Summary of changes proposed to OHS Regulations

July 2016

The Occupational Health and Safety Regulations (OHS Regulations) will expire in June 2017. WorkSafe is required to review and remake the OHS Regulations by this date. This information sheet outlines the key changes proposed to the OHS Regulations.

Note: The existing regulation is referenced first, followed by the draft regulation in brackets.

Part 3.1 – Hazardous Manual Handling

The key changes proposed to the Manual Handling regulations are in relation to:

The title of the Part

It is proposed to amend the title to ‘Hazardous Manual Handling’ to better reflect the scope of the Part, which applies to activities that fall within the definition of ‘hazardous manual handling’.

Regulation 1.1.5 – Definition of ‘hazardous manual handling’ [draft regulation 5]

It is proposed to redraft the definition to incorporate the existing definitions of ‘manual handling’ and ‘object’, which are currently defined separately.

It is also proposed to streamline the definition by making the following changes:

- removal of the word ‘sustained’ in relation to movements (1.1.5 ‘hazardous manual handling’ (a)(iii))
- removal of the reference to ‘repetitive’ in relation to posture (1.1.5 ‘hazardous manual handling’ (a)(ii))

Regulation 3.1.1 (1) – Hazard identification [draft regulation 26]

This regulation requires an employer to identify so far as reasonably practicable any task undertaken by an employee involving hazardous manual handling. However, the term ‘task’ is not defined in the OHS Regulations.

To reduce confusion around the meaning of ‘task’ and the risk of employers adopting a narrow definition and failing to identify hazardous manual handling, it is proposed to remove references to ‘task’ in the Part.

Instead, it is proposed to require employers to identify any ‘hazardous manual handling’ undertaken, or to be undertaken, by an employee. This would encourage employers to focus on all work undertaken by an employee having the characteristics of ‘hazardous manual handling’.

Regulation 3.1.1 (2) – Hazard identification

This regulation specifies that an employer can identify tasks in a class, where the tasks are similar, and it does not result in any greater, additional or different risk to health and safety than if the identification were carried out for each individual task.

It provides guidance about how an employer can comply with the broader duty to identify hazardous manual handling.

It is proposed to remove this regulation as this type of information is considered more appropriate for guidance material and will be included into the proposed Hazardous Manual Handling Code.

Regulation 3.1.3 (1) – Review of risk control measures

This provision requires an employer to review and, if necessary, revise risk control measures in response to specified triggers.

It is proposed to remove the trigger at 3.1.3(1)(b) that requires review of a risk control measure before an object is used for another purpose than that for which it was designed. Removal is proposed on the basis that the trigger is not widely used or understood.

It is also proposed to amend 3.1.3(1)(a) to refer more broadly to alteration to an object or plant, process or system of work, for consistency with other parts of the Regulations.

This change ensures that employers are required to review a risk control measure before any change to plant or a system of work.
Summary of changes proposed to OHS Regulations

Part 3.2 – Noise
The key changes proposed for the Noise regulations are in relation to:

**Regulation 3.2.4 – Control of exposure to Noise** [draft regulation 34]
It is proposed to remove regulations 3.2.4(2) and 3.2.4(3) which detail matters an employer must consider when providing hearing protectors.
It is considered that these regulations are more appropriate for guidance.

**Regulation 3.2.5 – Written risk control plan**
It is proposed to remove the requirement for a written risk control plan where implementation of a higher order risk control measure (such as substituting the plant for quieter plant or processes) is delayed for six months.
Removing this requirement does not reduce safety as the overarching requirement to control exposure to noise is maintained.

**Regulation 3.2.12 – Audiological examinations** [draft regulation 38]
Clarify that the trigger for an audiological examination is a reduction in hearing level of 15db or greater over a two year period, regardless of how many tests are undertaken over that two year period.

Part 3.3 – Prevention of Falls
The key change proposed for the Prevention of Falls regulations is in relation to:

**3.3.1 Application of Part** [draft regulation 41]
It is proposed to include a note to clarify that legislative obligations still apply to the risk of falls below two metres.

