

**CONSULTATION PAPER**

NOVEMBER 2014

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

Consultation Regulation Impact Statement prepared  
for the Department of Mines and Petroleum

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## Summary

The Western Australian (WA) Government has commenced the modernisation of WA's safety legislation covering mining, petroleum and Major Hazard Facilities (MHF).

The Hon. Bill Marmion, WA Minister for Mines and Petroleum announced that the new legislation will incorporate the best elements of the National Mine Safety Framework and the nationally developed model Work Health and Safety legislation.<sup>1</sup>

As an initial step, the Department of Mines and Petroleum (DMP) is seeking stakeholder input on five options to structure the safety aspects of mining, petroleum and MHF legislation.

The options range from fully consolidating safety elements into one unified Act (Option 1); partially consolidating into separate safety specific Acts (Options 2, 3 and 4); to keeping the status quo where safety provisions for resource industries are housed across six Acts (Option 5).

### **IMPORTANT:**

***This consultation process relates only to whether the safety provisions in existing legislation should be consolidated into one (or more) Acts and does not consider whether the content of the existing legislation should change.***

*As part of the Safety Legislation Reform program, DMP will modernise the safety legislation applicable to the resources industry. This may also prompt a need to review the structure of fees and levies.*

*Any changes to the content of the legislation which may arise through modernisation are considered independent of the regulatory structure and DMP commits that any content changes will be consulted on at a later point.*

***For this reason, stakeholders are asked to only consider which of the options will establish a statutory framework which best facilitates the achievement of safety objectives consistently and efficiently in the long term.***

The DMP's preferred option is unification of the acts and a move to a single regulator covering all aspects of mines, petroleum and MHF. The key substantive changes that require consideration by stakeholders include:

- MHFs: All safety provisions (occupational health and safety as well as process safety) could be regulated by one Act and one government body (DMP) under Option 1, or two Acts and one government body under Option 2, rather than the current split between two regulators and two Acts;
- Petroleum: All petroleum safety provisions would be together in one Act, rather than spread across three separate but similar petroleum Acts;
- a reduction or elimination of duplicated provisions where these already exist;
- reduced risk of inconsistencies emerging over time for similar safety risks.
- simplified regulatory arrangements for individual work sites; and
- facilitation of improved workforce mobility and simplified training.

Any changes to the safety provisions for any of the three relevant sectors would be subject to separate consultation processes in the future.

<sup>1</sup> Marmion, B (Hon.), 2014, *New Resources Safety Bill aims to save WA lives*, media release, 13 August, Ministers Office, Perth. Available at: [www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=MinisterialStatementsBarnett&StatId=342](http://www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=MinisterialStatementsBarnett&StatId=342)

## How to respond to this consultation

To consult on the options, a stakeholder forum will be held during November 2014. To register your interest, please email [whs@marsdenjacob.com.au](mailto:whs@marsdenjacob.com.au)

All stakeholders are encouraged to provide a submission. Details about how to make a submission are set out in section 5.

Respondents may choose to:

- answer “guide questions” which are provided in this paper; or
- provide general comments on the regulatory structure they prefer.

Submission by email: [whs@marsdenjacob.com.au](mailto:whs@marsdenjacob.com.au)

**All comments received by 5.00pm WST, Friday 19 December 2014, will be considered.**

### **Consultation questions:**

1. *Is the objective appropriate?: “to develop a regulatory structure that supports the delivery of high standards of safety in an efficient, equitable and consistent manner across mining, petroleum and MHF”*
2. *Are there any other objectives that should be considered in assessing the options?*
3. *Do you believe that Option 1 best fulfils the objectives identified?*
  - a. *Which option best fulfils the reform objectives and delivers the greatest benefit for the WA community?*
  - b. *Is this preference independent of potential outcomes of the streamlining and modernisation of the various Acts?*
4. *Are there other costs and benefits that are not identified?*
5. *Are the costs and benefits correctly assigned to each option?*
6. *Do any of the options result in costs or benefits being distributed unfairly (e.g. increased costs to small business?)*

# 1. Introduction

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The Department of Mines and Petroleum (DMP) is responsible for the regulation and administration of safety provisions pertaining to WA's resources industry, including the mining, petroleum and geothermal energy, and Major Hazard Facilities (MHF)<sup>2</sup> sectors.

Legislated safety obligations for these industries are currently contained within six different parliamentary acts and their associated regulations:

- *Mines Safety and Inspection Act 1994*;
- *Petroleum and Geothermal Energy Resources Act 1967*;
- *Petroleum Pipelines Act 1969*;
- *Petroleum (Submerged Lands) Act 1982*;
- *Dangerous Goods Safety Act 2004*; and
- *Occupational Safety and Health Act 1984* (regulated by WorkSafe WA / Department of Commerce).

The WA government has committed to modernising the safety legislation covering mining, petroleum and MHF in WA.<sup>3</sup> As legislation for all three areas is undergoing reform, there is a rare opportunity to review the legislative structure and consider consolidation of the current Acts and regulations.

Five options for consolidation (including retaining the status quo) are currently being considered. The options provide for consolidation or partial consolidation of the safety aspects of current Acts into a single safety specific Act or reduced number of safety specific Acts. Two of the options also consider the transfer of regulator responsibilities for occupational health and safety (OHS) for MHFs from WorkSafe to DMP as a consequence of consolidation.

