricted definition for excavation work that requires notification will need to be further assessed during the public consultation phase and addressed in the Decision RIS.

### Plant

Currently specific items of high risk plant are registered on the basis of enabling regulators to identify where high risk plant is located and thereby enable auditing of plant safety or validation of the safe installation, use and maintained of the plant. Currently there is a lack of consistency between jurisdictions on the periods of registration and the fees charged.

Alternatives for addressing this are removal of plant registration fees; retention of item registration with registration renewal required every 5 years, and retention of item registration with registration renewal required annually.

For employers operating across jurisdictions the differing arrangements contribute to a greater administrative burden and a lack of consistency in approach.

As a basis of review Table 4 provides a summary of current registration and registration renewal fees.

**Table 4. Registration and renewal requirements per item over five years, under the status quo, based on the most common fees currently levied**

| Jurisdiction | Registration         | Renewal              | Renewal period (years) | Total cost per item (5 year period) |
|--------------|----------------------|----------------------|------------------------|-------------------------------------|
| VIC          | \$21.50              | \$21.50              | 5                      | \$21.50                             |
| NSW          | \$65.00              | \$65.00              | 1                      | \$325.00                            |
| QLD          | \$47.10 to \$1324.00 | \$47.10 to \$1324.00 | 1                      | \$235.50 to \$6620.00               |
| NT           | \$23.00              | -                    | 0                      | \$23.00                             |
| WA           | \$77.00              | -                    | 0                      | \$77.00                             |
| SA           | \$58.50              | \$58.50              | 1                      | \$292.50                            |
| TAS          | \$73.05              | -                    | 0                      | \$73.05                             |
| ACT          | -                    | -                    | 0                      | \$0.00                              |
| COMM         | \$100.00             | \$100                | 4                      | \$125.00                            |

Notes: Queensland costs vary from \$47 to \$1,324 per annum, depending on the type of plant being registered. The ACT does not charge registration fees but does set out statutory inspection fees for registrable items of plant. The Commonwealth also has a 2 year renewal process for \$60.

### No registration of Plant

As there has been plant registration or an equivalent process in place across Australian jurisdictions for many years, it is difficult to assess whether the removal of plant registration requirements would adversely impact on health and safety outcomes.

The ACT currently has no system for charging registration fees, but does have a regulated process for regular inspection of high risk plant that aims to ensure a similar outcome, in that plant is installed, used and maintained in a safe manner.

Jurisdictions have not supported this approach as they believe it does not provide a reasonable balance between ensuring safety requirements and regulators' understanding of the potential risks within their jurisdiction.

**Table 5 Savings per item of plant over five years, with no registration or renewal of plant**

| Jurisdiction | Status Quo           | No fees | Fee savings per item<br>(5 years) |
|--------------|----------------------|---------|-----------------------------------|
| VIC          | \$21.50              | \$0.00  | \$21.50                           |
| NSW          | \$390.00             | \$0.00  | \$390.00                          |
| QLD          | \$47.10 to \$1324.00 | \$0.00  | \$235.50 to \$6620.00             |
| NT           | \$23.00              | \$0.00  | \$23.00                           |
| WA           | \$77.00              | \$0.00  | \$77.00                           |
| SA           | \$351.00             | \$0.00  | \$351.00                          |
| TAS          | \$73.05              | \$0.00  | \$73.05                           |
| ACT          | \$0.00               | \$0.00  | \$0.00                            |
| COMM         | \$150.00             | \$0.00  | \$150.00                          |

Notes: as per Table 4.

### Registration of Plant with 5 yearly renewals

This option is based on a renewal period used by Victoria, which has a five year period of registration, and charges on a cost recovery basis. Under this option, it is assumed that renewal fees cost the same to administer as initial registration fees, and that fees are based on cost-recovery. (Smaller states are likely to have higher unit costs, so fees would not be expected to be the same across all jurisdictions.) As ACT registration fees are currently zero, it is assumed that on a cost recovery basis, the least it would cost would be the same as in Victoria (which is the next lowest fee).

**Table 6: change in costs per item of plant over five years, with 5 yearly renewals:**

| Jurisdiction | Status Quo           | Fees - 5 yearly renewal | Fee savings per item (5 years) |
|--------------|----------------------|-------------------------|--------------------------------|
| VIC          | \$21.50              | \$21.50                 | \$0.00                         |
| NSW          | \$325.00             | \$65.00                 | \$260.00                       |
| QLD          | \$47.10 to \$1324.00 | \$47.10 to \$1324.00    | \$188.40 to \$5296.00          |
| NT           | \$23.00              | \$23.00                 | \$0.00                         |
| WA           | \$77.00              | \$77.00                 | \$0.00                         |
| SA           | \$292.50             | \$58.50                 | \$234.00                       |
| TAS          | \$73.05              | \$73.05                 | \$0.00                         |
| ACT          | \$0.00               | \$21.50                 | -\$21.50                       |
| COMM         | \$125.00             | \$25.00                 | \$100.00                       |

Notes: as per Table 4.

For the ACT, the fee rate has been set at that of Victoria, as the lowest fee based on cost recovery of the jurisdictions.

#### **Registration of Plant with annual renewal (notice of plant maintenance)**

Plant item registration seeks to provide regulators with the location details and a stock-take of high risk plant in operation, or in existence, in a jurisdiction. The annual notice of plant maintenance (annual notification) seeks to ensure that persons with management or control of registered items of plant maintain the plant so that it is safe to operate.

If accompanied by an appropriate fee structure, the registration and annual notification will provide a regulator with a more accurate stock-take of high risk plant in operation in their jurisdiction, including for moveable plant, and requires persons with management or control of registered items of plant to inform the regulator that the plant has been maintained so that it is safe to operate or if there have been alterations, movements or change of ownership. Nationally recognised registration means a once only item registration process. Annual notification may also provide business with greater certainty, as is the case in QLD, where a single date for all renewals/notifications is set.

A longer span of time between renewal of registration/notification, or indeed lifetime registration, relies heavily on the person with management or control of the plant to inform a regulator of alterations, movements or change of ownership, and for the regulator it results in uncertainty as to the plant that is operating in their jurisdiction.

The annual notification option is based on a renewal period of 1 year that is currently as used by a number of jurisdictions. NSW, SA and Queensland have one year periods of registration. Renewal and registration fees are assumed to be based on cost-recovery, and to be the same as each other.

The model regulations have been drafted to reflect this option for the purposes of public comment.



**Table 7: change in costs per item of plant over five years, with annual renewal:**

| Jurisdiction | Status Quo              | Annual fees<br>(5 years) | Fee increase per<br>item<br>(5 years) |
|--------------|-------------------------|--------------------------|---------------------------------------|
| VIC          | \$21.50                 | \$107.50                 | \$86.00                               |
| NSW          | \$325.00                | \$325.00                 | \$0.00                                |
| QLD          | \$47.10 to<br>\$1324.00 | \$235.50 to<br>\$6620.00 | \$0.00                                |
| NT           | \$23.00                 | \$115.00                 | \$92.00                               |
| WA           | \$77.00                 | \$385.00                 | \$308.00                              |
| SA           | \$292.50                | \$292.50                 | \$0.00                                |
| TAS          | \$73.05                 | \$365.25                 | \$292.20                              |
| ACT          | \$0.00                  | \$107.50                 | \$107.50                              |
| COMM         | \$125.00                | \$125.00                 | 0.00                                  |

Notes: as per Table 4.

For the ACT, the fee rate has been set at that of Victoria, as the lowest fee based on cost recovery of the jurisdictions.

Public comment and further analysis will be undertaken during the public comment phase to assist in determining impact and cost benefit of the above issue and the approach undertaken in the model regulations.

### Major Hazard Facilities

The definition of “major incident” in the draft regulations does not limit the type of incidents to which MHF specific obligations apply to those materials that appear in the schedule (i.e. “scheduled materials”).

The definition will result in existing MHF operators in (NSW, Victoria, and possibly WA) having to identify any escape of material (even water) that could expose any person to a serious risk to the person’s health and safety (emanating from either an immediate or imminent exposure to the occurrence). MHF operators will have to identify all these hazards and then include the assessment and management of these additional risks in accordance with the MHF provisions, such as the Safety Management System and Safety Case.

This is a departure from Victorian and NSW legislation and will require significant alteration to existing practices and procedures for MHF operators in those jurisdictions that currently restrict the definition of major incident to ‘scheduled’ materials (i.e. NSW, Victoria and possibly WA).

The proposed model regulation will provide, in addition to current coverage of higher risk hazards, further coverage of lesser hazards with an anticipated reduction in consequence of a catastrophic failure.

There may be additional costs as a consequence of the additional risks that need to be covered under the broader definition.

Public comment and further analysis will be undertaken during the public comment phase to assist in determining impact and cost benefit of the above issue and the approach undertaken in the model regulations.

Your views on the approach to defining major incident; the impact; costs and benefits and alternatives to the approach taken within the regulation, is sought.

### Major Hazard Facility Licensing

A benchmark study by Safe Work Australia in 2006 into MHF regulation (prior to model regulation development) identified that various licensing approaches were being used across the various jurisdictions. These differences included terminology, such as licensing vs registration vs classification; different licensing terms eg 3 and 5 years; and different fee structures – with some jurisdictions charging fees, while others were not charging any fees at all.

Data on existing MHF licensing / registration fees are very patchy. However, Access Economics estimates that currently States collect around \$7 million dollars a year in such fees<sup>6</sup>.

**Table 8: Estimated MHF Fees**

| Jurisdiction     | No. MHFs   | Initial assessment | Annual license | Total over four years | State total            |
|------------------|------------|--------------------|----------------|-----------------------|------------------------|
| NSW <sup>a</sup> | 32         |                    | \$40,200       | \$160,000             | \$5,145,600            |
| VIC <sup>b</sup> | 45         | \$35,000           | \$-            | \$35,000              | \$1,575,000            |
| QLD              | 32         | \$-                | \$-            |                       | \$-                    |
| TAS              | 12         | \$624              | \$-            | \$624                 | \$7,488                |
| WA               | 26         | \$55,000           | \$15,000       | \$115,000             | \$230,000 <sup>c</sup> |
| Commonwealth     | 30         | \$-                | \$-            |                       | \$-                    |
| <b>Total</b>     | <b>177</b> |                    |                |                       | <b>\$6,958,088</b>     |

Source: Safe Work Australia. Notes: a) NSW fee is base-fee per annum for non-registration based costs, b) Victoria is estimated average fee, c) Number of MHFs for WA is based on sites that would be so classified under Model regulations, whereas WA only classifies as MHF sites with highly complex processing operations (assumed to be two Class A sites.)

Three approaches are considered below to ascertain the relative impact of the approach undertaken in developing the model regulations.

#### No licensing or registration system

The National Standard does not prescribe requirements for the registration or licensing of MHFs.

Different licensing approaches are currently being used across those jurisdictions that have implemented MHF regulations. Under this scenario, jurisdictional regulatory fees would be

<sup>6</sup> Not including South Australia, for which there is no fees data.

reduced by an estimated \$7 million a year. However, the absence of any licensing or registration is regarded as unrealistic given the potential for loss of life with a relatively high risk facility. The inherent high-risk nature of MHFs warranted the need for strong regulatory oversight.

In 1995, South Korea introduced MHF legislation that, like Australia's National Standard, is based on the European Seveso Directive. Kwon (2005)<sup>7</sup> showed that in the seven years following these reforms, injuries in South Korean MHF sites diminished by 58%. It follows then, that the removal of regulatory oversight in Australia could have an equal, but opposite, effect.

Differences in licensing approaches can cause frustration and confusion for businesses that operate MHF's across multiple jurisdictions. Discussions with the tripartite MHF Technical and Reference Group indicated unanimous support for a licensing approach to be included in proposed model regulations.

A one step system where the operator would be required to present a completed safety case, taking several months to complete, prior to operating fully a major hazard facility is not a realistic alternative given the consequences of a catastrophic failure. It would require a decision by the regulator, not based on practical demonstration but solely on written submission.

The underlying intention of registering a major hazard facility is to allow the operator a certain period of time to develop a safety case and prepare for the rigours of full licensing requirements whilst also enabling initial regulatory oversight of the operators demonstrated capability. This single step approach would not provide for practical demonstration of the facility prior to licensing.

Assuming that this option adopted the NSW system of annual renewals, the net cost would be around \$16.8 million<sup>8</sup>

The two most contemporary approaches to domestic MHF licensing were examined for suitability for inclusion in the model regulations.

Both the Victorian and NSW legislation incorporate systems for 'registration prior to licensing' or 'provisional registration prior to registration', which are essentially schemes designed to minimise regulatory burden by allowing operators of MHFs a certain period of time to develop a safety case and prepare for the rigours of full licensing requirements and assessments.

Although essentially achieving the same regulatory outcome, the NSW approach of immediately imposing a series of conditions on 'provisionally registered' facilities, may be seen as an increase in regulation, as opposed to the Victorian system of later including essentially the same conditions as matters that must be satisfied before a licence can be issued.

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<sup>7</sup> Kwon HM (2005) "The effectiveness of process safety management regulation for the chemical industry in Korea". *Journal of Loss Prevention in the Process Industries*, 19:13-16

<sup>8</sup> Cost is \$160,800 over four years (as per NSW), for each of 147 MHF sites, which totals \$23.6 million.

This process allows the registered facility a 30 month period to progress towards becoming a licensed facility. The relationship between registration and licensing that the model MHF regulations need to prescribe is that only operators of registered MHFs can apply for a licence. This is consistent with the Victorian approach to licensing, and aligns with the intent of the NSW legislation.

For this reason the Victorian approach of initially registering facilities that then progress to licensed facilities was the preferred model for the model MHF regulations.