Part 3.4 – Confined Spaces
The key changes recommended for the Confined Spaces Regulations are in relation to:

**Regulation 3.4.4 – Supplier duties** [draft regulation 53]
It is proposed to remove the requirement at regulation 3.4.4(2).
Under this regulation, suppliers must ensure that if the designer and/or manufacturer have not eliminated the need to enter a confined space (or associated risks) in an item of plant, then it becomes the responsibility of the supplier to eliminate the need for any person to enter the confined space, so far as is reasonably practicable, or otherwise reduce the need and associated risks, so as far as is reasonably practicable.
It is unclear, however, how a supplier would be capable of adequately discharging this duty in practice. If a supplier was to organise the modification of the plant, then that supplier would also become a designer and/or manufacturer and therefore take on the responsibility for those duties at regulation 3.4.2 and 3.4.3. It is unlikely that a supplier would have access to the expertise engineering skills and facilities to achieve the safety outcome implicit in regulation 3.4.4(2).
It is not, however, proposed to remove 3.4.4(1). The requirement at r. 3.4.4(1) is to ensure, so far as is reasonably practicable, the plant has been designed and manufactured in accordance with r 3.4.2 and 3.4.3. It is considered that this duty plays an important role with regards to importing suppliers who effectively serve as a ‘gate-keeper’ for plant entering Victoria.

**Regulation 3.4.15 – Employer to retain entry permits** [draft regulation 64]
It is proposed to remove the requirement for an employer to retain a ‘confined space entry permit’ for 30 days and replace it with a requirement for an employer to retain the permit:
• until the work is completed; or
• for two years in the event of a notifiable incident.
This change will reduce record keeping requirements without reducing safety.
Part 3.5 – Plant

The key changes proposed for the Plant regulations are in relation to:

**Regulation 3.5.5 – Operator’s controls and Regulation 3.5.6 – Operational stop controls and emergency stop devices** [draft regulations 78 and 79]

It is proposed to remove reference to operational stop controls in regulation 3.5.6 as the current requirements in regulation 3.5.5 adequately cover operational stop controls.

It is also proposed to insert a definition of ‘operator controls’ providing that the term includes an operational stop control.

Regulation 3.5.5 will be relied upon for the design requirements for all operator controls including operational stop controls, but not emergency stop devices. Regulation 3.5.6 will apply solely to emergency stop devices.

These proposed changes will clarify design requirements applying to emergency stop devices and operator controls.

**Regulation 3.5.10 – Records and information** [draft regulation 83]

It is proposed to remove subregulations 3.5.10(1)(b), (c) and (d) which require a designer to keep copies of the information provided to the manufacturer.

This proposal reduces duplication and regulatory burden without reducing safety standards as manufacturers are required (under regulation 3.5.14) to keep information provided by the designer.

**Regulation 3.5.13 – Information must be obtained and provided (manufacturer) and Regulation 3.5.17 – Information must be obtained and provided (supplier)** [draft regulations 86 and 89]

It is proposed to streamline the information provision process under regulations 3.5.13 and 3.5.17 which currently place duties on manufacturers and suppliers to obtain and provide prescribed information by removing the requirement to ‘obtain information’ from these regulations.

The duty to provide information implicitly requires the information to be obtained, therefore there is a level of duplication in requiring a duty holder to both obtain and provide information.

This proposal streamlines the regulations while keeping the focus on the provision of information.

**Regulation 3.5.16 – General duties (suppliers of plant)**

It is proposed to remove the duty imposed on suppliers that requires that hazard identification and risk control requirements placed on designers and manufacturers of plant have been carried out prior to supplying the plant.

The proposed change removes unnecessary prescription and duplication.

The general duties placed on suppliers of plant under section 30 of the Occupational Health and Safety Act 2004 (OHS Act) will be relied upon, supported by guidance in the proposed Plant Compliance Code and/or other guidance material.
Regulation 3.5.26 – Operator's controls and emergency stop devices
Regulation 3.5.27 – Operational stop controls and emergency stop devices [draft regulations 101 and 102]

To maintain consistency between the requirements placed on employers and designers with respect to operator controls and emergency stop devices, it is proposed to remove reference to operational stop controls in regulation 3.5.27.