A number of legislative reviews relating to modernisation of safety provisions are currently underway, or proposed for implementation, during the next three years. A summary of these reviews is provided in Figure 1. Separate consultation processes on changes to the detail of the legislation will be undertaken at the appropriate time.

The purpose of this consultation is to establish whether the stakeholders consider unification of mines, petroleum and MHF safety legislation into a single Act would provide the best outcomes for Western Australia.

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<sup>2</sup> The exception is Occupational Health and Safety (OHS) for MHFs where WorkSafe is the regulator under the *Occupational Safety and Health Act 1984*.

<sup>3</sup> Modernisation of the safety legislation for mining and dangerous goods has commenced, with modernisation of petroleum safety legislation to follow. Stakeholder consultation on the content of safety legislation covered by the modernisation process has commenced and will continue throughout the reform process.

**Figure 1: Current and planned reforms of safety resources provisions for mining, petroleum and MHF*****Mines safety***

The current *Mines Safety Inspection Act 1994* will be replaced with modernised and harmonised mine safety legislation.

The Minister for Mines and Petroleum has already approved the preparation of drafting instructions for the proposed Work Health and Safety (Mines) Bill. The Bill is mainly based on the national Model Work Health and Safety Act and National Mines Safety Framework, tailored to suit Western Australia.

A preliminary timeframe for the drafting, review of content and consultation was published in July 2014<sup>4</sup>. It is intended that the new Work Health and Safety (Mines) legislation will be implemented in mid-2016.

***Petroleum safety***

DMP is responsible for administering three petroleum Acts, which contain safety provisions: the *Petroleum and Geothermal Energy Resources Act 1967*; the *Petroleum Pipelines Act 1969*; and the *Petroleum (Submerged Lands) Act 1982*.

DMP will maintain consistency, where appropriate, with the National Offshore Petroleum Safety and Environmental Management Authority (commonly referred to as NOPSEMA) with respect to the consolidation and modernisation of petroleum safety legislation.

The timing for this review and associated consultation has not yet been confirmed. However, pending the outcome of this review, steps will be taken to modernise the safety provisions (regardless of the preferred consolidation option) during the two-year period following acceptance of this Regulatory Impact Assessment by the Minister.

***MHF safety***

The occupational health and safety provisions for MHF are current contained in the *Occupational Health and Safety Act 1984*, which is administered by the WorkSafe Division of the Department of Commerce.

Process safety provisions are contained in MHF regulations under the *Dangerous Goods Safety Act 2004*, which is administered by the Resources Safety Division of DMP. In accordance with Section 69 of this Act, an independent review of the effectiveness of the Act was completed in 2014. The report on this review has been presented to the Minister for Mines and Petroleum for tabling in Parliament.<sup>5</sup>

<sup>4</sup> Ministerial Advisory Panel, 2014, *Minutes from July 2014 meeting*, 23 July, Attachment 2B. Available at: [http://www.dmp.wa.gov.au/documents/Misc/LP\\_MAPMinutes\\_23July2014.pdf](http://www.dmp.wa.gov.au/documents/Misc/LP_MAPMinutes_23July2014.pdf)

<sup>5</sup> Refer to: <http://www.dmp.wa.gov.au/6626.aspx>

## 2. Statement of issue and objective

### Statement of issue

Currently the safety legislation covering mining, petroleum and MHFs is spread across multiple Acts and regulations, and in some cases involves multiple regulators.

DMP is concerned that the current structure hinders the consistent and efficient regulation of similar safety aspects across different industries. Further, the potential for duplicated (and inconsistent) responsibilities and accountabilities may occur where there are two or more Acts dealing with the same safety aspects of a single work site.<sup>6</sup>

For example, WorkSafe is the regulator for OHS aspects and DMP is the regulator for processes safety aspects of MHF sites. The existence of two regulators and two Acts for MHF safety matters can add unnecessary complexity and ambiguity for MHF operators.

Industry, workers and regulators are all impacted by the complexity of current safety legislation. Simplifying the structure of safety aspects across the resources sector would remove some of this complexity and will facilitate the further consolidation and simplification of legal obligations once other reform processes have been completed.

### Objective of the proposed changes

The objective of the proposed change is to develop a regulatory structure that supports the delivery of high standards of safety in an efficient, equitable and consistent manner across mining, petroleum and MHF.

**This Consultation RIS seeks input from all stakeholders on the structural options for consolidation of safety aspects of Western Australia’s mining, petroleum and MHF legislation.**

To assist stakeholders, this consultation paper outlines various legislative framework options DMP is currently considering, and informs industry and stakeholders of related reform projects which the DMP will be consulting on separately in the future.

It is noted that consistency across safety provisions within legislation, while not the subject of this consultation, is likely to be facilitated on an ongoing basis by the structure of legislative instruments. To this end, the objective of the proposed changes is to select a structure which best supports achievement of wider safety objectives and outcomes in WA.

#### **Consultation questions:**

1. *Is the objective appropriate?: “to develop a regulatory structure that supports the delivery of high standards of safety in an efficient, equitable and consistent manner across mining, petroleum and MHF”*
2. *Are there any other objectives that should be considered in assessing the options?*

<sup>6</sup> Particularly for where multiple types of operations (e.g. petroleum and MHF) co-exist on one site.