As this approach is consistent with Victoria's, it is assumed that this option also follows the Victorian model of charging a large upfront registration fee (for successful applicants), but then no annual fees for the next five years. Thus, this option would represent a net saving of \$1.8 million in fees over the next four years<sup>9</sup>.

Such an approach requires the regulations to prohibit the operation of a major hazard facility unless the facility is either registered or licensed.

Public comment and further analysis will be undertaken during the public comment phase to assist in determining impact and cost benefit of the above issue and the approach undertaken in the model regulations.

## Asbestos

### Management and Removal

Four jurisdictions, NT, Queensland, Commonwealth and WA have indicated there will be considerable change and impact with implementation of the model WHS Regulations and Codes of Practice.

There are significant differences in regulatory regimes across jurisdictions, and aspects of management and removal of asbestos may currently be regulated other than under Work Health and Safety legislation in some jurisdictions.

The options outlined below span the possible regulatory approaches that may be considered.

**Minimal regulations:** Some jurisdictions take this approach on management and removal of asbestos. Requirements such as registers, management plans, notification and clearance reside in Codes of Practice which are evidentiary.

**Prescriptive regulations:** Regulations prescribe in detail the duties to manage and remove asbestos including requirements for PCBU to have asbestos registers, clearance, notification, etc. Regulations are supported by Codes which are guidance/evidentiary

The burden of asbestos disease, the clear risk to health and broader community concern about asbestos clearly means having no specific regulation or having only minimal regulation is untenable.

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<sup>9</sup> Cost is \$35,000 over four years (as per Victoria) for each of 147 MHF sites, which totals \$5.15 million.

The model WHS legislation package is, in general, based on the last option discussed above. It is performance based, except in cases where the risk to worker health and safety means that prescriptive regulation is necessary. Asbestos falls into this category. The introduction of compliance codes for asbestos would be inconsistent with the approach taken for the model WHS legislation generally.

The model regulations place clear obligations on duty holders to ensure that the risk of exposure to asbestos is minimised, and that asbestos is managed and removed only in certain ways by persons with the necessary competencies. The evidentiary codes provide guidance on how to comply with the duties set out in the regulations. This model provides clarity for duty holders and increased powers of enforcement for regulators over the first option, while allowing flexibility in the way in which a duty holder complies. This allows a range of duty holders to meet their obligations without being unnecessarily burdensome.

Further quantitative modelling of this issue will be undertaken during the Public comment phase.

### **Asbestos Assessor Licensing**

In 2008, various state regulators expressed concerns about the quality of work being undertaken by consultants in identification, issue of clearance certificates, and risk assessment of asbestos in workplaces. These concerns were reiterated by several regulators during the development of the policy proposal underpinning the model WHS regulations.

Improving the quality of clearance monitoring following asbestos removal, while not imposing a considerable increase in regulatory burden for the majority of jurisdictions, is a challenge in the development of the model Regulations for asbestos.

Three approaches (retaining the status quo; undertaking asbestos assessment in conjunction with identification and clearance monitoring; and a licensing regime requiring statements of attainment and licences for air monitoring and clearance), are considered below to ascertain the relative impact of the approach undertaken in developing the model regulations.

Currently there are estimated to be approximately 200 consultants, including occupational hygienists, and environmental scientists undertaking clearance of asbestos removal jobs. Persons undertaking this work at the current time are not licensed, and there is no mandatory qualification or training (except in the ACT). The cost/benefit of this model is nil as there is no change. There is a safety cost in having no method to ensure adequate skill and competency or ability to restrict persons undertaking the work by suspension or cancellation of a licence if necessary.

Safety costs have not been quantified, but Access Economics notes that invariably over recent years, whenever a jurisdiction has conducted a review into asbestos, standards have been tightened, which indicates the status quo is not satisfactory.

In developing the draft model WHS regulations, consideration was given to a model where a licensed asbestos assessor would undertake risk identification, assessment and clearance monitoring. This model has been discussed by SIG OHS and determined to be costly and not

feasible for introduction on a national basis, particularly in relation to more remote areas and for workplaces containing small quantities of asbestos.

The approach contained within draft model WHS Regulations propose a licensing regime which will require an asbestos assessor to have a statement of attainment in an endorsed unit of competency for asbestos assessors (to be developed) and to hold a licence to undertake air monitoring and clearance inspections for Class A asbestos removal work. Class A removal work has been identified as a work activity with a high level of risk of exposure to asbestos, both during the work and following the clean-up process, if that is not carried out correctly.

It is estimated that to demonstrate the required competencies, a 3 day training course would be required and may cost \$2000 on average and that a licence fee of \$200 to \$300 could be anticipated. In a worst case scenario assuming no recognition of prior learning, that for 200 assessors, the initial cost would be around \$460,000. The RIS survey will be utilised to capture the extent of benefits.

Public comment and further analysis will be undertaken during the public comment phase to assist in determining impact and cost benefit of the above issue and the approach undertaken in the model regulations.

### **6.1.3 Anticipated impact on workers**

It is anticipated there will be no substantial impact on workers. Where there are training costs, and where new licences are introduced and they currently do not exist, it is assumed that these will largely be paid for by employers.

There could be significant safety benefits for workers. COAG has directed that potential reductions in regulatory burden that will be achieved by the harmonisation must not result in reductions in the level of safety.

At the time of drafting of this Consultation RIS it was not possible to make definitive statements about the impact on workers. Feedback from regulators indicated that considerable changes in safety outcomes for workers is not expected. However this may change following public consultation and will be reflected in the Decision RIS as additional information becomes available for analysis.

While there is a large quantity of data on workplace incidents in Australia, it is still difficult to relate harmonisation changes to changed safety outcomes. After working on the issue from 2008 to 2010 the Productivity Commission concluded:

It is difficult to draw conclusions on the performance of OHS regulation from outcomes data. Firstly, there are data limitations ... Secondly, notwithstanding data limitations; it is usually difficult to link changes in outcomes with particular regulatory changes. Even attributing better or worse performance to whole regulatory regimes is dubious.

Moreover, there are considerable jurisdictional sensitivities over safety data, which has made it difficult for high profile documents such as Consultation RISs to include any analysis other than that which all jurisdictions have previously agreed to publish (such as in Comparative Performance Reports e.g. WRMC 2009).

As noted above, most of the proposed regulations and high priority Codes of Practice are based on existing National Standards. These have all been shown to be of net benefit by previous RIS analysis. To the extent that it is feasible, such previous analysis has been utilised in the current model.

Where practicable, the impact analysis will attempt to quantify potential gains in the level of safety associated with a harmonised work health and safety system, in terms of reductions in work health and safety incidents and associated loss of healthy life. Healthy life can be estimated in terms of Disability Adjusted Life Years (DALYs) or converted into a monetary equivalent using the Value of a Statistical Life Year (VSLY)<sup>10</sup>. To the extent data permits, the monetised impacts of harmonisation will be reported at the level of the Australian economy and each work health and safety jurisdiction.

In addition to the above information it is proposed to undertake further qualitative and quantitative analysis after public comment on the Consultation RIS, and on other issues rated as considerable change.

#### **6.1.4 Anticipated impact on regulators**

Work health and safety regulators provide the most significant interface between government regulation and businesses. They play an important role in regulatory regimes by encouraging compliance through education and advice, as well as enforcing laws and regulations. The resources of a work health and safety regulator provide a general indication of its capacity to monitor worksites across a jurisdiction. The level of finance and staff resources available to a regulator can denote the quality of its regulatory activities.

At the time of drafting this RIS, from initial discussions with regulators, none foresaw their charges increasing as a result of the harmonisation process. Following the publication of the RIS as part of the public comment process Access Economics will write to regulators seeking information on the changes they will need to make to current practices and ask if they are able to cost these changes.

#### **6.1.5 Income sources**

It is not yet known whether funding for regulators will change with harmonisation. Currently, funding and other income components for each regulator vary. Central funding is the primary financial resource for most jurisdictions, with income generated from fees making up the remainder. Table 9 displays the work health and safety income components of the core regulators in Australia, including the sources of income and the categories of different fee income for work health and safety related activities in 2008-09.

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<sup>10</sup> As measured by aggregate willingness to pay to avoid risk of harm or compensation demanded for incurring risk.

**Table 9: Work health and safety income components, 2008-09**

|                       | Cwlth   | NSW             | Vic             | Qld <sup>a</sup> | SA              | WA             | Tas <sup>b</sup> | NT           | ACT             |
|-----------------------|---|-----------------|-----------------|------------------|-----------------|----------------|------------------|--------------|-----------------|
|                       | <b>Source (%)</b>   |                 |                 |                  |                 |                |                  |              |                 |
| Central funding       | 2   | 0               | 88 <sup>c</sup> | 100              | 68              | 75             | 100              | 100          | nr              |
| Fees generated        | 98  | 100             | 12              | 0                | 32              | 25             | 0                | 0            | nr              |
|                       | <b>Fee income component as percentage of total fee income (%)</b> |                 |                 |                  |                 |                |                  |              |                 |
| Licensing             | 33  | 11              | 84              | na               | 33              | 90             | 83               | na           | 4               |
| Permits               | 0   | 1               | 0               | na               | 0               | 4              | 3                | na           | 0               |
| Inspections           | 0   | 1               | 0               | na               | 0               | 0              | 0                | na           | 19              |
| Audits                | 0   | 0               | 0               | na               | 0               | 0              | 0                | na           | 0               |
| Appeals               | 0   | 0               | 0               | na               | 0               | 0              | 0                | na           | 0               |
| Other                 | 67 <sup>d</sup>   | 87 <sup>e</sup> | 16 <sup>f</sup> | na               | 67 <sup>g</sup> | 6 <sup>h</sup> | 14 <sup>i</sup>  | na           | 77 <sup>j</sup> |
| <b>Total (\$'000)</b> | <b>16,932</b>   | <b>100,639</b>  | <b>65,166</b>   | <b>56,186</b>    | <b>28,965</b>   | <b>18,085</b>  | <b>6,427</b>     | <b>4,655</b> | <b>nr</b>       |

Key: na not applicable. nr non response.

Footnotes to table: (a) WHS related fees collected are classified as administrative revenue and are not retained by Workplace Health and Safety Queensland. (b) All expenditure for WHS activity is funded from appropriation. Revenue collected in fees is paid back directly into Consolidated Revenue and is not available to meet WHS costs. (c) Income allocated from workers' compensation premiums. (d) Other regulatory contributions, interest, training, conference and other fee income. (e) Other income primarily relates to contributions from the Workers' Compensation Scheme and Self and Specialised Insurers, as well as investments, commercial activities and other minor revenue sources, which are used to fund WorkCover operations. (f) Revenue collected from fines and penalties. (g) Employer registration fees. (h) Registration of plant application, design review application, plant registration assessment, publications of instrument books, miscellaneous revenue, fees, staff contribution to GVS, staff contributions to government housing. (i) Design and Survey Approval Fees. (j) Revenue received by the WHS Commissioner: for training and seminar fees, grants from other ACT Govt agencies, and sponsorship. Source: Productivity Commission (2010).

### 6.1.6 Resources

It is not yet known what impact the harmonisation will have on regulators' resources. Initial consultations with regulators suggested that there will be minimal change in staff numbers as there will still be the same need to administer regulations although the type of regulation will change from jurisdictional to the national standard.

A regulator's staffing resources can be viewed as a proxy for its capacity for administrative and enforcement activity, providing a possible insight into business compliance burdens. The Productivity Commission suggests that a regulator with a higher ratio of worksites to staff numbers may be less able to provide efficient oversight and assistance to businesses, compared to a regulator with a lower ratio. A higher ratio can therefore mean there is less activity by the regulator, which may reduce enforcement of regulations.

The ratio of worksites to inspectors indicates the extent that the regulator can oversee different worksites across their jurisdiction. A survey by the Productivity Commission (2010) found that the Commonwealth regulator Comcare has the lowest worksite to inspector ratio (98 worksites per inspector), followed by Victoria and South Australia. New South Wales has the highest worksite to inspector ratio. See Table 10.



Worksite inspectors also play a key role in encouraging adherence to and enforcing work health and safety regulations as they provide the link between regulators and business. Most work health and safety regulators experienced problems recruiting work health and safety inspectors into their agency in 2008-09, with the exceptions of the Commonwealth, New South Wales and Victoria. Table 10 shows that while Victoria had 95 per cent of its inspector positions filled as at 30 June 2009, South Australia had only 78 per cent filled. Further, annual turnover of inspectors was 3 per cent in New South Wales compared with 15 per cent in the Northern Territory.

**Table 10: Inspectorate resources**

|                                  |     | <b>CW</b> | <b>NSW</b> | <b>Vic</b> | <b>Qld</b> | <b>SA</b> | <b>WA</b> | <b>Tas</b> | <b>NT</b> | <b>ACT</b> |
|----------------------------------|-----|-----------|------------|------------|------------|-----------|-----------|------------|-----------|------------|
| WHS inspectors                   | no. | 41        | 289        | 203        | 235        | 89        | 103       | 47         | 12        | 17         |
| Worksites per WHS inspector      | no. | 98        | 2,296      | 1,086      | 1,662      | 1,618     | 1986      | na         | na        | na         |
| Positions filled at 30 June 2009 | %   | 100       | 92         | 95         | 83         | 78        | 87        | 87         | 75        | 100        |

Source: Productivity Commission (2009).

### 6.1.7 Regulator costs

Costs to the regulators are anticipated to remain similar as the function of each regulator will stay the same post-harmonisation albeit administering a new set of regulations. Greater costs may be incurred by jurisdictions where new regulation will need to be implemented and managed. Additional training may be needed to educate current inspectors in regards to new regulation and regulation documents will need to be updated.