Regulation 3.5.26 will be relied upon for employer requirements for all operator controls including operational stop controls, but not emergency stop devices.

Regulation 3.5.27 will apply solely to emergency stop devices.

These changes will improve and clarify design requirements placed on employers with respect to emergency stop devices and operator controls.

Schedule 2 – Plant requiring registration of design [draft regulations schedule 2]

Item 1.2 – Tower cranes

It is proposed to remove the design registration requirement applying to the supporting structure or foundations of a tower crane and replace it with specific requirements for the design of the supporting structure or foundation of a tower crane.

The new requirements will be placed on employers and inserted into Part 3.5.

Item 1.4 – Lifts

It is proposed to remove the requirement for design registration of lifts that are designed for the transportation of goods alone and which do not have any operational controls within the lift car (eg service lifts, including dumb waiters).

Item 1.8 – Amusement structures

There are a number of amusement devices excluded from design registration requirements.

It is proposed to make further exclusions of the type currently excluded in item 1.8 of Schedule 2. Specifically, it is proposed to exclude jet packs, hoverboards, rides or devices primarily used as a form of motor sports, and hovercrafts.

Part 3.6 – High Risk Work

The key changes proposed for the High Risk Work regulations are in relation to:

Regulation 3.6.10 – Person may work while application is being processed [draft regulation 138]

It is proposed to provide that a licence holder who applies for a licence renewal before the licence expires, can continue to perform work until a renewal is granted or until 14 days after being given written notice that the application has been refused.

This proposal provides for a similar provision as currently afforded under regulation 3.6.10 to a person who applies for a high risk work licence in the first instance.

Regulation 3.6.11 – Authorisation to carry out assessments of competency [draft regulation 139]

It is proposed to insert a provision to explicitly provide that WorkSafe may impose terms and conditions when it authorises a person to carry out assessments of competency.

Presently the imposition of terms and conditions on an assessor’s authorisation may be done administratively however the process is less transparent.

This will provide WorkSafe with an explicit power to impose terms and conditions that it considers necessary to authorise a person to carry out assessments of competency.

Schedule 3 – Part 1 – Licence classes for scaffolding and rigging [draft regulation schedule 3]

Item 1 – Definitions (dogging) and Item 5 – Dogging licence [draft regulation 5 and draft item 4]

It is proposed to clarify the requirement for a dogging licence under the regulations by aligning the licence scope statement for a dogging licence with the definition of ‘dogging’.

Specifically, it is proposed to amend item 5 to say that the scope of work under the dogging licence is dogging work.

In addition, it is proposed to redraft the existing definition of ‘dogging’ to provide clarity that a dogging licence is required if either of the following applies:

- the activity requires the application of slinging techniques; or
- the load is being moved outside the view of the operator.

The proposed changes provide greater consistency with the Model Work Health and Safety (WHS) Regulations.
Schedule 3 – Part 2 – Licence classes for crane, hoist and forklift truck operation [draft regulation schedule 3]

Reach stacker – Licensing [draft item 19]

It is proposed to introduce a new licence class for reach stackers.

This allows operators to train and receive a licence for operating reach stackers without having to cover all the competencies required for a non-slewing mobile crane operation licence.

It is proposed that holders of the latter licence would continue to be able to operate a reach stacker.

Item 9 – Definitions (forklift truck) [draft regulation 5 – Definitions (forklift truck)]

It is proposed to exclude low-lift pallet trucks from the definition of ‘forklift truck’.

This means that the requirement to hold a forklift truck operation licence will not apply to the operation of low lift pallet trucks.

This proposal removes unnecessary regulation and to make the regulations more proportionate to the risk.

Item 14 – Bridge and gantry crane operation licence [draft item 12]

It is proposed to broaden the scope of work allowed under a bridge and gantry crane operation licence.

Specifically, it is proposed to amend item 14 to provide that the scope of the work for a bridge and gantry crane operation licence includes the application of load estimation and slinging techniques to move a load with a bridge crane or gantry crane.

Currently this work must be performed by a person holding a dogging licence.

The proposed change will reduce regulatory burden and is consistent with the approach under the Model WHS Regulations.