### 3. Options to address the issue

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In preparing the review, DMP has identified five options for reforming the structure of mining, petroleum and MHF legislation in WA. These options can be summarised as:

- Option 1: Unified safety Act for mining, petroleum and MHF;
- Option 2: Consolidated safety Act for petroleum and MHF, mines safety Act remains separate;
- Option 3: Individual mining and petroleum safety specific Acts, MHF safety provisions remain split across two Acts and two regulators.
- Option 4: Consolidated safety Act for mining and petroleum, MHF safety provisions remain split across two Acts and two regulators;
- Option 5: Maintain the status quo. Work Health and Safety (Mines) Act, safety provisions contained in three separate petroleum Acts and MHF safety provisions remain split across two Acts and two regulators.

In summary, Option 1 represents the creation of a single unified safety Act and can be considered the “full consolidation” option. In contrast, Option 5 represents the maintenance of the status quo where mining, petroleum and MHF are dealt with under separate Acts.

Options 2, 3 and 4 represent various partial consolidation options.

Table 1 presents a summary of the options and specifies the outcome of the option in terms of safety legislation (mining, petroleum and MHF). Table 1 also specifies the proposed regulator responsibility for MHF safety provisions applicable to each option. As the Government responsibilities for petroleum and for mines safety would remain unchanged under each option, responsibilities for these industries have not been included in the table.

**Table 1: Summary of options being considered**

	Option 1	Option 2	Option 3	Option 4	Option 5 (Status Quo)
<b>Mining legislation</b>	<p>NEW Work Health and Safety (Resources) Act: Unifying safety provisions into one Act covering:</p> <ul style="list-style-type: none"> <li>• Mining</li> <li>• Petroleum</li> <li>• MHF</li> </ul>	NEW Work Health and Safety (Mines) Act which replaces <i>Mines Safety and Inspection Act 1994</i>	NEW Work Health and Safety (Mines) Act which replaces <i>Mines Safety and Inspection Act 1994</i>	NEW Work Health and Safety (Resources) Act Consolidating safety provisions into one Act covering: <ul style="list-style-type: none"> <li>• Mining</li> <li>• Petroleum</li> </ul>	NEW Work Health and Safety (Mines) Act which replaces <i>Mines Safety and Inspection Act 1994</i>
<b>Petroleum Legislation</b>		NEW Work Health and Safety (Petroleum, Geothermal Energy and Major Hazard Facilities) Act: Consolidating safety provisions into one Act covering: <ul style="list-style-type: none"> <li>• Petroleum</li> <li>• MHF</li> </ul>	NEW Work Health and Safety (Petroleum and Geothermal Energy) Act: Consolidating safety provisions from the three separate petroleum Acts into one Act		Petroleum safety provisions remain with current petroleum Acts: <ul style="list-style-type: none"> <li>• <i>Petroleum and Geothermal Energy Resources Act 1967</i></li> <li>• <i>Petroleum Pipelines Act 1969</i></li> <li>• <i>Petroleum (Submerged Lands) Act 1982</i></li> </ul>
<b>MHF legislation</b>		MHF safety provisions remain under two acts: <ul style="list-style-type: none"> <li>• process safety remains under <i>Dangerous Goods Safety Act 2004</i></li> <li>• OSH remains under <i>Occupational Safety and Health Act 1984</i></li> </ul>	MHF safety provisions remain under two acts: <ul style="list-style-type: none"> <li>• process safety remains under <i>Dangerous Goods Safety Act 2004</i></li> <li>• OSH remains under <i>Occupational Safety and Health Act 1984</i></li> </ul>	MHF safety provisions remain under two acts: <ul style="list-style-type: none"> <li>• process safety remains under <i>Dangerous Goods Safety Act 2004</i></li> <li>• OSH remains under <i>Occupational Safety and Health Act 1984</i></li> </ul>	
<b>MHF Government Roles</b>	<b>Unified responsibility:</b> Responsibility for regulation of OHS at MHF is transferred from WorkSafe to the DMP (making DMP responsible for both process safety aspects and the OHS for MHFs).	<b>Unified responsibility:</b> Responsibility for regulation of OHS at MHF is transferred from WorkSafe to the DMP (making DMP responsible for both process safety aspects and the OHS for MHFs).	<b>Split responsibility:</b> WorkSafe retains responsibility for regulation of OHS and the DMP continues to regulate process safety aspects for MHFs.	<b>Split responsibility:</b> WorkSafe retains responsibility for regulation of OHS and the DMP continues to regulate process safety aspects for MHFs.	<b>Split responsibility:</b> WorkSafe retains responsibility for regulation of OHS and the DMP continues to regulate process safety aspects for MHFs.

Note: The naming of new Acts outlined above is indicative only. Actual names would be subject to Parliamentary Counsel naming protocols.

## 4. Impact analysis

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This review will identify the legislative framework which best facilitates safety outcomes, by comparing the costs and benefits of each option relative to Option 5 (status quo). The costs and benefits of change may accrue to any sector of the community including industry, government or employees.

To assist stakeholders responding to the consultation, a preliminary review of the costs and benefits of each option is summarised below.

### Costs of the proposed consolidation

Generally, when assessing the costs of a legislative change, costs are divided into set up costs and ongoing costs.

#### Set up costs

Set up costs include the development of the legislative reform as well as the implementation costs that occur in the initial year the legislation is put in place. These costs traditionally fall to government during the development of the legislation, and both government and industry in the implementation of the legislation.