The introduction of a new national standard would also mean that each jurisdiction may need to amend regulations. Changing regulations requires resources and costs on behalf of government, including seeking policy approvals, training, draft changes, technology costs and making regulations.

- The important point is not the absolute level of costs incurred, but the relative costs compared to Option 1. That is, jurisdictions frequently update their regulations, and to some extent harmonisation is a substitute for reforms that would have otherwise taken place, with attendant costs. Also jurisdictions will no longer have the costs of regularly revising and updating their own regulations and Codes of Practice.

Estimates in past work health and safety RISs for costs for implementing individual regulations have ranged between \$30 000 to \$300 000 depending on the size of the jurisdiction and the complexity of the regulation involved. These have all been ex-ante estimates. Access Economics was only able to uncover one example of an ex-post estimate. In Western Australia a new Codes of Practice for radiation protection in veterinary medicine was conservatively estimated to have cost the regulator around \$45 000 to implement (Australian Radiation Protection and Nuclear Safety Agency, 2009).

## 7 Anticipated costs and benefits

The following is based on information provided to date. However, it is expected that the costs and benefits of introducing the model WHS Regulations and Codes of Practice will be discussed in detail following the information provided from stakeholders in the public comment process. The following section introduces the issues that will be discussed in more detail in the Decision RIS.

Note that while this chapter mainly focuses on national costs and benefits, high level analysis at state level will be conducted in the Decision RIS, to the extent that information from focus groups of key stakeholders and the survey allow.

### 7.1 Anticipated costs and benefits to business

COAG's Business Regulation and Competition Working Group is tasked with assessing 27 priority areas of regulation. Of these 27 priority areas, work health and safety ranks as the highest concern among businesses.

Several harmonised regulations have been based on existing National Standards that have been supported and accompanied by RISs, as outlined in Appendix C. Consequently, any increase in regulation should at least be offset by increased benefits for firms as demonstrated further in those RISs. Increased safety affords gains such as higher productivity, lower staff turnover and reduced workers' compensation premiums.

Costs caused by overlaps and inconsistencies in regulations between jurisdictions are unnecessary and are unlikely to have any offsetting safety benefits. Thus, removing these differences should confer net gains for multistate businesses.

Specific controls in the regulations have been selected on grounds that they provide clear guidance for duty holders, are generally performance based and are well established in most jurisdictions. The intention of this approach is to minimise the regulatory impact of the model WHS Regulations and Codes of Practice.

There are some potential benefits from removing the previous approach of using risk assessments in all situations. The model WHS Regulations are based on hazard identification and risk control. Some jurisdictions report a need for less emphasis on the assessment process and greater emphasis on managing and implementing risk control. This is particularly the case where risk controls are well accepted and established. Removing the blanket risk assessment process means that risk management processes may be streamlined while maintaining work health and safety.

The model WHS Act and model WHS Regulations adopt risk management approaches already in place in Victorian legislation. Allen Consulting (2007) estimated that the average Victorian small business should save \$550 over the then subsequent decade (in net present values) as a result of no longer having to conduct initial and recurring risk assessments for all items of plant and manual handling procedures. (Technically, in some jurisdictions, a risk assessment has to be conducted for every desk in an office, and for using a hammer or a pair of scissors.) As the harmonised regulations approaches to risk assessment for manual handling, plant and noise

are largely based on Victoria's regulations, this indicates potential savings of around \$117.5 million annually to single-state businesses (almost all of which are small)<sup>11</sup>.

The main costs to business from introducing the model WHS Act will be in adapting to new regulations, especially for single state businesses which will not reap the offsetting benefit of reduced complexity. However, the large numbers of regulations and tight timeframes set by COAG dictate that for the most part this is a harmonisation exercise rather than an optimisation exercise. This confers the benefit that, for any given regulation, businesses in the majority of states will not face considerable changes.

Further, these costs to business are unlikely to be greater than the costs of ongoing changes under disparate jurisdictional regimes in the absence of harmonisation. Jurisdictional work health and safety Acts are generally reviewed every five years on average, with changes to subordinate regulation being considerably more frequent. Thus, introducing the model WHS Regulations could be seen as part of an ongoing regular change process that just happens to be consolidated into one single simultaneous reform across jurisdictions.

There are essentially seven areas where businesses are likely to face considerable changes. These seven areas are within electricity, plant, construction excavation, major hazard facilities (scope and licensing of assessors) and asbestos (licensing of asbestos removal and of asbestos assessors); all with potentially very dangerous hazards, substances or operations. The changes are as follows:

- The requirements in relation to RCDs in those jurisdictions which currently do mandate their use may be a considerable change. However, as RCDs are inexpensive, long lasting and highly effective, it is possible that most workplaces already use them regardless of whether they are legally obliged to. Information from the survey will clarify this matter.
- Plant registration has several changes which have cost and impact implications requiring further analysis to determine the suitability of the approach and the consequential safety benefits.
- Nationally consistent notification process for construction excavation has the potential for improvements in cross border operations.
- Consistent requirements for registration of, and licensing processes for Major Hazard Facilities have the potential for improvements in not only workplace safety but public safety.
- Granting asbestos assessor licences will require asbestos assessors to meet competency requirements, ensuring that the standard of clearance inspections and air monitoring are improved.
- The requirement in four jurisdictions that a Class A asbestos removalist must have a certified safety management system will be extended across all jurisdictions. This will require 261 additional Class A removalists to obtain such certification (approximately \$2500) during the regulatory transition period from 2012. However, current licence holders will be grandfathered into the new licence scheme.

All of the above require further impact analysis during the public comment phase.

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<sup>11</sup> Figure based on a simple pro-rata of Victorian to national employment (25%) and estimated share of total employment accounted for by single state businesses (71%).

For multi-jurisdictional employers there may even be a reduction in adjustment costs. These employers will only face one set of changes with the implementation of harmonised regulations and Codes of Practice, rather than several jurisdiction-specific sets of change. Moreover, such benefits will be ongoing. Under the model WHS Act, all future changes will be conducted on a single, nationally coordinated basis. Indeed, some participants have argued that perhaps the greatest benefit of harmonisation is the foundation it provides for problem areas to be reformed on a consistent, nationwide basis.

## 7.2 Anticipated costs and benefits to workers

It is anticipated that there are unlikely to be any substantial costs to workers. The cost of training (beyond that required for the normal volume of work health and safety changes) and of additional safety equipment (if any) will be paid for by employers.

Exceptions to this would be in circumstances where individual subcontractors and people supplying their services through labour hire businesses would rank as self-employed businesses.

Nevertheless, nationally consistent work health and safety regulations and Codes of Practice will also contribute to the ease with which workers, particularly self employed contractors, can move between jurisdictions by allowing for mutual recognition of work health and safety licences across jurisdictions.

Modelling the health impact of changed regulations is challenging. Both the Productivity Commission (2010) and the National OHS Review (2009) concluded that the impacts of work health and safety regimes on safety outcomes are not readily quantifiable across jurisdictions.

- The National Review stated, 'The standardised statistics are, in our view, not reliable for reaching conclusions about the effect of particular legislative provisions.'
- The Productivity Commission stated, 'It is difficult to draw conclusions on the performance of OHS regulation from outcomes data. Firstly, there are data limitations ... Secondly, notwithstanding data limitations; it is usually difficult to link changes in outcomes with particular regulatory changes. Even attributing better or worse performance to whole regulatory regimes is dubious.'

There is greater certainty comparing changes in safety outcomes within a given jurisdiction when there has been a considerable change in its work health and safety regime. In such cases, providing there have not been other major changes at the same time, it can be reasonable to attribute improved (or worsened) outcomes to better (or worse) regulations. Accordingly, the survey for this Consultation RIS asks participants about their experiences when similar regulations were previously introduced. That is, for example, if the harmonised regulations for plant are based on Victorian regulations, then participants in that State will be asked what effect the introduction of those regulations have had.

In addition, there are examples where outcomes are anticipated. For example, there is some support for the proposed compulsory use of RCDs to prevent electrocution. RCDs are inexpensive and long lasting, and it would only require one life a year to be saved for every 70 000 RCDs installed for the policy to be cost effective.

### 7.3 Anticipated costs and benefits to governments

The anticipated net costs to regulators are also not likely to be substantial after initial implementation. Jurisdictions are continually rolling out changes to work health and safety regulations, with commensurate education and advice costs. In preliminary discussions with regulators, none indicated that they would require funding above their normal budget allocation in order to implement harmonised regulations. Now that the final form of the harmonised regulations is known, regulators in each state and territory will be asked if they can estimate what their costs will be to educate businesses and workers in their jurisdictions about the changes.

Benefits to regulators are likely to be more significant in the long term due to the reduction of duplication, as future legislative reviews and development of regulations and Codes of Practice will be undertaken nationally. If the Act reduces industrial incidents, governments also may benefit from increased taxes and reduced welfare payments.

**Table 11: Anticipated costs and benefits of harmonisation by group**

| <b>Category</b>       | <b>Benefit</b> | <b>Cost</b>  | <b>Net</b>        |
|-----------------------|----------------|--------------|-------------------|
| Multi-state business  | Medium         | Small        | Small gain        |
| Single-state business | Nil-Marginal   | Small        | Small cost        |
| Workers               | Medium         | Nil-Marginal | Medium gain       |
| Governments           | Marginal       | Small        | Marginal cost     |
| <b>Society</b>        | <b>Medium</b>  | <b>Small</b> | <b>Small gain</b> |

Combining these effects<sup>12</sup> Access Economics expects that harmonised regulations and Codes of Practice will confer an overall small net benefit. Thus, at this stage it appears from theory *a priori*, conceptual analysis and initial consultation, that adoption of harmonised regulations and Codes of Practice (Option 2) may well be the recommended outcome.

<sup>12</sup> The majority of small businesses responding to a Productivity Commission (2010) survey responded that they were not very aware of OHS requirements.

## 8 Review Provisions

All legislative changes agreed by COAG are subject to review to ensure a commitment to establish and maintain effective arrangements for maximising the efficiency of both new and amended legislation. This helps to avoid unnecessary compliance costs and restriction of competition.

Safe Work Australia is developing a plan, in consultation with the Research Evaluation and Data Advisory Group (a tripartite group established to advise Safe Work Australia regarding research and statistical work), to evaluate the model work health and safety legislative framework and the outcomes of its implementation if they are adopted and implemented. This evaluation plan is being designed to provide information to:

- meet reporting requirements on progress towards achieving the objectives set out in the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA) and the model WHS Act
- assist the 2015 review of the IGA by WRMC, and
- assist jurisdictions in their implementation of the legislative framework and inform them of the impact of changes.

The plan has four main focus areas which align with the objectives of the IGA and the objects of the model WHS Act:

- improved health and safety
- uniformity
- reducing the regulatory burden of employers operating in more than one jurisdiction, and
- efficiencies for government.

The evaluation plan proposes work to begin in 2010-11 and will cover the first three years following implementation of the legislative framework up to the review of the IGA in 2015.

Where possible change will be measured using existing data sources such as workers' compensation statistics, the Australian Bureau of Statistics Work-Related Injuries survey, fatality data and the National Hazard Exposure Worker Surveillance Survey 2008.

Where data are not available, surveys will be developed and undertaken. Baseline measures will be established in 2010-11 to enable pre and post implementation comparisons. Where possible, measures will include both lead and lag indicators.

## 9 Summary

Work health and safety regulations and compliance policies differ between jurisdictions. This can impose substantial costs on businesses that operate in more than one state or territory. Accordingly, Australian governments are committed to harmonising work health and safety laws, regulations, Codes of Practice and enforcement policies. The first step in this process was the development of a model WHS Act. The RIS process assesses the costs and benefits of adopting harmonised Regulations and Codes of Practice to support the model WHS Act (Option 2) relative to retaining the status quo (Option 1). The reform of work health and safety implementation, enforcement and compliance policies will follow subsequently.

For the vast majority of regulations, in the majority of jurisdictions, it is anticipated there will be little change as a result of the harmonisation process. The largest areas of change appear to be in states which have not fully complied with existing National Standards yet, but will now do so.

Costs and the benefits of harmonised regulations and Codes of Practice are likely to be small and for the most part not readily quantifiable (this assessment may be different in the Decision RIS, after public comment is received). The preliminary qualitative assessment suggests that harmonised regulations may be neutral for business, with benefits for multistate firms (who employ almost one-third of Australia's workforce)<sup>13</sup> being offset by adjustment costs for single-state business currently subject to regulation that is not largely based on National Standards (again, such adjustment costs have to be netted against adjustment costs that would have occurred anyway in the absence of harmonisation under Option 1.) There will be a small increase in adjustment costs for government (relative to such ongoing costs in the counterfactual); partly offset by benefits to smaller jurisdictions in being able to utilise some of the development and research capability of larger counterparts, and significantly reduced future reform costs compared to Option 1.

Combining these effects, Access Economics expects that that harmonised regulations and Codes of Practice will confer an overall small net benefit. Thus, at this stage it appears from theory, conceptual analysis and initial consultation that adoption of model WHS Regulations and Codes of Practice (Option 2) will be the recommended outcome.