Item 15 – Vehicle loading crane operation licence [draft item 13]

It is proposed to amend item 15 to provide that the scope of the work for a vehicle loading crane operation licence includes the application of load estimation and slinging techniques to move a load with a vehicle loading crane.

The proposed change to the vehicle loading crane operation licence will reduce regulatory burden and is consistent with the approach under the Model WHS Regulations.

As a consequence of this proposal, a change will be required to each of the slewing mobile crane licence classes to maintain safety. A slewing mobile crane operation licence will continue to allow the licence holder to operate a vehicle loading crane but it is proposed not to allow the licence holder to carry out the application of load estimation or slinging techniques to move a load with a vehicle loading crane.

This proposal provides consistency with the approach under the Model WHS Regulations.

Item 27 – Order-picking forklift truck operation licence [draft item 25]

It is proposed to narrow the types of order-picking forklift trucks requiring an operator with a high risk work licence.

This mean that only operators of order-picking forklift trucks with lifting attachments capable of being raised 900 mm or more above the ground would be required to hold an order-picking forklift truck operation licence.

This also means that persons operating order-picking forklift trucks that lift less than 900 mm would no longer need to apply for a high risk work licence.

This proposal reduces regulatory burden and makes the regulations more proportionate to risk.
Summary of changes proposed to OHS Regulations

Schedule 3 – Part 3 – Licence classes for pressure equipment operation [draft regulations schedule 3]

Items 29, 30 and 31 – Boiler operation licence classes [draft items 26 and 27]

It is proposed to consolidate and streamline the boiler operation licensing scheme which currently consists of three hierarchical licence classes – basic, intermediate and advanced boiler operation. It is proposed to replace the current three licence classes with two new classes (standard and advanced), and remove the hierarchical system.

The proposed two new classes will align with the boiler operation licence classes in the Model WHS Regulations.

The aim of this proposal is to better reflect the risk associated with contemporary boiler design and to make it easier for people to work across state and territory borders.

Schedule 4 – High risk work [draft regulation schedule 4]

Item 2 – Pressure equipment for which high risk work licence is not required – Item 2.1 [draft item 1]

It is proposed to expand the current exception that provides that a high risk work licence is not required to operate a boiler having not more than 4.6 square metres of heating surface used in agriculture and related industries.

Under the proposal the exception will be expanded to all boilers having less than five square metres of heating surface. Operators of these small boilers will not need to hold a high risk work licence regardless of the industry in which they are used.

This change represents a more proportionate response to the risk.

Part 4.1 – Hazardous Substances

The key changes proposed for the Hazardous Substances regulations are in relation to:

Approved Criteria for Classifying Hazardous Substances referencing

It is proposed to remove all references to the Approved Criteria for Classifying Hazardous Substances, Hazardous Substances Information System (HSIS) and associated terminology.

Recasting the regulations to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) terminology

The OHS Regulations currently contain terminology that is taken from the Approved Criteria for Classifying Hazardous Substances.

It is proposed, where required, to change this terminology to align with GHS terminology.

Recognition of other labelling systems [draft regulation 150]

It is proposed to amend the AgVet labelling requirements at 4.1.10 to align with the WHS approach which is currently to allow for the Australian Pesticides and Veterinary Medicines Authority (APVMA) approved labels but require GHS hazard and precautionary statements.

Part 4.2 – Scheduled Carcinogenic Substances

The key change proposed for the Scheduled Carcinogenic Substances regulations is in relation to:

Regulation 4.2.3 – Requirement to hold carcinogens licence [draft regulation 174]

It is proposed to clarify that the exemption at 4.2.3(4) is limited to suppliers who store these substances for short terms only before passing on to a customer.

This is to ensure the regulation clearly reflects the policy intent.
Part 4.3 – Asbestos

The key changes proposed for the Asbestos regulations are in relation to:

Regulation 4.3.19 – Application of Division and Regulation 4.3.34 – Application of Division [draft regulations 225 and 240]

Currently these regulations only apply to a workplace where there is fixed and installed asbestos present. This creates a regulatory gap in a scenario where they may be no fixed or installed asbestos present at the workplace but there may be other forms of asbestos such as asbestos contaminated soil or asbestos-contaminated dust (ACD).