All safety legislation will be subject to modernisation through separate processes, regardless of any consolidation of the legislative framework. While some legal and other administrative costs would be expected as a result of consolidation, these would be small additions to the costs of legislative change arising from modernisation.

Preliminary analysis by DMP indicates that there would be limited set up costs associated with the adoption of any of the reform options when compared to Option 5 (status quo) and that the costs are likely to be fairly consistent across each of the options, including under Option 5 (status quo).

DMP has recognised that some additional work may be necessary to consolidate the Petroleum Acts, due to the interactions with other WA petroleum legislation and with Commonwealth legislation. This consideration is relevant to each of the Options 1 to 4 when compared to the Option 5 (status quo).

#### Ongoing costs

Ongoing costs of a legislative change are dependent on the substantive requirements of the change.

No substantive changes to the content of safety provisions or the administration of safety processes (beyond a transfer of regulator responsibilities for Options 1 and 2)<sup>7</sup> are being considered as part of this consultation. As such, the ongoing costs (which are dependent on the content of legislation) are considered unchanged across the options, including Option 5 (status quo), for the purposes of this Regulatory Impact Assessment.

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<sup>7</sup> It should be noted that DMP have stated that the proposed transfer of roles for OHS safety on MHF would not result in an increase in fees for these sites.

## Benefits of the proposed consolidation

The types of benefits arising from each option can be aligned with the objectives identified in Section 2 of this paper (consistency, equity and efficiency). Each of the benefit types are described in detail below, the alignment of each benefit type to each option is then considered in detail.

### Consistency and equity

Preliminary analysis indicates that each of the reform options would deliver varying levels of the benefits relating to consistency and equity.

Consistency of approaches to safety regulation and standards across resources industry sectors is important for achieving equitable safety conditions where the same risks and safety consequences are evident across different industries and work sites.

Reform of the legislative framework is likely to facilitate consistency in approach and the detail of safety activities and standards.

The regulatory structure being determined by this consultation process will affect the future consistency and ease of administration of the legislation, when the legislation is modernised later.

Consolidation of safety provisions into a unified Act with a single regulator under Option 1 would enable consistency to be maintained over time.

Modernisation of separate Acts under options 2 to 5 will initially result in a consistency of the approach, objectives and standards across separate Acts (where appropriate). If the legislation is not consolidated, there is a risk that these separate Acts will “drift apart” over time, as has already happened with petroleum legislation. This would result in inconsistencies in the Acts arising on a case-by-case basis.

### Efficiency

Preliminary analysis indicates that each of the reform options would deliver varying efficiency benefits to government, industry and employees.

Efficiency gains and ease of regulatory burden is likely to be driven by:

- (a) the number of Acts containing provisions relevant to a particular industry sector (e.g. the three separate Acts covering petroleum safety), and
- (b) the number of Acts and regulators applicable to a single work site (e.g. some sites have mining operations and petroleum pipelines; some MHFs are located on the same site as a mining or petroleum operation; all MHFs are covered by two Acts and two regulators).

By reducing the number of Acts, it is proposed that the consolidation will assist to:

- **Reduced costs for compliance, compliance monitoring, enforcement and administrative costs**

A simplified legislative structure will enable the use of common terminology and compliance requirements, which will remove duplication, simplify approvals, documentation and reporting, as well as reducing legal/consultant and administrative costs. These benefits would apply to industry and government.

- **Reduce ongoing training costs for both industry and the regulator, arising from a simplified legislative structure**

It is proposed that a simplified legislative structure will result in reduced training costs for all workers (industry and government) using the safety Acts due to use of a simplified structure.

- **Increase mobility of workers between industries**  
The simplified legislative structure and the use of common definitions and regulatory requirements will ease the mobility of workers between industries. This benefit would potentially accrue to both government and industry employers and employees.
- **Reduce ongoing legislative change costs to ensure consistency between legislation**  
The consolidation of Acts would simplify and reduce future costs of legislative change, such as reflecting changes across multiple separate acts. These costs would be noted by government in reduced regulatory analysis, regulatory drafting, and communication with industry.

Consolidation of regulatory roles for MHF is expected to:

- **Reduce reporting to multiple government departments - removing duplication and reducing compliance costs;**  
Reducing the number of government departments each MHF site reports to would remove duplication and consequently reduce compliance costs. These benefits would be noted by industry.
- **Enable a single government regulator to be responsible for each MHF site**  
Having a single government regulator responsible for each MHF site will remove any opportunity for ambiguity or inconsistency. For example, a single regulator for each site covering both process safety and worker OHS may deliver potential efficiencies in inspection and documentation processes. A single regulator covering safety across the three resource industries may also enable consideration of further efficiency gains. Benefits from removal of duplication would be noted by both government and industry.

#### Alignment of benefits to each of the options

As set out above the benefits identified are related to both the number of acts and the number of regulators. Table 2 sets out the expected number of acts and number of regulators under each option and the resulting impact on expected benefits.