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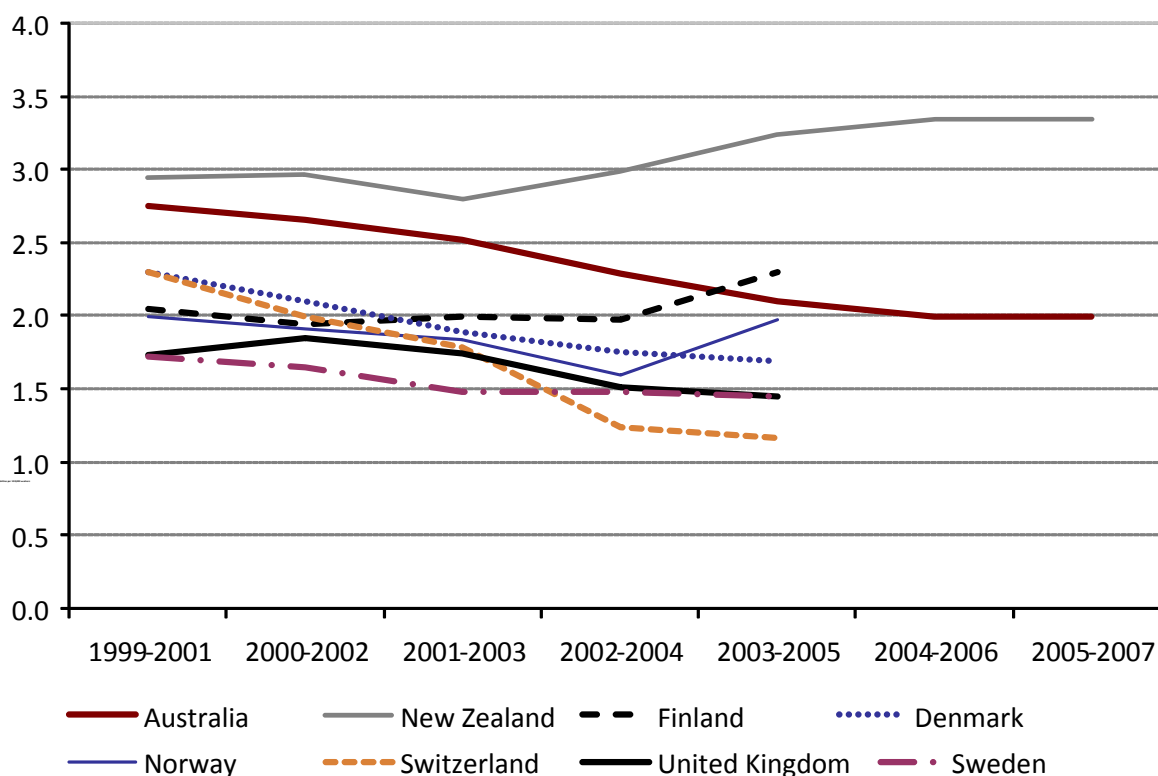
<sup>13</sup> See section 96.1.1

## Appendix A: Australia's work health and safety performance

Occupational injury, illness and deaths have a significant impact on workers, employers and society. Preliminary data indicates that in 2008-09 there were 130 520 serious workers' compensation claims for an injury or illness, which equates to 1.3 per cent of the Australian workforce. It is important to note that, as not all work-related injuries and illness result in workers' compensation claims being made, these figures are likely to understate the true incidence of workplace injury and illness. The Australian Bureau of Statistics (ABS, 2006) found that in 2005-06, 6.4 per cent of workers experienced a work-related injury or illness and approximately 2 per cent reported experiencing a work-related injury or illness resulting in one or more weeks off work.

From an international perspective, Australia's work-related fatality rates are above some of the best performing countries. However, Australia's incident rates have generally decreased at a greater rate than the best performing countries (see Chart 2). While the gap between Australia and the better performing countries has reduced since 1999-2001, Australia did not meet its aspirational goal of having the lowest levels of work related traumatic fatalities in the world by 2009, as set out in the first triennial review of the *National OHS Strategy 2002-2012*.

**Chart 2: Comparison of Australia's work-related injury fatality rate with the best performing countries**



Source: WRMC (2008).

Safe Work Australia estimates the economic cost alone of occupational injury, illness and death for 2005-06, was \$57.5 billion or 5.9 per cent of gross domestic product, of which it is estimated that 3 per cent is borne by employers, 49 per cent by workers and 47 per cent by



the community (ASCC, 2009). This figure does not include an estimate of the cost of suffering and early death. Table 12 below presents a breakdown of the economic costs associated with work-related injury and illness.

Safe Work Australia did not estimate the cost of suffering and early work-related death, however, an earlier report by Access Economics (2004) estimated the cost of suffering and early death to be at least \$57 billion in 2000-01. The report utilised a willingness to pay methodology and the concept of the value of a statistical life to estimate the cost of suffering and early death.

The economic costs of occupational injury, illness and death, coupled with the impacts of the quality of life of those affected, highlight the importance of work health and safety.

**Table 12: Economic costs borne by the employer, worker and the community**

| <b>Conceptual group</b>             | <b>Total (T)</b>  | <b>Employer (E)</b>                                       | <b>Worker (W)</b>   | <b>Society (S)</b>  |
|-------------------------------------|---|---|---|---|
| <b>Production disturbance costs</b> | Value of production (inc. overtime)                                     | Overtime premium<br>Employer excess Payment<br>Sick leave | Loss of income prior to RPR, net of compensation, welfare and tax | Compensation and welfare payments transferred to worker for temporary loss of wage: tax losses prior to RPR   |
|                                     | Staff turnover costs  | Staff turnover costs                                      | Zero  | Zero  |
| <b>Human capital costs</b>          | Present value of earnings before incident minus earnings after incident | Zero  | Loss of income after RPR, net of compensation, welfare and tax    | Compensation and welfare payments for lost income earnings capacity: tax losses after RPR   |
| <b>Medical costs</b>                | Medical and rehabilitation costs incurred as a result of the injury     | Threshold medical payments                                | Gap payments<br>Private health Insurance payments                 | Compensation medical payments<br>Public health system payments  |
| <b>Administrative costs</b>         | Legal costs   | Real legal costs incurred plus fines and penalties        | Real legal costs incurred   | Real legal costs incurred<br>Deadweight costs of enforcement minus fines and penalties credit   |
|                                     | Investigation costs   | Employer investigation costs                              | Zero/negligible   | Real costs of running the compensation system (including investigation of claims)   |
|                                     | Travel costs  | Zero/negligible   | Travel costs net of compensation and concessions                  | Compensation for travel costs<br>Travel concession  |
|                                     | Cost of funeral today minus present value of future costs               | Zero  | Net costs of bringing forward                                     | Compensation for funeral costs  |
| <b>Transfer costs</b>               | Real deadweight costs of transfer payments (welfare and tax)            | Negligible  | Zero (accounted for in netting other items)                       | Deadweight costs of welfare payment (Disability Support Pension, Sickness Allowance, Mobility Allowance, Rent Assistance)<br>Deadweight costs of tax losses |
| <b>Other</b>                        | Carers  | Zero  | Carer costs net of carer payment/allowance                        | Payments to carers plus deadweight cost   |
|                                     | Aids, equipment and modifications                                       | Zero  | Aids etc (net costs after reimbursements)                         | Reimbursements for aids etc plus deadweight cost  |

RPR = time to return or permanent replacement of injured worker

Source: ASCC (2009) based on Access Economics (2004)

## Trends in Injury and Incident Rates

Nationally, the incidence rate of serious occupational injuries, as measured by workers' compensation claims, is declining (see Chart 3).

Each jurisdiction has a different work health and safety regime and different workers' compensation schemes. There are a large number of factors that may influence work health and safety outcomes in each state as measured by workers' compensation claims (for example differing industry composition and the nature of the workers' compensation schemes themselves).

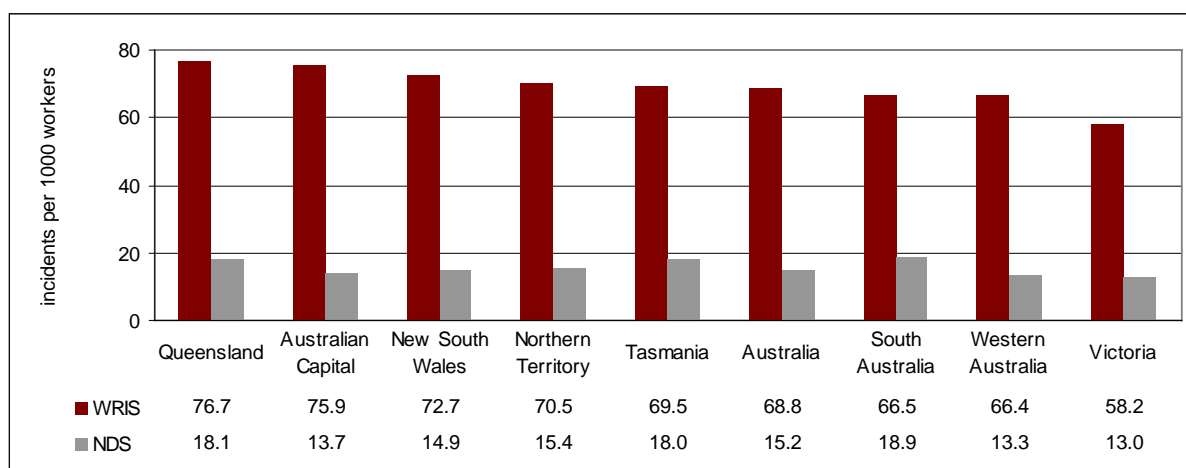
Workers' compensation data remain the main data source for examining trends over time and for comparing performance between jurisdictions and industries. Incidence rates (or claims per 1000 employees) are used to compare performance and the Australian Bureau of Statistics provides estimates of the number of employees (those covered by workers' compensation claims) for each jurisdiction and industry.

To ensure that the jurisdictional data are not influenced by the different excess periods that exist, Safe Work Australia uses a standard definition of serious injury which includes only those workers' compensation claims where the duration of absence from work is one week or more, or where a permanent incapacity or death has occurred. Data from workers' compensation schemes with an excess period greater than one week have been factored to allow comparison.

Chart 3 shows the incidence rates of the jurisdictions since 2003-04. While NSW and South Australia showed the greatest improvements in incidence rates in the four years between 2003-04 and 2007-08, both started the period with relatively high rates. Queensland, which also started the period with a high rate, has shown less improvement and now has the highest incidence rate of the jurisdictions. The Commonwealth and Victoria started the period with the lowest and second lowest rates and have maintained this position over the four years.



**Chart 4: Injury incidence rates by state, 2005-06**

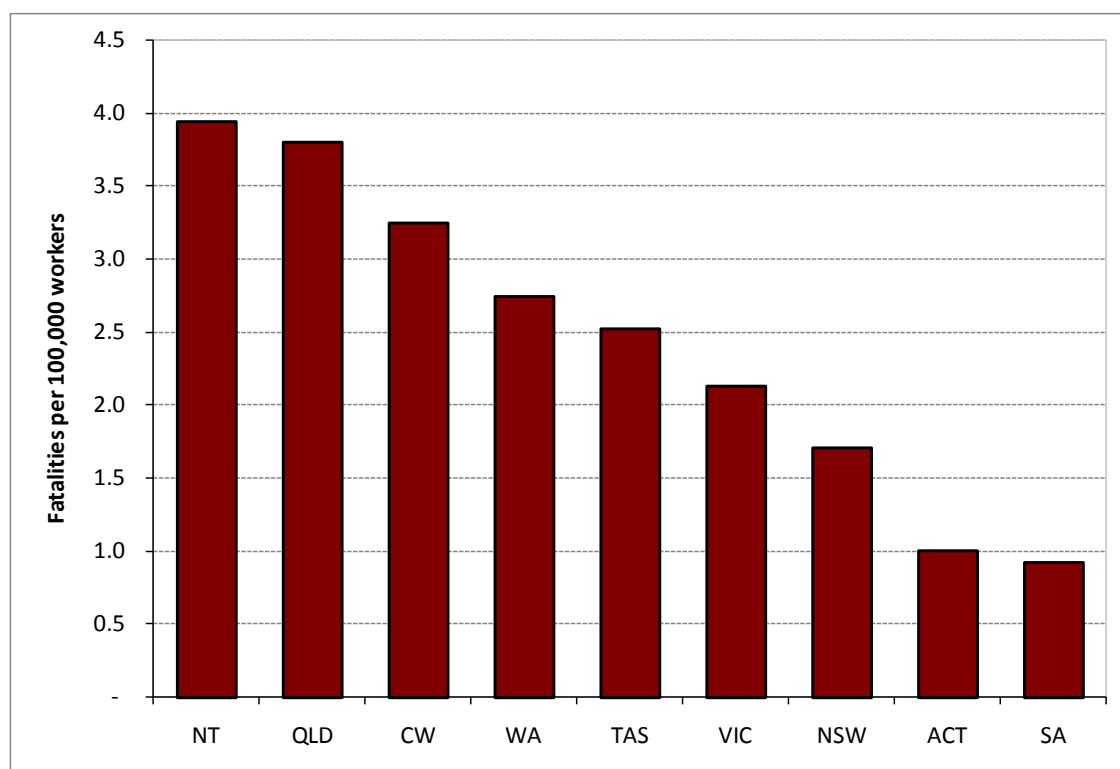


Abbreviations: WRIS – Work-Related Injuries Survey, NDS – National Data Set

Source: NDS and ABS (2006)

Another measure of work health and safety outcomes that does not depend on workers' compensation data alone is the rate of occupational injury fatalities. The data from Chart 5 combines information from workers' compensation claims, injury fatalities notified to work health and safety jurisdictions and the National Coronial Information System. Due to the relatively small number of fatalities, fatality rates can be volatile. To smooth out some of this volatility, rates have been calculated for the five year period from 2004-2008. The Northern Territory and Queensland recorded the highest rates of injury fatalities, and the ACT and South Australia the lowest rates.

**Chart 5: Average fatalities per 100,000 workers, 2004-2008**



Source: WRMC (2009).

While there is some link between work health and safety regimes and numbers of injuries, other factors, such as industrial composition of employment in different states will also have a major effect. For example, in Queensland, the fact that many people work in mining - a dangerous occupation – will drive up the level of injuries in that State. Conversely, a relatively large proportion of people under the Commonwealth’s jurisdiction work in public administrations, which will reduce injury levels.