It is proposed to apply Division 5 and Division 6 regardless of whether there is fixed and installed asbestos present in the workplace. This will ensure that all asbestos in the workplace is identified and the associated risks are appropriately managed.

Regulation 4.3.19 – Application of Division and Regulation 4.3.34 – Application of Division [draft regulation 225 and 240]

The duty to identify asbestos and prepare an asbestos register applies to all workplaces in Victoria regardless of the age of the building. Legislative prohibitions on the mining, manufacture, import and use of asbestos have progressively been introduced by States and Territories since the late 1980s, concluding with a national prohibition on the use of all asbestos since 31 December 2003.

It is proposed to allow a person to assume asbestos is not present if the building, structure, ship or plant was built or made on or after 31 December 2003 and no asbestos has been identified and asbestos is not likely to be present.

Regulation 4.3.49 – Provision of information about proposed asbestos removal work and Regulation 4.3.90 – Employers in immediate and adjacent areas to be informed [draft regulation 301]

Division 7 of the Asbestos regulations requires duty holders to inform others that asbestos removal work will be undertaken. These duties apply to both non-licensed and licensed removal.

In regards to non-licensed removal regulation 4.3.49 requires an employer or self-employed person to inform the person who commissioned the work that asbestos removal work will be performed. That informed person must then notify employers in immediate and adjacent areas before the removal takes place. Those informed employers then have to inform their employees before the work commences.

For licensed removal regulation 4.3.90 requires that a person who commissions removal work must, before the work, inform all employers in immediate and adjacent areas. Regulation 4.3.99 then requires that for all asbestos removal (licensed and non-licensed) an employer at a workplace must, before removal, inform employees in immediate and adjacent areas.

It appears that in relation to licensed removal, employers who have been informed are not required to notify their employees.

It is therefore proposed to introduce a requirement for licensed removal work that employers who have been informed of asbestos removal should inform their employees in immediate and adjacent areas.

It is also proposed to clarify that in the context of limited non-licenced removal work on a domestic premises the person who commissioned the work is the employer or self-employed for the purposes of informing others.

This will make it clear that occupiers of domestic premises do not have regulatory duties. A similar clarification is provided in relation to licensed removal and it is equally applicable in this scenario.

Regulations 4.3.59, 4.3.80 and 4.3.111 – Notice of medical practitioner

It is proposed to remove the requirement to notify WorkSafe of the name and contact details of registered medical practitioners engaged to undertake medical examinations.

Under the OHS Regulations, employers undertaking asbestos removal work are required to provide WorkSafe with the name and contact details of registered medical practitioners engaged to undertake medical examinations.

As WorkSafe can obtain the details of these medical practitioners through other channels, the process of the employer providing the details to WorkSafe is no longer required.

Equivalent provisions in the Mines and Lead Parts of the OHS Regulations were repealed in the OHS Amendment Regulations 2014.
Division 7 – Removal of asbestos

Dangerous Goods Order 2007

It is proposed that the content of the current Dangerous Goods Order 2007 (DG Order) be incorporated into the regulations.

This means that the regulations will be extended to regulate the removal of asbestos that is not fixed or installed, including ACD.

There are multiple changes throughout Part 4 which give effect to this change.

Removal by a Class B licence holder

Class B removalists are currently restricted under the DG Order from removing non-friable asbestos that is not fixed or installed, despite being able to remove unlimited amounts of fixed or installed non-friable asbestos.

By incorporating the DG Order into the OHS Regulations, and given that the same method of removal and risk control would be used for non-friable asbestos that is not fixed or installed, it is proposed that Class B asbestos removal licence holders be enabled to remove all non-friable asbestos under the OHS Regulations regardless of whether the asbestos is fixed or installed, or not fixed or installed.

In relation to the removal of ACD not associated with the removal of non-friable asbestos, it is proposed to incorporate the requirements outlined in DG Order, which are considered to be proportionate to risk.

This allows Class B removal of ACD:

- If the removal of ACD does not exceed 10 minutes in total, and in a cumulative sense does not exceed one hour in seven days, or
- Where an independent person determines that airborne asbestos fibre levels are likely to be less than one half of the asbestos exposure standard.