**Table 2: Expected number of Acts and regulators under each option and the resulting expected benefits**

	Number of Acts	Number of regulators	Summary of the benefits
Option 1	1 Act Unified Safety Act for Mines, Petroleum and MHF	1 Regulator	Maximum benefit achieved Benefits arising from unification of all safety acts achieved Benefits of 1 regulator achieved
Option 2	2 Acts Safety Act for mines and separate act consolidating Petroleum and MHF	1 Regulator	Some benefits arising from consolidation of the petroleum and MHF Acts. Benefits of 1 regulator achieved
Option 3	4 Acts Separate safety act for mines and for both Petroleum and two acts covering MHF	2 Regulators	Small benefits arising from consolidating the petroleum Acts No benefits from consolidation of the regulatory roles
Option 4	3 Acts Consolidated safety act covering mines and petroleum and a separate act for MHF	2 Regulators	Some benefits arising from consolidation of the petroleum and mines safety Acts. No benefits from consolidation of the regulatory roles
Option 5	6 Acts One safety act for mines, three acts for Petroleum and two acts covering MHF	2 Regulators	No benefits (status quo)

## Preferred Option

In preparing the options, DMP consider that Option 1 best fulfils the objectives of the reform and would deliver high levels of safety as well as the greatest benefit for the WA community. The costs of Option 1 are expected to be similar to the other options, while the benefits are expected to be greater than for any of the other options, including the status quo.

Consequently, DMP considers Option 1 to be the preferred option in advance of feedback from the consultation process.

### **Consultation questions:**

3. *Do you believe that Option 1 best fulfils the objectives identified?*
  - a. *Which option best fulfils the reform objectives and delivers the greatest benefit for the WA community?*
  - b. *Is this preference independent of potential outcomes of the streamlining and modernisation of the various Acts?*
4. *Have the costs and benefits described in this paper been correctly assigned to each option? If not, how should these differ?*
5. *Are there other substantive costs or benefits that have not been identified? Please elaborate.*
6. *Do any of the options result in costs or benefits being distributed unfairly (e.g. increased costs to small business?)*

## Timing of implementation

This consultation forms part of a series of work streams being undertaken by DMP to modernise safety legislation across the industry sectors of mining, petroleum and MHFs.

The implementation of a preferred option selected through the consultation process will impact on the nature and timing of a number of elements of modernisation reforms. Specifically, DMP will seek to optimise adoption of any preferred consolidation option with other legislative amendments resulting from modernisation reviews. Therefore, implementation timing has not yet been estimated for the purpose of comparing costs and benefits.

As detailed in Appendix 1, published timeframes for modernisation of mines safety legislation indicates a conclusion of the process in mid-2016.<sup>8</sup>

The reform process for petroleum and MHF is yet to be finalised, and these processes would necessarily incorporate full public consultation on all proposed changes to the content of the relevant Acts, but is broadly expected to occur between 2015 and 2017.

<sup>8</sup> Ministerial Advisory Panel on Safety Legislation Reform minutes from 23 July 2014 meeting, refer to Attachment 2B. Available at: [http://www.dmp.wa.gov.au/documents/Misc/LP\\_MAPMinutes\\_23July2014.pdf](http://www.dmp.wa.gov.au/documents/Misc/LP_MAPMinutes_23July2014.pdf)

## 5. Consultation responses and next steps

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### Providing input

To consult on the options, a stakeholder forum will be held during November 2014. To register your interest, please email [whs@marsdenjacob.com.au](mailto:whs@marsdenjacob.com.au)

### Cover sheet

In order to provide a written submission you will need to complete a cover sheet to go with your submission. The cover sheet is shown on the last page of this document.

A copy of the cover sheet in Microsoft Word format is available here:

- [Cover Sheet For Submissions](#)

Please provide written feedback on the proposed options by **Friday, 19 December 2014**.

In providing a written submission you may:

- answer “guide questions” which are provided in this paper; or
- provide general comments on the preferred regulatory structure.

Submission Address:

Marsden Jacob Associates  
Level 1, 220 St Georges Terrace  
Perth 6000 WA

By email to: [whs@marsdenjacob.com.au](mailto:whs@marsdenjacob.com.au)

### Conditions of submission and confirmation of receipt

When your submission is received by Marsden Jacob Associates, you will be sent a receipt as confirmation. All submissions will be made accessible to the public on DMP’s website. If you do not wish your submission to be made public, please clearly mark it “IN CONFIDENCE”. Your receipt will note your preference.

**Thank you for taking the time to provide comment. All comments received by 5.00pm WST, Friday 19 December 2014, will be considered.**

### Next steps

Marsden Jacob Associates will compile and analyse all responses that are received and prepare a comprehensive report for the Minister for Mines and Petroleum.

Following the analysis of submissions, a Decision RIS will be prepared setting out the recommended option. The Decision RIS will be published on DMP’s website and is expected to be completed by 31 January 2015.

## Enquiries

All enquiries about this consultation process should be addressed to:

Alex Marsden

Principal

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(08) 9324 1785

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# Appendix 1: Background

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## Overview

DMP has received Government approval to reform the safety legislation that applies to the resources sector.

DMP is modernising the *Mine Safety Inspection Act 1994* (likely to be called the Work Health and Safety (Mines) Act) by adopting the best provisions of the national model work health and safety legislation, and the outcomes of the National Mine Safety Framework process, tailored to suit the needs of the Western Australian resources sector.

While the department is modernising safety legislation for mining, it is also examining the feasibility and options for consolidating this with the safety and health legislation for petroleum and MHF.

## Mines safety

Occupational safety and health in the mining industry is currently regulated under the *Mines Safety and Inspection Act, 1994*.

### Overview of the current Act

Relevant sections of the current Act align well with the safety provisions for general industry (specified under the *Occupational Safety and Health Act 1984*). However, the current Act is considered to be outdated and too prescriptive.