Similarly, while there are links between work health and safety regimes and severity, as measured by compensation payments, other factors also have major influences. For example, the design of the workers’ compensation system can affect average payments for a given severity of injury. For example, some systems have ‘long tails’ with injured workers being paid compensation for extended periods off work; others are focused as much on rehabilitation as compensation; while private schemes recoup capital costs but public ones do not.

Thus, as both the Productivity Commission (2010) and the National OHS Review (2009) concluded, the impacts of work health and safety regimes on safety outcomes are not readily quantifiable across jurisdictions.

- The Productivity Commission concluded ‘It is difficult to draw conclusions on the performance of work health and safety regulation from outcomes data. Firstly, there are data limitations. Secondly, notwithstanding data limitations, it is usually difficult to link changes in outcomes with particular regulatory changes. Even attributing better or worse performance to whole regulatory regimes is dubious.’
- The National Review concluded: ‘The standardised statistics are, in our view, not reliable for reaching conclusions about the effect of particular legislative provisions.’

However, where a jurisdiction has made significant changes in its work health and safety regime, it is possible to compare outcomes over time, and in such cases, depending on other variables, it can be reasonable to attribute improved (worsened) outcomes to better (worse) regulations. This approach will be adopted here where possible for the Decision RIS.

The relative degree of industry risk of fatality can be seen in Table 13, which shows the number of compensated fatalities for the 2008-09 financial years by industry and jurisdiction. Relative risk is measured by the frequency rate, which shows the number of fatalities per one hundred million hours worked per year. This illustrates that high risk industries include Construction, Transport and Storage, Agriculture, Forestry and Fishing, and Mining. It also illustrates that Queensland and Northern Territory have fatality frequency rates significantly above the national average (1.4 fatalities per 100 million hours worked – the equivalent of one fatality per 36 000 full time employees).

**Table 13: Work health and safety statistics report- fatalities by jurisdiction and industry division, 2008-09**

| Industry                              | ACT<br>Government | ACT<br>Private | Clth     | NSW       | NT       | QLD       | SA       | TAS      | VIC       | WA        | ALL        | Frequency<br>rate |
|---------------------------------------|-------------------|----------------|----------|-----------|----------|-----------|----------|----------|-----------|-----------|------------|-------------------|
| Construction                          |                   | 1              |          | 11        |          | 16        | 2        | 1        | 4         | 5         | 40         | 3.0               |
| Transport and storage                 |                   |                |          | 8         | 1        | 14        | 2        | 1        | 9         | 3         | 38         | 4.6               |
| Manufacturing                         |                   |                |          | 9         |          | 12        |          |          | 6         | 1         | 28         | 1.5               |
| Agriculture, forestry and fishing     |                   |                |          | 2         | 4        | 7         | 3        | 3        | 2         | 2         | 23         | 6.8               |
| Wholesale trade                       |                   |                |          | 7         |          | 7         |          |          | 1         | 1         | 16         | 2.0               |
| Property and business services        |                   |                |          | 8         |          | 3         |          |          | 2         | 2         | 15         | 0.7               |
| Mining                                |                   |                |          | 3         | 1        |           |          |          |           | 8         | 12         | 3.3               |
| Personal and other services           |                   |                | 1        |           |          | 5         |          |          | 3         |           | 9          | 1.6               |
| Retail trade                          |                   |                |          | 3         |          | 4         |          |          | 2         |           | 9          | 0.4               |
| Government administration and defence | 1                 |                | 4        | 3         |          |           |          |          |           |           | 8          | 0.9               |
| Education                             |                   |                |          | 3         |          | 1         |          |          | 1         | 1         | 6          | 0.5               |
| Health and community services         |                   |                |          | 1         |          | 3         |          |          | 1         |           | 5          | 0.3               |
| Electricity, gas and water supply     | 1                 |                |          |           |          |           |          |          | 1         | 1         | 3          | 1.6               |
| Accommodation, cafes and restaurants  |                   |                |          |           |          |           |          |          | 2         |           | 2          | 0.3               |
| Communication services                |                   |                | 1        |           |          |           |          |          |           |           | 1          | 0.2               |
| Finance and insurance                 |                   |                |          | 1         |          |           |          |          |           |           | 1          | 0.1               |
| Not stated                            |                   |                |          |           |          | 6         | 1        |          |           |           | 7          |                   |
| <b>Total</b>                          | <b>2</b>          | <b>1</b>       | <b>6</b> | <b>59</b> | <b>6</b> | <b>78</b> | <b>8</b> | <b>5</b> | <b>34</b> | <b>24</b> | <b>223</b> | <b>1.4</b>        |
| Frequency rate                        | 6.6               | 0.6            | 0.9      | 1.2       | 3.0      | 2.5       | 0.7      | 1.5      | 0.9       | 1.3       | 1.4        |                   |

Source: Safe Work Australia National Data Set for Compensation-based Statistics (NDS), September, 2010.

## Appendix B: History of work health and safety harmonisation in Australia

### National Occupational Health and Safety Commission (NOHSC)

NOHSC was established in 1985 as a tripartite body made up of representatives from the state, territory and Commonwealth governments, and employer and trade unions.

Following a review by the Department of Industrial Relations (1990), the Ministers of Labour Advisory Committee agreed that standards developed and endorsed by NOHSC as far as possible be accepted as minimum standards and implemented in each jurisdiction.

The primary focus of national uniformity from the early 1990s was the development and adoption of National Standards and National Codes of Practice for priority areas; manual handling, plant, hazardous substances, noise, certification of occupations and major hazard facilities (National Uniformity Taskforce, 1992).

The development and adoption of standards was slow and lacked consistency across jurisdictions, with some jurisdictions implementing provisions in work health and safety regulations while others implemented the same provisions in Codes of Practice or in guidance material (Johnston, 2008). The implementation of National Standards was slow because of extensive consultation and regulation impact requirements in some jurisdictions, and complications derived from tailoring National Standards and Codes of Practice to each jurisdiction.

### Industry Commission Report

In 1995 the Industry Commission released its report *Work, Health and Safety: Inquiry into Occupational Health and Safety*. The report highlighted substantial inconsistencies in work health and safety legislation across the jurisdictions, and also in standard development and uptake. For example, by 1995 only five of the seven priority standards had been declared by NOHSC, and none of these had been implemented in the jurisdictions at the time of the report.

The Industry Commission (1995) noted that Australian work health and safety instruments had increased from around 90 in the mid-1980s to around 150 by 1995.

The Industry Commission (1995) concluded that non-uniformity of work health and safety legislation may impose significant costs on the business community, with employers who work across multiple work health and safety jurisdictions facing increased compliance costs and additional costs whenever systems of work are changed or staff is moved between regimes.

The Industry Commission recommended the use of template legislation covering the core elements of work health and safety legislation, which all jurisdictions would agree to adopt with little or no amendment, through a process of co-operative federalism (Industry Commission, 1995).



## National OHS Strategy

In 2002, NOHSC launched the *National OHS Strategy: 2002-2012*, which established national targets and priorities. Under the strategy one of the areas requiring national action is the development of a nationally consistent regulatory framework.

## Productivity Commission Report 2004

In 2003, the Productivity Commission (successor to the Industry Commission) conducted a further inquiry into work health and safety arrangements in Australia. Broadly, the terms of reference were to 'assess possible models for establishing national frameworks for Workers' Compensation and OHS'.

The report *National Workers' Compensation and Occupational Health and Safety Frameworks*, released in 2004, found that all previous attempts to achieve national consistency in work health and safety legislation had failed.

The report considered it essential that the existing broad agreement on work health and safety legislation be taken further to develop, adopt and enforce uniform national work health and safety legislation. Nationally consistent work health and safety legislation would increase efficiency for multi-state employers to meet their work health and safety requirements as workers and employers could be trained in one set of work health and safety requirements. Also businesses could establish a single safety culture with common associated manuals and procedures throughout their entire organisation.

The Productivity Commission (2004) argued that national uniformity in work health and safety regulations should be established as a matter of priority and stated that:

*There are no compelling arguments against a single national OHS regime, and there are significant benefits from a national approach, particularly for multi-state employers and for the increasingly mobile workforce.*

It recommended that a single uniform national OHS regime be the medium term objective and provided two approaches, to operate in parallel for achieving this:

- adapt the current cooperative model by strengthening the national institutional structure based on NOHSC and the WRMC – emphasising the timely development of best-practice national OHS standards and their implementation uniformly throughout Australia. Such an approach should be commenced immediately, *and*
- *progressively open up access to the existing Australian Government OHS regime, giving businesses the choice of a single set of national OHS rules.*

A second proposed approach was implemented in 2007 with amendments to the *Occupational Health and Safety Act 1991* (Cwlth). The amendments allowed for employers licensed to self-insure under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth) to be regulated by the *Occupational Health and Safety Act 1991* (Cwlth), instead of by state and territory work health and safety statutes.

## **The Australian Safety Compensation Council (ASCC)**

In response to the Productivity Commission report of 2004, in 2005 the Australian Government replaced NOHSC with the ASCC. The ASCC, also a tripartite body, had a similar role to NOHSC in facilitating national consistency in the work health and safety regulatory framework, but its role was expanded to include workers' compensation policy.

## **Taskforce for reducing the regulatory burden on business**

In 2005, the Regulation Taskforce was established to address areas of 'unnecessarily burdensome, complex, redundant or duplicate regulations'. Submissions to the Taskforce highlighted deficiencies with work health and safety regimes and the Taskforce report, *Rethinking Regulation*, released in April 2006, noted industries' concerns that inconsistency in work health and safety regulation across jurisdictions adds significantly to compliance costs for businesses. The report recommended:

- COAG should implement nationally consistent standards for work health and safety and apply a test whereby jurisdictions must demonstrate a net public benefit if they want to vary a National Standard or National Code of Practice to suit local conditions, and
- COAG should request the ASCC examine the duty of care provisions in principal work health and safety Acts as a priority area for harmonisation. In undertaking this work, the council should give weight to recent work health and safety reforms in Victoria.

## **Productivity Commission Report 2010**

In 2010 the Productivity Commission released another report benchmarking work health and safety regulation. In a submission to this report, the Australian Chamber of Commerce and Industry (ACCI) (2009) noted that, since the mid-1990s 'the stock and complexity of work health and safety burden has grown incrementally over time, exacerbated by a lack of consistency in legislation and regulation across jurisdictions.' ACCI (2009) reported that its 2007 Pre-Election Survey found that the majority of ACCI members had moderate to major concerns regarding compliance with work health and safety regulations and over a third of multi-state businesses found that differences in work health and safety regulations were significant enough to increase their costs.

## **COAG National Reform Agenda**

The harmonisation of work health and safety legislation has become part of the COAG National Reform Agenda aiming to reduce regulatory burdens and create a seamless national economy. In February 2006 COAG agreed to improve the development and uptake of National Standards, and the ASCC commenced work on reviewing the national work health and safety framework to achieve greater national consistency; and on prioritising areas for harmonisation.

According to COAG, of all the regulations faced by business, work health and safety causes most concern. The COAG Business Regulation and Competition Working Group (2008) assessed 27 priority areas of regulation and nominated work health and safety as the number one issue.

According to the WRMC (2008), by 2008 there over 400 work health and safety Acts, regulations and Codes of Practice.

## Safe Work Australia

Safe Work Australia replaced the ASCC in 2009 and as previously discussed, it is the principal national organisation progressing work health and safety and workers' compensation policy development in partnership with governments, employers and employees. One of Safe Work Australia's main focus is to progress the harmonisation of work health and safety legislation in Australia. With extensive consultation with key stakeholders, the first part of this process; the development of a model WHS Act, was completed on 11 December 2009, when WRMC endorsed the model WHS Act. Safe Work Australia has now progressed the development of a package of draft model WHS Regulations and Codes of Practice under the proposed model WHS Act, for public comment.

## Appendix C: Literature Review

This section reviews processes that have already been undertaken to identify the costs and impacts of introducing various regulations and guidance material relevant to the national work health and safety harmonisation process.

These reports have been previously produced by Commonwealth, State and Territory agencies and independent organisations. Aspects of these publications which concern the adoption of national model WHS Regulations and Codes of Practice are summarised in this section.

The previous RISs outlined in this Appendix are an important part of the Consultation RIS process. They provide a base line for determining additional change and impact that may arise in the course of developing the model WHS Regulations and Codes of Practice. All jurisdictions have previously agreed to the outcomes of these RISs and as such, whether they have implemented any or part of the regulation assessed, they represent the base from which the proposed model WHS Regulations or Codes of Practice have been assessed.

### Chemicals RIS 2009

Existing workplace chemicals regulations in the jurisdictions are based on two separate instruments covering hazardous substances and dangerous goods. The primary regulatory instruments are the *National Model Regulations for the Control of Workplace Hazardous Substances* and the *National Standard for the Storage and Handling of Workplace Dangerous Goods*.

An extensive review of these regulatory instruments commenced in 2002. In July 2009, Safe Work Australia made a policy decision to develop model work health and safety regulations for hazardous chemicals that merged the existing hazardous substances and dangerous goods instruments and adopted the United Nations' *Globally Harmonised System of Classification and Labelling of Chemicals* as the basis for classification and hazard communication on labels and safety data sheets.

The Safe Work Australia decision was supported by a RIS, developed by Access Economics, titled *Proposed Revisions to the National OHS Framework for the Control of Workplace Hazardous Substances and Dangerous Goods*. The RIS considered transitional arrangements for moving to the new classification and hazard communication system, and based calculations on a 5 year transitional period between 2012 and 2017, during which time both existing and GHS systems would operate concurrently. The transitional period would allow 2 years to reclassify (and relabel) pure substances, and a further 3 years to reclassify mixtures. The RIS demonstrated a net benefit in accordance with COAG requirements, and was approved by the OBPR, noting that:

- the COAG Guide had been followed
- the level of analysis was commensurate with the potential impacts of the proposal, and
- alternatives to the proposal had been adequately considered.