Regulation 4.3.61 – Persons not to perform asbestos removal work unless licensed [draft regulation 265]

It is proposed to allow a Class A licence holder to engage an independent contractor who operates an excavator provided the independent contractor is supervised by the licence holder and the asbestos removal supervisor.

Under regulation 4.3.61(1)(b), persons undertaking licensed asbestos removal work must be an employee of a licence holder to perform that asbestos removal work. There are situations where this regulation has made it difficult to undertake certain types of asbestos removal work where the licensed removalist has needed to engage a subcontractor to assist, such as engaging an excavator operator to assist with the demolition of a building which contains asbestos.

The proposed change will enable Class A licence holders to access excavator operator services where necessary from time to time to undertake asbestos removal work. The regulation protects health and safety by ensuring that the independent contractor is appropriately supervised.

Schedule 7 – Asbestos – Information required to be included in an asbestos control plan [draft schedule Schedule 12]

Given the proposal to allow independent contractors (excavator operators only) to perform asbestos removal work for a Class A licenced asbestos removalist, it is proposed to require the control plan to include the name of any independent contractors engaged.

Schedule 8 – Asbestos – Information required to be included in a notification of asbestos removal work [draft schedule Schedule 13]

It is proposed to:

- remove item 12 (details of training and experience of individual employees) and item 13 (date of asbestos register) as this information can be obtained through citing training records and the asbestos control plan
- include ACD in item 7 (whether the asbestos is friable or non-friable) given incorporation of the DG Order
- include the number of contractors in item 11 (number of employees) given the proposal to allow independent contractors (excavator operators only) to perform asbestos removal work.
- require the name of the independent person who determined that airborne asbestos fibre levels are likely to be less than one half of the exposure standard.
Summary of changes proposed to OHS Regulations

Part 4.4 – Lead
The key changes proposed for the Lead regulations are in relation to:

1.1.5 – Blood lead level definition [draft regulation 5]
It is proposed to amend the blood lead level definition to display the concentration of lead expressed in both µg/dL (micrograms per decilitre) and umol/L (micromoles per litre).

4.4.5(2) – Medical examinations and biological monitoring [draft regulation 181(2)]
It is proposed to remove the requirement for haematocrit correction during biological monitoring of lead.
This is a minor change to remove unnecessary prescription and allow reporting in accordance with standard practices and in a way that is consistent with other states and territories.

Part 5.1 – Construction
The key changes proposed for the Construction regulations are in relation to:

Changes to terminology regarding construction induction requirements
It is proposed to remove references to ‘registration’ in relation to the construction induction training requirements and to make changes to ensure that the provisions refer directly to the requirement to undertake construction induction training and to hold a ‘construction induction training card’ (CI card) evidencing that training has been undertaken.
This is expected to result in improved safety because it will focus duty holders on the importance of undertaking construction induction training which provides training on key hazards and risk on the construction sites.

Regulation 5.1.6 – Self-employed person to have the same duties as an employer
It is proposed to remove the provision which specifies that self-employed persons have the same duties as an employer.
Self-employed person will now be specifically referenced in any regulation where a self-employed person has a duty and where such a duty is required to be compliant with the OHS Act.

Emergency procedures [draft regulation 331]
It is proposed to include a new regulation which requires employers and self-employed persons to develop emergency procedures if there is a risk of a person becoming engulfed by soil or other material when construction work is being performed.
Part 5.2 – Major Hazard Facilities

The key changes proposed to the Major Hazard Facilities regulations are in relation to:

Regulation 5.2.5 – Safety Management System [draft regulation 372]

This regulation sets out the core content required in a Safety Management System (SMS) and specifies it must also include the matters in Schedule 10.

To improve readability, it is proposed to consolidate all the SMS content requirements together in Schedule 10.

Regulation 5.2.9 – Emergency plan [draft regulation 375]

This regulation specifies that Major Hazard Facility (MHF) operators must prepare emergency plans in conjunction with emergency services responsible for the area where the MHF is located and, in relation to the off-site consequences of a major incident, municipal councils in the area occupied by the local community.