### Modernisation of the Act

The Act will be modernised and is likely to be called the Work Health and Safety (Mines) Act. This reform process has commenced and will continue regardless of the preferred consolidation option which is selected. Government is ensuring input on the modernisation reform is received from a broad range of stakeholders through the use of the Ministerial Advisory Panel on Safety Legislation Reform<sup>9</sup>, working groups and workshops<sup>10</sup>.

### Content of the modernised Act

The content of the revised Work Health and Safety (Mines) Act is likely to substantively align with the proposed Western Australian version of the Work Health and Safety Act, which covers occupational health and safety for general industry.<sup>11</sup> The revised act will also draw many provisions from the National Mine Safety Framework process.

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<sup>9</sup> The membership of the Ministerial Advisory Panel on Safety Legislation Reform and minutes of meetings are available here <http://www.dmp.wa.gov.au/19517.aspx>

<sup>10</sup> Three working groups (Guarding, Confined Spaces and Asbestos) and one workshop (management and supervision) have concluded. Their reports will be considered during development of the new regulations.

<sup>11</sup> On 12 August 2014, the Minister for Commerce, Hon Michael Mischin MLC announced in parliament that a Western Australian version of the model workplace health and safety (WHS) bill would be introduced shortly into State Parliament. This will be in the form of a green bill, which will be released for a consultation period of three months.

### Timing of modernisation

It is expected that implementation of the Work Health and Safety (Mines) Act will occur in mid-2016, subject to Parliamentary processes and consultation.

DMP have already prepared drafting instructions for Parliamentary Counsel's Office and it is planned to introduce the Bill to Parliament in mid-2015.

Key milestones are the passage of the Act through Parliament by the end of 2015 and gazettal of the regulations around July 2016.<sup>12</sup>

## Major Hazard Facilities safety

### Overview of the current Act

Process safety for Major Hazard Facilities (MHF) is regulated through the Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007 (MHF Regulations), under the *Dangerous Goods Safety Act 2004*.

The MHF Regulations apply to those sites with dangerous goods (including mine sites) where the Chief Officer has determined that the site will be classified as a Major Hazard Facility (MHF). The status of a site as a MHF is based on the critical quantity of dangerous goods and likelihood of a major incident.

The MHF Regulations are one of seven sets of regulations that give effect to the *Dangerous Goods Safety Act 2004*. The MHF Regulations apply in addition to other dangerous goods safety storage and handling regulations. These regulations relate to process safety and not occupational safety and health.

Occupational safety and health at MHFs is currently regulated by WorkSafe under the *Occupational Safety and Health Act 1984*.

### Modernisation

In August 2014, the Minister for Mines and Petroleum announced the proposed transfer of regulatory responsibility for OHS on MHF sites from WorkSafe to DMP<sup>13</sup>. However, the proposal is subject to the outcome of this RIS consultation process, and is contingent on the adoption of either Option 1 or Option 2.

Regardless of the selected option, DMP will continue to maintain the *Dangerous Goods Safety Act 2004*, as this Act covers other dangerous goods safety requirements.

If Option 1 or Option 2 are not adopted, DMP will retain responsibility for process safety at MHFs and the MHF regulations would remain under the Dangerous Goods Safety Act. The legislation for MHFs would be modernised at a later date. WorkSafe would retain responsibility for MHF occupational safety and health and include it in their proposed Work Health and Safety Act for general industry.

The modernisation of MHF safety legislation is subject to detailed development and stakeholder consultation, and the method is dependent upon which option is selected through this RIS. As such, timeframes for the modernisation process are currently uncertain, but it is broadly expected to occur between 2015 and 2017.

<sup>12</sup> Ministerial Advisory Panel minutes 23 July 2014, Attachment 2B.

<sup>13</sup> Marmion, B (Hon.), 2014, *New Resources Safety Bill aims to save WA lives*, media release, 13 August, Ministers Office, Perth. Available at: [www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=MinisterialStatementsBarnett&StatId=342](http://www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=MinisterialStatementsBarnett&StatId=342)

## Petroleum safety

### Overview of the current Acts

#### State Legislation

DMP has responsibility for occupational safety and health (OSH) regulation of petroleum, pipeline and geothermal activities, both onshore and in State coastal waters.

The safety and health provisions for the petroleum industry are contained in three separate (but similar) acts and regulations:

- *Petroleum and Geothermal Energy Resources Act 1967*: covers all onshore areas of the State, including its islands and, in certain circumstances, areas of submerged lands internal to the State (i.e. those waters landward of the base line), other than ‘subsisting’ permit areas under the Petroleum (Submerged Lands) Act 1982 (PSLA82);
- *Petroleum (Submerged Lands) Act 1982*: applies to Western Australia’s territorial sea to the three nautical mile mark, including the territorial sea around State islands, and under certain circumstances, some areas of internal waters; and
- *Petroleum Pipelines Act 1969*: applies to petroleum pipelines on land within the State.

Under COAG arrangements, petroleum legislation in the various States and Territories is broadly aligned with Commonwealth legislation.

#### Commonwealth legislation

The National Offshore Petroleum Safety and Environmental Management Authority (commonly referred to as NOPSEMA) is the regulator administering safety and health under the Offshore Petroleum and Greenhouse Gas Storage Act 2006, which applies to continental shelf waters outside of the three nautical mile boundary.