## **Asbestos RIS 2005**

A RIS was developed by NOHSC on the Proposed Codes of Practice and Guidance Note for Asbestos in 2005. The RIS considered the impacts of the provision of new and additional guidance to manage and control exposure to airborne asbestos fibres from in situ asbestos containing material compared to maintaining the guidance material that was first published by NOHSC in 1988. The RIS recommended the revision of the 1988 Removal Code of Practice, and 1988 Guidance note, and upgrading the 1988 Guide to a Code of Practice.

The average cost to business of complying with the additional requirements of the Management Code of Practice in the first year of operation was estimated at between \$843.75 (SA) and \$4580.50 (Queensland). The average additional cost, per job, for all forms of asbestos removal under amendments to the Removal Code of Practice was estimated at up to \$1042.05 (WA, TAS, NT and ACT). The average additional cost, per job, for friable asbestos removal work was estimated at between \$2587.50 (Queensland, NSW) and \$2703 (other States and Territories).

The medical and compensation costs avoided by preventing each case of mesothelioma were estimated at \$667,000, with an estimated reduction in the number of cases of asbestos related disease of 156 cases between 2005 and 2030. Regardless of the monetary value of each option, the significant factor in these two options is the reduction in the number of new cases of asbestos-related lung cancer, mesothelioma and other diseases which could be expected to occur.

## **Major Hazardous Facilities RIS 1995**

A RIS was prepared to accompany NOHSC's original declaration of the *National Standard for the Control of Major Hazard Facilities* [NOHSC: 1014] in 1996. Through NOHSC, all states and territories agreed to implement this national standard. The model WHS Regulations do not propose any significantly new concepts over and above what was included in the original national standard, however it is acknowledged that model MHF regulations will be an entirely new set of regulations for SA and the ACT, noting that the ACT have no licensable facilities.

A compliance cost survey in 1995 indicated there would be some additional costs for industry in meeting the provisions of the then new National Standard. Additional costs were found to be on average 11.4 per cent of current expenditure. Current expenditure is that required to meet existing legislative requirements or in conforming with provisions expected by parent companies based on international best practice.

The benefits derive from the objective of preventing major incidents and near misses and minimising the affects of major accidents.

## **National Standard for Construction Work RIS 2005**

The NOHSC developed this RIS as part of the development of the *National Standard for Construction Work* [NOHSC:1016(2005)] (the National Standard) in response to a perceived need for regulatory action. At the time of the RIS each state and territory had its own approach to work health and safety policy and practice and developed their own legislation.

The Royal Commission into the Building and Construction Industry<sup>15</sup> noted that inefficiencies existed where companies operated nationally and needed to comply with individual jurisdictional regulations or Codes of Practice.

The Royal Commission recommended that NOHSC develop a uniform, national standard for the construction industry under the National Strategy. The WRMC considered NOHSC's scoping work and agreed to the development of national material for the construction industry. A sector of the residential construction industry expressed concerns over the scope of the proposed national standard, and in response, further consultations with industry bodies were undertaken. This resulted in the proposal for two national Codes of Practice to be developed under the National Standard: one for the construction industry and the other for the housing sector.

This 2005 RIS identified a range of factors that were to be targeted including:

- safe design
- consistent national regulation to improve industry understanding of responsibilities, and
- consistent targeting of the high risk tasks on a construction site, with legislative requirements for specific controls.

The RIS noted that many construction industry fatalities and injuries were either directly attributable, or in part attributable, to poor design. The RIS identified that up to 37% of workplace injuries, over a two year period were related to design related hazards. This was also acknowledged by the Royal Commission, which also called for a consistent national approach, recognising that inconsistency in construction regulation results in inefficiencies in the industry. Inconsistent work health and safety regulation can lead to misunderstandings and contribute to the higher than average incidence of workers' compensation claims in the construction industry.

The option to develop a single National Standard for construction was the preferred option with benefits to business including efficiency gains and lower overall costs for work health and safety compliance. The RIS stated that if all injuries and fatalities arising from design were eliminated there could be savings of \$112 million per annum. This figure was calculated by the NOHSC using workers' compensation claims between 1994 and 2000 where there was an average cost per claim of \$11 900.

Benefits to the Australian community of approximately \$20 billion in 2007 were estimated and Government benefits were the expected result in a reduction of both workers' compensation costs and costs that are borne by the public health and income support systems.

### **General Falls Code of Practice RIS 2008**

Access Economics (2008) developed a RIS for the ASCC on preventing falls in the general Construction industry (that is, excluding housing construction). The RIS was primarily focussed on analysing the introduction of a 2 metre height threshold for physical fall protection, where reasonably practicable, and found that introducing a 2 metre height

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<sup>15</sup> Royal Commission into the Building and Construction Industry, Volume 6: Reform – Occupational Health and Safety, Final Report, February 2003.

threshold would result in net benefits of \$191 million over a following ten year period. For those jurisdictions that already employed a 2 metre rule, the average cost of safety measures was around \$432 per worker higher than the average for other jurisdictions. However, in terms of benefit-cost ratios, the RIS found that every dollar spent on fall protection would result in \$1.23 worth of benefits.

### **Housing Falls Code of Practice RIS 2009**

Access Economics (2009a) examined the impact of adopting a *National Code of Practice for the Prevention of Falls in Housing Construction* (Housing Falls Code). The report also considered the costs and other effects of incidents involving falls from height in the course of housing construction work, as well as the costs and impacts of introducing a 2 metre height threshold for physical fall protection, where reasonably practicable. The costs and benefits to the housing construction industry of introducing the Housing Falls Code were outlined in this RIS process.

The Housing Falls Code was developed to provide practical guidance on meeting the safety principles outlined in the *National Standard for Construction Work* and for reducing the incidence and impacts of falls from height in housing construction.

### **Streamlined Victorian Work Health and Safety Regulations RIS 2007**

Allen Consulting (2007) was commissioned by WorkSafe to conduct the *Regulatory Impact Statement: proposed OHS Regulation and proposed Equipment (Public Safety) Regulations 2007*, which found that streamlining and consolidating the existing work health and safety regulatory framework in Victoria would have a positive net impact on businesses. This report suggested that the regulatory approach prior to the review was unduly complex – thereby adding to business costs and reducing businesses' ability to comply with the work health and safety framework. Proposed improvements to the regulations included:

- streamlining a set of 13 regulations into a single set
- removing duplication between the existing regulation, and
- aligning the regulations with the national standards.

While the new regulation framework was largely a translation exercise, in many areas the Government was still able to reduce the compliance costs of red tape. In particular, removing prescriptive risk assessment requirements was estimated to lead to accrued savings of \$40 per annum per business. Allens estimated that this represented a 20% reduction in the total work health and safety administrative burden for businesses. There are similarities between the removal of the prescriptive risk assessment requirements in the Victorian regulations and that proposed in the model WHS Regulations.

In terms of costs associated with introducing the changes to the regulations it was estimated that \$71 million in new costs to businesses would arise from new obligations and increases in business compliance. Thus, in order to generate a net benefit, work health and safety incidents would need to be reduced by 0.2 per cent per year, which was judged to be achievable by Allens.



## Construction Induction Training RIS 2006

Access Economics (2006) was commissioned by the ASCC to conduct this cost benefit analysis (CBA) of the introduction of a *National Code of Practice for Construction Induction Training*. The CBA formed part of the RIS supporting the draft Code of Practice within the regulatory review process. When the RIS was prepared there was considerable variation in construction induction training across jurisdictions. While induction training was mandatory in NSW, Queensland, and Western Australia, it was not required in the ACT, Victoria, SA or Tasmania. Since the publication of the National Code in May 2007, these jurisdictions have adopted the requirements of the National Code.

The report found that reductions in incidents were related to the numbers of additional workers undertaking training, with the reduction occurring one year after the training. Benefits would begin to accrue in 2007-08, following on from the commencement of additional training in 2006-07. In 2007-08 the claim rate is estimated as 24.26 incidents per 1,000 workers falling from 25.27 in 2006-07, the 'base year'.

Introducing induction training created a net financial cost of \$28.1 million in 2006-07, compared to maintaining the status-quo. However, from 2007-08 this became a net benefit as the benefits from incidents averted outweighed the costs of the training. There was also an estimated 76 disability adjusted life years (DALYs) gained in 2007-08 (worth \$12 million), with 307 DALYs (worth \$50 million) averted over the period to 2014-15.

## High Risk Work Licensing RIS 2006

This RIS (OASCC, 2006) concerned the introduction of a *new National Standard for Licensing Persons Performing High-Risk Work*. The current standard was inflexible and unable to accommodate contemporary work practices or emerging technologies. The proposed new Standard recognised the importance of training as an underpinning principle in providing competent workers and that the most effective form of training was a combination of formal and informal training methods. The new Standard required training and assessment to be undertaken by RTOs operating under the Australian Quality Training Framework.

The report found that the introduction of a new National Standard was the preferred option. This option was found using a cost and benefit analysis that included calculation of the number of injury incidents averted. Incident rates were calculated in relation to the equipment associated with the cause of the injury, such as forklift truck, power hoists and scaffolding. The number of incidents for each equipment type (e.g. scaffolding) in the revised Standard was found to diminish over the forecast horizon (2005-06 to 2013-14) in line with the average growth in all claims of -2.7% per annum. The eventual reduction in incidents averted was due to trend improvements in over time. Results for projected incidents averted are presented in Table 14. The overall net benefit of this option was estimated as \$38.6 million in 2006.



**Table 14: Projected incidents averted by type of equipment, 2004-05 to 2013-14**

| Equipment type  | '04-05     | '05-06     | '06-07     | '07-08     | '08-09     | '09-10     | '10-11     | '11-12    | '12-13    | '13-14    |
|-----------------|------------|------------|------------|------------|------------|------------|------------|-----------|-----------|-----------|
| Power hoists    | 6          | 6          | 6          | 6          | 5          | 5          | 5          | 5         | 5         | 5         |
| Cranes          | 12         | 12         | 11         | 11         | 11         | 10         | 10         | 10        | 10        | 9         |
| Forklift trucks | 63         | 61         | 59         | 58         | 56         | 55         | 53         | 52        | 50        | 49        |
| Scaffolding     | 33         | 32         | 31         | 31         | 30         | 29         | 28         | 27        | 27        | 26        |
| Boilers         | 4          | 4          | 4          | 4          | 4          | 3          | 3          | 3         | 3         | 3         |
| <b>Total</b>    | <b>118</b> | <b>115</b> | <b>112</b> | <b>109</b> | <b>106</b> | <b>103</b> | <b>100</b> | <b>97</b> | <b>95</b> | <b>92</b> |

Source: OASCC (2006).

## Economic analysis of NSW work health and safety regulations 2006

WorkCover NSW commissioned ACIL Tasman (2006) to undertake this *Occupational Health and Safety: Economic Analysis* to determine the impact of reforms to the work health and safety regulation in 2001. This analysis found that the average level of workplace injuries would have increased by about 3% in the absence of the 2001 work health and safety reforms. Actual claims data since 2001 showed an average reduction of about 9%. Therefore, the total effect of the 2001 work health and safety reforms was estimated to be a reduction of about 12% or 19,248 claims.

The reduction in injury and disease incidents reported above were converted into injury categories and used in conjunction with updates of the NOHSC cost data to estimate the reform induced cost saving. Based on this methodology it was estimated that the saving in (direct and indirect) costs resulting from the 2001 work health and safety reform was \$5.58 billion per year. This estimate was based on reductions in the number of work related compensated injury incidents in a single year and equates to the savings these workers (who would have otherwise been injured), their employers and the community enjoy as a result of the reform induced reduction in injury and disease.

## Rethinking Regulation 2006

A report looking at the burden of over-regulation across a number of areas, *Rethinking Regulation* (Regulation Taskforce, 2006) recommended that a rigorous program of evaluation including CBA, targeted consultation and comprehensive RIS be undertaken for proposed regulation programs. The basis for this recommendation was that the unnecessary component of compliance in Australia – partially due to overlap and duplication – was conservatively estimated by the Taskforce as \$3 billion per year.

These additional costs are borne by business in the form of:

- providing management and staff time to fill in forms and assist with audits and the like
- recruiting and training additional staff, where needed to meet compliance burdens
- purchasing and maintaining reporting and information technology systems
- obtaining advice from external sources (such as accountants and lawyers) to assist with compliance, and
- obtaining licences and/or attending courses to meet regulatory requirements.

As well as the monetary cost, regulatory compliance obligations can also divert management attention – compliance issues can consume up to 25% of the time of senior management and boards of some large companies, which risks stifling innovation and creativity. Smaller

companies are disproportionately hit as a result of a smaller revenue base to spread costs, no in-house regulatory team, relatively less time to keep abreast of regulatory developments and heightened concern of penalties for non-compliance. In addition, where regulation increases business costs, these are often passed on to consumers in the form of higher prices for goods and services.

Governments also experience costs in designing, updating, implementing and enforcing regulation. The administrative expenses of 15 dedicated Australian Government regulatory agencies approached \$2 billion in 2003–04. The Australian Taxation Office accounted for a further \$2.3 billion in that year.

### **RIS for the Manual Handling Standard 2006**

On 31 May 2005, the Department of Employment and Workplace Relations, ASCC commissioned Access Economics, to research and write components of a RIS for the revised National Standard and Code of Practice for Manual Handling.

A consultation process was used in order to obtain feedback on the financial impacts of the changes. A series of phone consultations and email correspondence was conducted with a range of State work health and safety authorities, industry associations, ergonomics consultants and employers.