While there is a duty to provide a copy of the plan to consulted emergency services, there is currently no requirement to provide any part of the plan to relevant municipal councils.

To enable municipal councils to be prepared, and respond more quickly in the event of a major incident, it is proposed to add a new requirement to provide municipal councils in the area occupied by the local community, with a copy of the parts of the emergency plan relevant to the off-site consequences of a major incident.

Regulation 5.2.12 – Content of Safety Case [draft regulation 379]

This regulation sets out core information that a Safety Case must contain, as well as matters the Safety Case must be able to demonstrate. It specifies that a Safety Case must also include all the information specified in Schedule 12.

To improve readability, it is proposed to consolidate all necessary Safety Case content requirements together in Schedule 12.

Regulation 5.2.17 – Review of Safety Case [draft regulation 387]

An operator of an MHF must review and revise the Safety Case in response to specified triggers. As soon as reasonably possible after any revision, the operator must provide a full copy of the revised Safety Case to WorkSafe.

To provide operators with more flexibility, it is proposed to allow them to provide WorkSafe with details of the changes made to the Safety Case, rather than the entire revised Safety Case. An operator could still provide the entire revised Safety Case by choice, and would be required to do so upon a request by WorkSafe.

Regulation 5.2.27 – Operators of certain facilities to notify Authority [draft regulation 360]

This regulation requires an operator of a facility at which Schedule 9 materials are present (or likely to be present) in a quantity exceeding 10 per cent of their threshold but less than their threshold to notify WorkSafe.

Under the current provision a facility holding materials at or above threshold is not technically required to notify WorkSafe of this fact, although if holding materials above threshold it would have to be registered or licensed in order to operate.

To address this anomaly it is proposed to amend 5.2.27 to require a facility operator to notify WorkSafe where materials are present in a quantity exceeding 10 per cent of their threshold. This would simplify notification requirements and ensure that there is no gap in coverage of the regulations.

Schedule 9 – Materials at Major Hazard Facilities (and their thresholds) [draft Schedule 14]

The term 'major hazard facility' is defined by reference to the hazardous materials and thresholds set out in Schedule 9. As such, the content of Schedule 9 defines the scope of Part 5.2.

For this reason it is important that materials and threshold quantities described in Schedule 9 reflect the current state of knowledge around risk associated with the mass storage of hazardous materials.

It is proposed to update Schedule 9 to ensure current state of knowledge around MHF risks is reflected in the regulations.
Summary of changes proposed to OHS Regulations

Schedule 11 – Matters to be included in Emergency Plan [draft Schedule 14]

Schedule 11 specifies matters that must be included in an emergency plan prepared for an MHF.

A change is proposed to insert an express requirement that an MHF operator consider the protection of emergency services personnel when preparing an emergency plan.

The proposed change is intended to ensure that the potential impact of a major incident on first responders is planned for as part of the preparation and implementation of the facilities’ emergency plan.

Schedule 12 – Additional matters to be included in Safety Case [draft Schedule 17]

Schedule 12 specifies matters that must be included in a Safety Case prepared for a MHF.

The following policy changes are proposed to Schedule 12:

- To amend clause 2.2 to remove the need for demographic information for the local community to be presented graphically. This would allow more flexibility as to how operators could provide this information.
- To add a new requirement at clause 2.3 to provide seismic data where relevant to the risk of a major incident at a MHF. The likelihood and consequence of a major incident may be affected by the type and nature of any seismic activity posing a risk and it is therefore useful to have this data included in a Safety Case where it is relevant.
- To expand clause 8 to require a summary of any notifiable incidents (ie incidents that require notification to WorkSafe under Part 5 of the OHS Act) that have occurred at the MHF in the last five years, in addition to major incidents. This is intended to ensure that operators address hazards and risks highlighted by previous incidents, including those that may not fall within the definition of a ‘major incident’.

Part 5.3 – Mines

The key changes proposed for the Mines regulations are in relation to:

Regulation 5.3.2 – What is a mining hazard? [draft regulation 400]

It is proposed to consolidate the list of mining hazards to align with the WHS terminology for principal mining hazards and to retain the remaining mining-hazards types.