#### Modernisation

It is proposed that the petroleum safety legislation (irrespective of the final structure) would be modernised to maintain consistency, where appropriate, with the Commonwealth petroleum legislation and the modernised Work Health and Safety Acts for mining and general industry in WA.

The modernisation of petroleum safety legislation is subject to detailed development and stakeholder consultation, so the timeframe is currently uncertain, but is broadly expected to occur between 2015 and 2017.

## Appendix 2: Common questions

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### Changes in regulator for MHF occupational safety and health

*Q: What would a change in regulator mean?*

A change in regulator for occupational safety and health at MHFs would only occur if either Option 1 or Option 2 are selected as the preferred option.

OHS at MHFs is currently regulated by WorkSafe and it is proposed under Options 1 and 2 that these responsibilities would be transferred to DMP.

DMP is already responsible for regulating process safety at MHFs, and there are a number of benefits in having DMP as the sole regulator for all aspects of MHF safety (see pages 11 to 13 of this paper for details of the benefits).

Regardless of the selected option, DMP would continue to regulate process safety for MHFs.

The proposed change in regulator under Options 1 and 2 would only apply to MHFs, and would not impact mining or petroleum and geothermal energy. DMP is already the safety regulator for these industries.

*Q: Would the change in regulator have any immediate impacts to the way MHFs are regulated?*

The change in regulatory responsibilities would only occur following consolidation of the legislation in occurrence with the selected option.

Plans to modernise the content of safety legislation is currently either underway, or subject to future review (timing for which is currently uncertain). DMP plans to adopt consolidation alongside conducting these reforms; however, the earliest timing for implementing consolidation is early 2017. As such, the change in regulator responsibilities is not expected to occur until this date.

### Fees and Levies

*Q: Are any of the proposed changes going to impact fees and levies paid by industry?*

The structure of fees and levies is independent of the legislative structure and as such, no changes to current charges are expected as a result of the consolidation of legislation.

If the preferred option includes transfer of responsibilities for MHF OSH from WorkSafe to DMP, the MHF fees are not expected to be impacted.

DMP is aware that cost recovery for safety regulatory services is applied using different methodologies. A wider review of cost recovery levies and fees legislation will be undertaken later, under a separate process, with appropriate consultation. The cost recovery review is not dependent on the structure of the legislation.

### Changes to other legislation as a consequence of this consolidation

*Q: Which other pieces of legislation will be updated as a result of this reform?*

Depending on the options selected, there would be a number of minor consequential amendments to other legislation (e.g. to ensure correct referencing across other WA Acts).

DMP will need to review all relevant legislation after the preferred option has been identified.

## Appendix 3: Expanded description of options

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### Option 1: **One safety Act covering the resources sector. One regulator.**

- A new Work Health and Safety (Resources) Act which consolidates and replaces all safety aspects from the Work Health and Safety (Mines) Act (which is to replace the *Mines Safety and Inspection Act 1994* from 2016); the three Petroleum Acts; the MHF process safety provisions currently contained in MHF regulations under the *Dangerous Goods Safety Act 2004* and the MHF OHS provisions in the *Occupational Safety and Health Act 1984*.
- Responsibility for regulation of Occupational Health and Safety at MHFs is transferred from WorkSafe to DMP, such that DMP is responsible for both process safety aspects and the OHS aspects of safety regulation at MHFs.

### Option 2: **Two safety Acts (one for mining; one for petroleum and MHFs). One regulator.**

- A new Work Health and Safety (Mines) Act which replaces the *Mines Safety and Inspection Act 1994*.
- A new ‘Work Health and Safety (Petroleum, Geothermal Energy and MHF) Act’ which consolidates and replaces all safety provisions currently contained in the three Petroleum Acts and the MHF process safety provisions currently contained in MHF regulations under the *Dangerous Goods Safety Act 2004* and the MHF OHS provisions in the *Occupational Safety and Health Act 1984*.
- Responsibility for regulation of OHS at MHFs is transferred from WorkSafe to DMP, such that DMP is responsible for both process safety aspects and the OHS aspects of safety regulation at MHFs.

### Option 3: **Two safety Acts (one for mining and one for petroleum). MHF safety provisions remain across two Acts. Two regulators.**

- A new Work Health and Safety (Mines) Act which replaces the *Mines Safety and Inspection Act 1994* and contains only mines safety provisions.
- A new Work Health and Safety (Petroleum and Geothermal Energy) Act which consolidates and replaces all safety provisions currently contained in the three Petroleum Acts.
- MHF safety provisions continue to be housed in two separate Acts. Process safety provisions remain in MHF regulations under the *Dangerous Goods Safety Act 2004* and the occupational health and safety provisions are retained under the *Occupational Safety and Health Act 1984*.
- WorkSafe retains responsibility for regulation of occupational health and safety at MHF and DMP continues to regulate compliance with process safety provisions at these sites.

**Option 4: One safety Act covering mining and petroleum. MHF safety provisions remain across two Acts. Two regulators.**

- A new Work Health and Safety (Resources) Act which consolidates and replaces all safety aspects from the *Mines Safety and Inspection Act 1994* and the three Petroleum Acts.
- MHF safety provisions continue to be housed in two separate Acts. Process safety provisions remain in MHF regulations under the *Dangerous Goods Safety Act 2004* and the occupational health and safety provisions are retained under the *Occupational Safety and Health Act 1984*.
- WorkSafe retains responsibility for regulation of OHS at MHFs and DMP continues to regulate process safety provisions for MHFs.