The RIS (ASCC 2006) found that on purely quantifiable economic grounds that the highest expected net benefit came from the option to revise and update the National Standard for Manual Handling and National Code of Practice for Manual Handling. Consistency across jurisdictions would be improved by moving the national regime closer to the regimes implemented in Victoria, Queensland and Western Australia. Key changes included:

- an expansion of the duties of designers, manufactures and suppliers
- shifting the ‘duty holder’ from employers to persons with ‘control of work’, and person with control of workplaces, and
- ensuring that the hazard identification and risk assessment tools are updated to help duty holders identify, assess and control manual handling hazards.

New and additional costs to business pursuing this option involved hazard identification and modification costs for owners of workplaces and the transitional costs for business and work health and safety authorities associated with regulatory change. However, these costs were expected to be outweighed by the benefits from improvement in consistency between jurisdictions and a reduction in manual handling incidents in workplaces because of enhanced design practices. Table 15 summarises the main components of the benefits accruing in the first year after implantation of the Revised Standard.

**Table 15: Main benefits from revision and update of National Standard and Code of practice for Manual Handling**

| <b>Benefit component</b>                  | <b>Benefit range (million p.a.)<sup>(a)</sup></b> |
|---|---|
| Greater mutual recognition                | \$0.18  |
| Financial benefits from incidents avoided | \$118   |
| The value of healthy life gained          | \$495   |

Note: (a) figures from 2005

In net present value terms over a ten year time horizon the net benefits were potentially \$630 million.

## Appendix D: Survey

During the public comment process Access Economics will send a web-based survey to around 4000 firms across industries, jurisdictions and a range of workforce sizes. While previous experience has shown response rates can be low for such surveys, a sample of this size should enable the collection of sufficient data to assess the impact of model WHS Regulations.

Questions have been framed to separately capture answers from participants who have already implemented changes the same or similar to those on which the model WHS Regulations are based. A copy of the survey is contained in this Appendix.

Recruitment of company respondents for the survey will utilise the following criteria:

- a mix of small, medium and large companies, and
- a mix of companies across industries and jurisdictions.

The survey also contains a section asking businesses that trade across borders about the perceived benefits from only having to deal with one set of regulations.



## 1. Section 1 Introduction

Safe Work Australia has recently agreed to release for public comment a set of draft work health and safety (WHS) regulations and Codes of Practice that will apply uniformly across all Australian states and territories by 1 January 2012. Details are available at: <http://www.safeworkaustralia.gov.au/LEGISLATION/PUBLICCOMMENT/Pages/PublicComment.aspx>

Access Economics is conducting this survey to assess the additional work health and safety costs caused by existing differences in WHS regulations, and future impacts of harmonising WHS legislation (including on businesses that only operate in one jurisdiction).

Work health and safety reform is an important issue and businesses have approached the government for reform. If you think the proposed work health and safety reforms will impose unnecessary costs on your business – or bring welcome changes – we need to know so that we can get reform right. Your opinion is valuable, and we greatly appreciate any time you can spare to complete this survey.

Please note Access Economics will treat all information in strictest confidence; only aggregated summaries will be reported.

It would be appreciated if you could respond by 4 April 2011.

1. Please supply some details about your company. If you would be amenable to a possible follow up, it would be helpful if you supplied your name, and contact details, but this is purely optional.

|                              |                      |
|------------------------------|----------------------|
| Name (optional):             | <input type="text"/> |
| Position:                    | <input type="text"/> |
| Company:                     | <input type="text"/> |
| Address:                     | <input type="text"/> |
| City/Town:                   | <input type="text"/> |
| State:                       | <input type="text"/> |
| Email Address:<br>(optional) | <input type="text"/> |
| Phone Number:<br>(optional)  | <input type="text"/> |

2. Which jurisdictional law(s) does your business operate under (tick all that apply)

- New South Wales
- Victoria

- Queensland
- South Australia
- Western Australia
- Tasmania
- Northern Territory
- Australian Capital Territory
- Commonwealth

3. Approximately how many employees does your business have (including casuals and part-timers)?

(please enter a whole number)

4. What sector does your business operate in? (Select the one that best applies)

- Agriculture, Forestry and Fishing
- Mining
- Manufacturing
- Electricity, Gas and Water and Waste Services
- Construction
- Wholesale Trade
- Retail Trade
- Accommodation and Food Services
- Transport, Postal and Warehousing
- Information Media and Telecommunications
- Finance and Insurance Services
- Rental, Hiring and Real Estate Services
- Professional, Scientific and Technical Services
- Administrative and Support Services
- Public Administration and Safety
- Education and Training
- Health Care and Social Assistance
- Arts and Recreation Services
- Other Services

5. What was your approximate turnover last financial year, ending 30 June 2010? (If you're

not sure, you can enter a range, e.g. "between x dollars and y dollars")

6. Approximately how much does your company spend each year to comply with work health and safety regulations? Please do not include workers compensation costs. (If you're not sure, you can enter a range, eg "between x dollars and y dollars")

7. Approximately, what percentage of your company's turnover would these work health and safety compliance costs be equivalent to?  
(If you're not sure, you can enter a range, eg "between x% and y%")

8. This question looks at the time costs to your business of complying with WHS regulations. Please do not include the time costs of workers acting in their capacities as Health and Safety Representatives or Committee members (as their role is to facilitate consultation and representation of workers' interests in safety).

On an annual basis, how much time (in terms of full time equivalent positions) would your business spend on complying with WHS regulations? (fractions of a position are acceptable, eg 0.5 FTE)

Is this likely to change as a result of each jurisdiction having identical WHS regulations?

## 2. Section 2. Impact of specific WHS reforms

This section examines impacts where particular regulations may change substantially in particular states. For all states and territories, there will be some changes to current practices. Full details new regulations and codes of practice can be found at <http://www.safeworkaustralia.gov.au/LEGISLATION/PUBLICCOMMENT/Pages/PublicComment.aspx>

Some of these changes may involve short term costs to comply with the new work health and safety requirements ("compliance costs"). But these changes then hopefully should also lead to health and safety benefits ("safety benefits") in the longer term such as reduced accidents, lower fines, smaller premiums and less lost productivity. When estimating costs and benefits, please allow enough time for any such safety benefits to be realised.

If a question is not relevant for your business, please leave it blank.

The questions in this section cover manual tasks, prevention of falls, diving work, electrical work, plant and structures, construction, hazardous chemicals (including asbestos) and other regulations.

**1. MANUAL TASKS. It is proposed that workplaces must have procedures in place to identify potential hazardous manual tasks. If you don't already have such procedures in place, what impact do you think this could have on your compliance costs and/or safety benefits?**

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

If you currently conduct risk assessments for manual tasks, what is the cost in undertaking these risk assessments? (a broad range is acceptable)

**2. FALLS. The model regulation specifies methods for controlling the risk of falls and falling objects and includes requirements for the establishment of emergency and rescue procedures to address fall hazards. What do you think could be the impact on your compliance costs and/or safety benefits?**



|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

**3. DIVING WORK.** It is proposed that the model regulations be largely based on, and refer to the current Australian Standard for diving work. What impact do you think this could have on your compliance costs and/or safety benefits?

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Do you have any comments you would like to make on this matter?

**4. ELECTRICAL WORK.** It is proposed that all workplaces will have to use residual current devices (RCDs). If you already use RCDs, what do you think has been the impact on your compliance costs and safety benefits?

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Do you have any comments you would like to make on this matter?

**5. PLANT.** It is proposed that an annual notice of plant maintenance be required for registrable plant with an administration fee. If you operate such plant, what impact do you think these changes could have on your compliance costs &/or safety benefits?

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Would a requirement to mark registrable plant items with a registration number be difficult or costly to implement? (And if so, why?)

**6. CONSTRUCTION - GENERAL.** It is proposed that a principal contractor be identified for construction projects worth more than \$200,000. If you already operate under (or could operate under) such regulations, what impact do you think these changes have had (could have) on your compliance costs &/or safety benefits?

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Do you have any comments you would like to make on this matter?

**7. CONSTRUCTION - EXCAVATION.** It is proposed that a Safe Work Method Statement (SWMS) must be prepared before high risk excavation work is undertaken. If you already operate under (or could operate under) such regulations, what impact do you think these changes have had (could have) on your compliance costs &/or safety benefits?

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Do you think the definition of high risk (notifiable) excavation work is too broad? (And if so, why?)

**8. RESTRICTED CHEMICALS.** It is proposed that silica and certain other restricted chemicals may no longer be used for abrasive blasting and spray painting. If you already operate (or could have to operate) under such requirements, what do you think has been (could be) the impact on your compliance costs and safety benefits?

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

If this affects your business, what would it cost to source alternative chemicals? (broad range estimates are acceptable)

**9. CHEMICALS - PLACARDING.** It is proposed to lower the threshold amount that triggers placarding requirements for flammable gases from 500 L to 200 L. If this will affect your operations, what do you think has been / will be the impact on your compliance costs and safety benefits?

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Do you have any comments you would like to make on this proposal?

**10. MAJOR HAZARD FACILITIES.** It is proposed that regulators will have to be notified whenever a site is likely to store hazardous chemicals in amounts greater than 10% of the relevant threshold. If you already operate, or could have to operate, under such conditions, what impact do you think this has had /could have on your compliance costs &/or safety benefits?

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

If you have a site that could become classified as an MHF, what do you think it could cost you to develop an emergency plan for it?

**11. ASBESTOS. The model regulations will require that asbestos at your workplace be identified by a 'competent person' unless the PCBU has presumed that asbestos is present. An asbestos register does NOT require a competent person to prepare it but would include the asbestos identified by the competent person. The regulations specify that a 'competent person' is someone who has acquired through training, qualification or experience, the knowledge and skills to carry out the task.**

(a) Should the competent person undertaking identification of asbestos have any formal qualifications to undertake this work?

(b) Do you agree that only persons who have undergone a competency based training unit should be suitable for licensing as an asbestos assessor? Should the regulations specify other requirements e.g. experience and qualifications?

(c) The model regulations will require that an asbestos register be developed for a workplace where asbestos is identified. If you do not currently have an asbestos register for your workplace, would you be confident to develop an asbestos register yourself, assuming that a 'competent person' has identified your asbestos?

(d) How much would you expect a register would cost to develop, given that a competent person must carry out the identification unless asbestos has been presumed?' (broad ranges are acceptable)

(e) 'The model regulations will require that a Licensed Asbestos Assessor is engaged to conduct air monitoring, and to undertake clearance inspections for Class A (friable) asbestos removal jobs. The regulations will require that a licensed asbestos assessor will have to provide a statement of attainment for the specified unit of competency for asbestos assessor work to obtain a licence. Do you agree with the proposed competency requirement for licensed asbestos assessors?

**12. ASBESTOS. What impact do you think the proposed asbestos regulations would have on your compliance costs &/or safety benefits?**

|                  | Significant increase  | Minor increase        | No change             | Minor decrease        | Significant decrease  | Don't know            | Not applicable        |
|------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Compliance costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Safety benefits  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

**13. OTHER. There are a large number of other regulations that may only have an impact in one or two states. (For example, diving work.) If any of these affect you, could you please select up to three of them (from column 1) and pick the impact you think each could have on your compliance costs (column 2) and safety benefits (column 3)**

|               | Matter covered       | Compliance costs     | Safety benefits      |
|---------------|----------------------|----------------------|----------------------|
| Regulation #1 | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Regulation #2 | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Regulation #3 | <input type="text"/> | <input type="text"/> | <input type="text"/> |

If you chose any instances of "other" in column 1, could you please specify which regulation(s) you are referring to?

**3. Section 3 Education and training costs**

The questions on this page relate to education and training costs your business may face in adjusting to the new WHS regulations.

**1. In view of the above changes, what do you think it might cost your business to educate your workers about the new harmonised WHS regime when it is introduced? (A ranged answer is acceptable, eg "x thousand to y thousand")**

**2. In an average year, what do you think it might cost your business to educate your workers about changes to WHS regulations and Codes of Practice? (A ranged answer is acceptable, eg "x thousand to y thousand")**

#### 4. Section 4 Impact of WHS reforms on interstate businesses

This section examines the benefits of harmonising WHS regulations across all States and Territories for those businesses that trade in multiple jurisdictions. In framing your answers, please consider a period in the future for all adjustment costs to have been spent, and for any resultant safety benefits to have had enough time to come into play.

If your business only trades within a single State or Territory, please hit "Next" at the bottom of the page to proceed.