Regulation 5.3.11 – Who may enter mine? [draft regulation 408]

It is proposed to introduce flexibility for young workers by allowing:

- an apprentice or trainee over 16 years but under 18 years to work in an underground mine if they are under direct supervision (direct supervision will be defined)
- a person under the age of 16 years to work at the mine but not to carry out work in any open cut workings or in an underground mine.

Regulation 5.3.18 – Communication in the event of an employee working alone [draft regulation 415]

It is proposed to amend the current duty that all mining operators must ensure, so far as is reasonably practicable, that there are available means for ‘constant communication’ with an employee who is working alone at an isolated location at a mine, so that the operator must instead provide an ‘effective’ means of communication.

The aim of this proposal is to improve the flexibility and risk proportionality of communicate requirements in mines.

Regulation 5.3.30 – Working environment [draft regulation 429]

It is proposed to amend the requirement that mining operators ensure air is maintained at a safe level ‘throughout the mine’ to only ‘areas in the mine in which persons work or travel’.

Regulation 5.3.34 – Emergency plan [draft regulation 433]

It is proposed to amend this regulation to require the operator of a prescribed mine to provide relevant parts of the emergency plan to municipal councils.

This is intended to improve safety standards by assisting municipal councils to be prepared, and respond more quickly, in the event of an incident affecting the health or safety of people in the area surrounding a mine.
Part 6.1 – Licences and Part 6.2 – Registration

The key changes proposed to the Licences and Registration regulations are in relation to:

**Regulation 6.1.1 – Matters to be included in licence applications** [draft regulation 449]

It is proposed to remove the mechanism for conversion of expired old certificates (ie certificate of competency and old style certificates issued under former legislation) to current high risk work licences at regulation 6.1.1(2).

The existing OHS Regulations replaced certificates of competency with high risk work licences in 2007 and provided for the phased expiry of all old certificates by 30 June 2012.

The proposed change will therefore close a 10 year transition period for the conversion of old certificates to high risk work licences.

**Regulation 6.1.9 – Additional information to be included in (high risk work) licence applications** [draft regulation 458]

It is proposed to amend regulation 6.1.9(b) to require an application for a high risk work licence to include a notice of assessment (satisfactory) and remove references to statement of attainment.

Only a notice of assessment (satisfactory) will be recognised as evidence of a person’s competency in a licence application.

**Regulation 6.1.13 – Additional information to be included in (asbestos removal) licence application** [draft regulation 462]

It is proposed to broaden the required information in an application for an asbestos removal licence by amending regulation 6.1.13 to require a declaration as to whether or not the applicant has ever been found guilty of an offence under specified Environment Protection laws, where the offence relates to the transport or disposal of asbestos.

Such findings of guilt are relevant information for WorkSafe’s consideration of asbestos removal licence applications because the safe transport and disposal of asbestos waste is of direct relevance to asbestos removal work.

**Regulation 6.1.24 – Authority may impose terms and conditions on licences** [draft regulation 473]

It is proposed to amend regulation 6.1.24 to make explicit the ability for WorkSafe to impose terms and conditions on a major hazard facility licence when a licence is transferred to another operator.

The regulations are currently unclear about this matter and the proposal will improve transparency.

Part 6.2 – Division 4 – Registration to perform construction work

It is proposed to remove regulations concerning registration to perform construction work from Part 6.2.

The requirement to be registered will be discontinued but under proposed changes to Part 5.1 – Construction, workers will still be required to complete construction induction training and hold a construction induction card (subject to exceptions which have remained unchanged).

Part 7.2 Exemptions

The key change proposed to the Exemption regulations are in relation to:

**Regulation 7.2.10 – Notice of exemptions to be given to individual applicants, Regulation 7.2.13 – Notice of refusal and Regulation and 7.2.14 – Variation or revocation of exemption** [draft regulation 546, 549 and 550]

It is proposed to amend these regulations to ensure WorkSafe provides the required document within 14 days.

Further information

For further information contact the WorkSafe Advisory Service on 1800 136 089 or by email at: ohsregsreform@worksafe.vic.gov.au.

Further information is also available on the WorkSafe website: worksafe.vic.gov.au.