**Option 5: No consolidation. Safety provisions for mining contained in one Act, safety provisions for petroleum remain across three Acts, and MHF safety provisions remain across two Acts. Two regulators.**

- A new Work Health and Safety (Mines) Act which replaces the *Mines Safety and Inspection Act 1994* and contains only mining related safety provisions.
- Petroleum safety provisions continue to be housed across the three current petroleum Acts alongside other non-safety petroleum provisions.
- MHF safety provisions continue to be housed in two separate Acts. Process safety provisions remain in MHF regulations under the *Dangerous Goods Safety Act 2004* and the occupational health and safety provisions are retained under the *Occupational Safety and Health Act 1984*.
- WorkSafe retains responsibility for regulation of occupational health and safety at MHF and DMP continues to regulate compliance with process safety provisions at these sites.

*Notes:*

- *The naming of new Acts outlined above is indicative only. Actual names would be subject to Parliamentary Counsel naming protocols.*
- *The Occupational Safety and Health Act 1984 is being reformed and would be replaced by the proposed Work Health and Safety Act for general industry.*

## Appendix 4: Indicative structure of legislation under Option 1\*

### Common provisions

- Introduction
- Object
- Interpretation (definitions) – some common, some sector-specific
- Application of the Act: scope of the Act and activities to which the Act applies
- Health and safety duties (some common provisions, some sector-specific) – management of risks, risk control measures, duty of care, duties of persons conducting a business or undertaking (PCBU)/officers/workers, offences and penalties.
- Records
- Incident notification
- Authorisations: authorisation of workplaces/plant/substance/ work, prescribed qualifications or experience; commencement/suspension/closure/ recommencement of operations.
- Consultation, representation and participation: duty to consult, health and safety representatives, work groups, health and safety committees, issue resolution, right to cease unsafe work, provisional improvement notices.
- Discriminatory, coercive and misleading conduct
- Functions and powers of the regulator
- Securing compliance – appointments and powers of inspectors.
- Enforcement measures – improvement notices, prohibition notices, non-disturbance notices, injunctions.
- Review of decisions
- Legal proceedings – prosecutions, sentencing, infringement notices
- General (some common provisions, some sector-specific) – offence to give false or misleading information, immunity from liability, confidentiality of information, sharing of information with corresponding regulator, codes of practice, regulation-making powers, board of examiners (mining), boards of inquiry, statutory committees, review of the Act.
- Schedules (some common provisions, some sector-specific) – regulation making powers, work health and safety tribunal, health and safety magistrates, transitional provisions, repeals, consequential amendments to other Acts

### Sector-specific provisions

#### MINING

Mining-specific provisions, including:

- Duty of mine operators and site senior executives
- Appointments (statutory positions)
- Safety Management System (mining)

#### PETROLEUM

- Petroleum-specific provisions, including Safety Case / Safety Management System

#### MHF

- MHF-specific provisions, including Safety Report

Provisions not proposed to be adopted by Western Australia are Workplace entry by WHS entry permit holders and Enforceable undertakings

\* **Subject to the outcomes of detailed development and stakeholder consultation**

# Structural Reform of WA Mining, Petroleum and Major Hazard Facilities Safety Legislation

## COVER SHEET FOR SUBMISSIONS

Please complete and submit this form with your submission by  
5pm WST on FRIDAY 19 DECEMBER 2014

Email submissions to: [whs@marsdenjacob.com.au](mailto:whs@marsdenjacob.com.au)

Contact name:
Organisation:
Position:
Email:
Phone: <span style="float: right;">Mobile:</span>
Postal address:
Length of submission (number of pages including this cover sheet) :
Are you making this submission as: (please select one of the following categories)
<input type="checkbox"/> Union <input type="checkbox"/> Business <input type="checkbox"/> Academic
<input type="checkbox"/> Community organisation <input type="checkbox"/> Employer organisation <input type="checkbox"/> Professional
<input type="checkbox"/> Individual <input type="checkbox"/> Industry representative <input type="checkbox"/> Other:
Which of the following industry sectors is relevant to your work: (pick one or more)
<input type="checkbox"/> Mining activities <input type="checkbox"/> Petroleum Facilities <input type="checkbox"/> Major Hazard Facilities <input type="checkbox"/> Other (please specify):
What specifically do you or your business do?
Approximately how many people work for the business or organisation in WA?
<input type="checkbox"/> Fewer than five employees <input type="checkbox"/> Five to 20 employees <input type="checkbox"/> 21 to 100 employees <input type="checkbox"/> 100+ employees <input type="checkbox"/> N/A
Do you operate across two or more states and/or territories?
<input type="checkbox"/> Yes <input type="checkbox"/> No
Approximately how many people work for the business or organisation interstate?
<input type="checkbox"/> Fewer than five employees <input type="checkbox"/> Five to 20 employees <input type="checkbox"/> 21 to 100 employees <input type="checkbox"/> 100+ employees <input type="checkbox"/> N/A

### PLEASE NOTE:

- All submissions will be placed on the Department of Mines and Petroleum website, unless clearly marked as **Confidential**.
- Neither the State of Western Australia nor the Department of Mines and Petroleum takes responsibility or shall be liable for any breach of the copyright, or libellous or defamatory comments in submissions published by the Department of Mines and Petroleum.