**1. If your business currently operates in more than one state/territory, do you undertake the following activities to comply with jurisdictional requirements?**

|   | Yes                   | No                    | Don't know            |
|---|-----------------------|-----------------------|-----------------------|
| Training for all employees  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Establishing consultation mechanisms such as Health and Safety Representatives and OHS Committees | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Use outside consultant services (including legal advice)  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Use technology such as an IT system or software   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Licenses  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Develop new OHS policies, procedures and systems  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

**2. If your business currently deals with multiple state and territory WHS Acts, what impact do you think each jurisdiction adopting the same WHS regulations might have on the following costs for your business?**

|  | Significant<br>increase in<br>costs | Minor<br>increase in<br>costs | No change             | Minor<br>decrease in<br>costs | Significant<br>decrease in<br>costs | Don't know            | Not<br>applicable     |
|--|-------------------------------------|-------------------------------|-----------------------|-------------------------------|-------------------------------------|-----------------------|-----------------------|
| Training for all employees   | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |
| Establishing consultation mechanisms, such as Health and Safety Representatives and WHS committees | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |
| Outside consultant services (including legal advice)   | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |
| Technology such as an IT system or software  | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |
| Licenses   | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |
| Staff time devoted to WHS compliance administration  | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |
| Developing new WHS policies, procedures and systems  | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |
| Standardisation of consultation arrangements   | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |
| Red tape reduction   | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |
| Simplified record keeping  | <input type="radio"/>               | <input type="radio"/>         | <input type="radio"/> | <input type="radio"/>         | <input type="radio"/>               | <input type="radio"/> | <input type="radio"/> |

**3. Do you think that your business would benefit from having the same WHS regulations in all the states and territories you operate in? Please indicate if you would expect benefit in the following ways:**

|                                     | Significantly<br>better | Better                | No change             | Worse                 | Significantly<br>worse | Don't know            | Not applicable        |
|-------------------------------------|-------------------------|-----------------------|-----------------------|-----------------------|------------------------|-----------------------|-----------------------|
| Understanding of legal requirements | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>  | <input type="radio"/> | <input type="radio"/> |
| Compliance                          | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>  | <input type="radio"/> | <input type="radio"/> |
| Productivity                        | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>  | <input type="radio"/> | <input type="radio"/> |
| Health and safety                   | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>  | <input type="radio"/> | <input type="radio"/> |
| Business opportunities              | <input type="radio"/>   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>  | <input type="radio"/> | <input type="radio"/> |



## 5. Section 5. General impact

**1. With the removal of the mandatory requirements to undertake risk assessments across all hazards of your business, what are your anticipated savings in time and/or costs?**

## 6. Section 6 Completion

Thank you for your time - your feedback is a valuable input into the process of creating better regulations.

**1. Are there any other matters you would like to comment on regarding harmonisation of work health and safety regimes?**

## Appendix E: Methodology

The RIS must comply with the COAG Best Practice Regulation guidelines (see box below), be agreed to by the OBPR, and satisfy regulatory requirements of the state, territory and Commonwealth jurisdictions.

### COAG Best Practice Regulation Guidelines

COAG (2007) defines good regulation as that which is consistent with the following principles:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self regulatory, co regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-
  - a. the benefits of the restrictions to the community as a whole outweigh the costs, and
  - b. the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.

In May 2010, Safe Work Australia and OBPR agreed a methodology proposed by Access Economics to conduct analysis and consultation for this RIS. Comments from stakeholders were also taken into consideration in developing the methodology.

The methodology employed in the Decision RIS will estimate the net benefits of moving to national harmonisation (Option 2), relative to the implementation costs of such a move (i.e. a cost benefit approach), by identifying the major problems under a non-harmonised system (Option 1), and the advantages of reform, together with associated transition costs.

The methods for this RIS essentially follow those developed in the Model WHS Act RIS (Access Economics, 2009).

- 1 Identify options, costs and benefits conceptually expected to be associated with each option and the timeframes over which these are likely to occur.

2 Establish methodological processes to quantify the costs and benefits, including who bears the costs.

3 Estimate the costs and benefits using modelling techniques. and

4 Report the findings and perform sensitivity testing.

The mapping process analyses each WRMC recommendation and evaluates those for which there are likely to be measurable costs and/or benefits. The nature of the costs and benefits associated with each recommendation are listed in **Chapter 7**.

Consultation with stakeholders is an important part of the mapping process. A first round consultation process with pre-agreed stakeholders was conducted in an initial phase (July 2010), to elicit responses on the proposed methods for estimating impacts of the model WHS Act to feed into the design of the draft survey instrument. This first round has led to the development of this Consultation RIS., and further consultation (including through surveying) and comment on this RIS will be required with responses gathered for potential modifications prior to finalisation of the RIS.

The Decision RIS will utilise two approaches to determining these costs and benefits: qualitative analysis (primarily from focus groups) and quantitative analysis (primarily from surveys). Each is discussed in the following sections.

### Qualitative analysis

The Decision RIS will use a combination of surveys and focus groups to obtain qualitative data. Focus groups will be held in Sydney, Melbourne, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin.

- Access Economics has asked regulators and other stakeholders to recommend invitees for each focus group.
- Some capital cities may hold more than one focus group, for example the ACT and the Commonwealth in Canberra.
- Depending upon advice from regulators, there may be separate meetings for employers / industry associations and for workers / unions. Partly this would be to keep numbers small enough for constructive dialogue, and partly to allow for candour.

### Quantitative analysis

A preliminary step was to summarise national and international literature sources concerning work health and safety regulation, jurisdictional differences and associated costs. However, there was scant discussion found quantifying the benefits of harmonising work health and safety legislation (as opposed to the impact of specific changes to regulations that directly change compliance practices). The key literature is summarised in Appendix C of this report.

A data audit was also conducted but quantitative coverage of costs from complying with multiple jurisdictions' regulation, was found not to be reported in Australia, although the Productivity Commission (2010) has some useful qualitative reporting on such costs. As such, it was concluded that new data would have to be gathered, via careful surveying, in order to measure the costs of work health and safety harmonisation.

Drawing upon previous RISs, NDS data and survey responses, costs and benefits for firms and workers, will be estimated per employee and/or per business where possible. Financial savings to firms and workers are expected to result from avoiding duplication of activities and reducing compliance costs. There may also be benefits in terms of safety enhancements, e.g. if compliance increases under a harmonised system. There will also be differences across jurisdictions – e.g. changes to occupational diving or mining regulations would not have much impact in the ACT but could have substantial affects in Queensland.

Assuming sufficiently robust data are obtained from the survey or other feedback from this Consultation RIS, the impact analysis section of the Decision RIS will determine if the full adoption of the model WHS Act recommendations relative to the retention of the status quo will be cost-neutral, cost-saving or an additional cost. This is determined by measuring the NPV of benefit streams and comparing them to the NPV of cost streams.

The level of safety and any loss of healthy life will be considered in the impact analysis. Healthy life can be estimated in terms of disability adjusted life years (DALYs) or converted into a monetary equivalent using the value of a statistical life year (VSLY). Access Economics will adopt the VSLY recommended by the Department of Finance and Deregulation (DFD) of \$151 000 to yield an economic value of lost wellbeing. In non-RIS work, Access Economics usually uses a net VSLY that is specific to the disease or injury in question and a gross VSLY as per Access Economics (2008). However, recent RIS analysis for the Department of Education, Employment and Workplace Relations suggests that the net VSLY using the normal detailed process is almost identical to the ‘average’ net VSLY suggested by DFD. All calculations will be estimated in NPV terms. A summary of proposed data sources and methods is provided below.

#### Summary of proposed data and methods for impact analysis

| Cost/benefit category  | Source of data/<br>method                           | NPV 2012-21       |
|--|---|-------------------|
| Nature of new model WHS Regulations and Codes of Practice                              | Safe Work Australia                                 |                   |
| <b>(1) Costs</b>   |   | <b>\$m</b>        |
| Financial costs to firms/workers of changing   | Survey, focus groups                                |                   |
| Financial costs to governments of changing   | Consultation (mini-survey)                          |                   |
| Financial costs to others in society of changing                                       | Literature, previous RIS                            |                   |
| <b>(2) Benefits</b>  |   | <b>\$m</b>        |
| Financial benefits to firms/workers of changing  | Survey, focus groups                                |                   |
| Financial benefits to governments of changing  | Consultation (mini-survey)                          |                   |
| Financial benefits to others in society of changing                                    | Literature, previous RIS                            |                   |
| Incidents averted due to higher overall benchmarks                                     | NDS, Survey, focus groups, literature, previous RIS | <b>Incidents</b>  |
| Multiplied by average cost per incident averted (including financial costs and DALYs)* | Access Economics (various years)                    | <b>\$m, DALYs</b> |
| <b>Net social benefits: (2) – (1)</b>  | By bearer & jurisdiction                            | <b>\$m</b>        |
| <b>Benefit: cost ratio and cost effectiveness</b>                                      |   | <b>%, \$/DALY</b> |

\*Note: DALYs will also be converted to a dollar indicative value, using the value of a statistical life year.

A base case of ten years is being adopted, from 1 January 2011 to 31 December 2020. While the regulations will not take effect until 1 January 2012, regulators and businesses will incur preparation costs during the year preceding commencement. The real discount rate used to estimate the NPV over this period will be 7 per cent in the base case with sensitivity at 3 per cent (and a high sensitivity at 11 per cent real), reflecting OBPR preferences<sup>16</sup> gives an indication of where RIS timetables fit within the overall harmonisation process.

A summary of methods to estimate and findings regarding costs/benefits to businesses, workers, government and society will be included in the final section of the Decision RIS, data permitting. However, considering the views from the consultation process to date, lack of cost data available and problems associated with accuracy of obtaining new cost data, the analysis at this Consultation stage of the RIS is performed principally qualitatively.

### Summary of initial timeframes

| <b>Deliverable/ Task</b>  | <b>Date</b>           |
|---|-----------------------|
| Official Order signed, services commence                                  | <b>20 May 2010</b>    |
| <b>Detailed methodology submitted: (Deliverable 1)</b>                    | <b>31 May 2010</b>    |
| Comments on methodology from Safe Work Australia/OBPR                     | 11 June 2010          |
| <i>Comments incorporated, final methodology</i>                           | 25 June 2010          |
| <b>Draft Consultation RIS submitted: (Deliverable 2)</b>                  | <b>29 July 2010</b>   |
| Comments on Consultation RIS from Safe Work Australia/OBPR                | 15 August 2010        |
| <b>Consultation RIS submitted: (Deliverable 3)</b>                        | <b>30 September</b>   |
| <b>Draft decision making RIS submitted: (Deliverable 4)</b>               | <b>31 March 2011</b>  |
| Comments on Decision RIS from Safe Work Australia/OBPR                    | 15 April 2011         |
| <b>Decision making RIS submitted: (Deliverable 5)</b>                     | <b>30 April 2011</b>  |
| <b>Harmonised legislation, regulations and Codes of Practice commence</b> | <b>1 January 2012</b> |

### Survey

Between this Consultation RIS and the Decision RIS, Access Economics will field a web-based survey to around 4,000 firms across industries, jurisdictions and a variety of workforce sizes. Questions have been framed to separately capture answers from participants who have already implemented changes the same or similar to those on which the model WHS Regulations is based. A copy of the survey is contained in Appendix A.

Recruitment of company respondents for the survey will utilise the following criteria:

- a mix of small, medium and large companies;
- a mix of companies across industries and jurisdictions;

The survey will be piloted with a small group of companies recommended by state and territory regulators.

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<sup>16</sup> In health reporting Access Economics prefers to use the risk-free discount rate of 3% in line with Australian Institute of Health and Welfare (AIHW) and the World Health Organization (WHO). As this is a COAG RIS, authors have discretion to choose discount rates. However, in other RIS work, OBPR has expressed a strong preference to use the 7% discount rate in the base case. Access Economics notes that a 10% nominal rate appears high compared to the body of evidence in the literature for these very low risk streams (see Access Economics, 2008).

The survey will also have a section asking firms which trade across borders about their perceived benefits from only having to deal with one set of regulations.

Once the final state of proposed regulations and Codes of Practice is known, Access Economics will also send a mini survey to regulators asking them about their costs in educating firms, retraining inspectorates, reprogramming IT systems etc.

## Appendix F: Summary of all RIS Questions in Part 4

Safe Work Australia would be interested in your views on the following matters:

### High Risk Work

- *Are you able to provide information on any impact these new high risk work licensing regulations may have, if any, on your business (either positive or negative)?*
- *Would the possible licensing of reach stackers, as a separate class of high risk work, have an impact on the cost of running your business?*
- *How would the reduction of boiler operation classes of high risk work, from three classes to [two or one], impact on your business?*

### Electrical

- *Do you / your business / your employer use residual current devices in your workplace?*
- *In what situations/for what work activities are residual current devices used in your workplace?*
- *Do you think the requirements for residual current device to protect socket outlets in the model Regulations will result in a cost or benefit to you / your business / your employer? If so, what do you estimate the cost or benefit to be per annum?*

### Chemicals

- *How many of your premises will need to placard for class 2.1 flammable gases that currently do not need to (i.e. how many premises store between 200 and 500L of flammable gases).*
- *What restricted substances do you use and in what quantities for spray painting or abrasive blasting in your workplace currently? - Are alternatives available? - What is the difference in cost of sourcing alternative materials compared to ones currently used?*
- *When decommissioning an underground tank will the requirement to notify the authority represent an increased regulatory burden (noting that other regulations eg building regulations, environmental regulations may already apply in some jurisdictions)? How many tanks are decommissioned each year? Would regulators anticipate inspecting the decommissioning process if they receive a notification?*
- *If the placarding threshold for gas is changed from 500L to 200L what additional costs will you incur as a consequence of compliance with this placarding threshold?*

### Inorganic Lead

- *Access Economics would be interested in your views on the impact of the regulation to permit workers to refuse blood lead level monitoring*

### Asbestos

- *The model regulations will require that all workplaces have an asbestos management plan where asbestos has been identified. Do you currently have an Asbestos Register for your building/s, and if not, what do you anticipate would be the cost of developing one?*

- *The model regulations will require that Class A asbestos removalists hold a certified Safety Management System in order to be licensed. If you are a class A asbestos removalist and do not currently have one, what costs do you anticipate will be involved undertaking this. If you have a certified system, what did it cost?*

### Major Hazard Facilities

- *The model MHF regulations require facilities where scheduled hazardous chemicals are present, or likely to be present, in quantities at or over 10% of the corresponding threshold or aggregate quantity, to notify the regulator of this fact. Is your facility already classified as a major hazard facility under MHF legislation? If not, do you expect you will now have to 'notify' and potentially be licensed under the model MHF regulations?*
- *The model regulations require MHFs to have emergency plans in place that have been developed in consultation with the relevant emergency services, and must include all of the matters as specified in Schedule 5.4.2. For facilities storing and handling hazardous chemicals, it is thought that this requirement will result in upgrades to any existing emergency plan. What will it cost your business to comply with this requirement?*



## Appendix G: References

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