WHS Regulations submission coversheet

Section 1: Submission details

Full name	Northern Star Resources Limited
Organisation and position (if applicable)	
Email	[redacted]
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Employment status (if applicable)	☐ Worker ☐ Employer ☐ Self-employed ☐ Principal contractor ☐ Contractor ☐ OSH professional ☐ Other (enter details)
Size of workplace	☐ Small (0-9) ☐ Medium (20-199) ☒ Large (200+)
Please indicate in what capacity you are making this submission (select one of the following categories)	☐ Individual ☒ Business ☐ Community organisation ☐ Employer organisation ☐ Industry representative ☐ Academic ☐ Government representative ☐ Professional ☐ Other (enter details)
Which industry sector do you operate in?	Gold Mining and production
Your type of job or business (if applicable)	

Section 1: Permission details

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Three-Tiered Legislative Framework				
#	**Subject**	**Recommendation**	**Issue**	**Comment**
1	Three-Tiered Legislative Framework	Northern Star Resources Limited (**NSR**) recommends that: • there is a separate set of mining safety regulations that contain all of the obligations that apply to mine sites which are not too prescriptive with a view to allowing the mining industry to transition to a safety case regime[1] over time; and • the regulator has created guidance notes setting out how mining companies may elect to manage the more common risks.	Having multiple regulations that are overly prescriptive is likely to: • cause confusion and give rise to the potential to negatively impact safety; • add to compliance costs; and • make it more difficult for mining companies to transition to a safety case regime (and thereby lose the added safety benefits usually associated with that regime being applied).	NSR is concerned that difficulties may arise if it has to navigate through three tiers of Workplace Health and Safety laws to select the aspects that specifically apply to it. This will add to costs and increases the risk of confusion where there are examples of inconsistencies between the regulations, for example: • identifying hazards: ○ Rule 34 of the WHS (General) Regulations imposes a duty to identify hazards; ○ M33 of the WHS (Mining) Regulations imposes a duty to identify principal mining hazards; • inspections: ○ Regulation 235(4)-(5) of the WHS (General) Regulations regulates the requirements for major inspections of registered mobile cranes and tower cranes; ○ Regulation 46 of the WHS (Mining) regulates the requirements for inspections of the working environment of the mine; and • see number 6 and 9 below regarding duplications with definitions of "electrical work" and "dangerous goods". Given Western Australia's (**WA**) status as a major mining state, NSR considers that the WA Government should take all the steps that it can to ensure it is made it as simple as possible for a mining company to understand what safety obligations apply to it. This would be achieved by having one set of mining regulations which contain all of the regulatory requirements applicable to mining operations. NSR notes that in Queensland (**Qld**) (a major mining state which has harmonised its health and safety laws), mining operations are excluded from the application of the general Work Health and Safety Regulations, and are instead legislated under their own regulations

[1] Safety case regime is a regime whereby legislation sets broad safety objectives and the operator who accepts direct responsibility for the ongoing management of safety, develops the most appropriate methods to achieve those objectives.

Three-Tiered Legislative Framework				
#	**Subject**	**Recommendation**	**Issue**	**Comment**
				dedicated to mine sites. NSR considers the framework adopted in Qld is far more appropriate for adoption in WA. NSR considers that having complete mining specific regulations would be more likely to ensure safety compliance as there would be no confusion as to what obligations a company is required to comply with. NSR anticipates that having multiple regulations will cause confusion as to what is required where there is apparent duplication or inconsistency between the obligations. To allow mining companies the flexibility to adopt safety improvements as they develop and to have world's best practice safety, NSR considers it would be more appropriate for mining companies to be subject to one complete set of higher level regulations requiring them to properly manage risks, with the regulator's guidance notes which can be considered and adopted as appropriate to the site. It is difficult to estimate the time, risk and costs involved in having to comply with two sets of regulations. These costs would be significantly added to in the event that a prosecution were to arise due to a mining company mistakenly following the wrong regulatory requirement as a result of confusion as to what obligation it is required to comply with. NSR is concerned that having too much prescription in the regulations applicable to mine sites will make it more difficult for the industry to operate their mine sites using the safety case regime. It is more beneficial to the State if companies operate on the basis that they are responsible for identifying and managing their own hazards using the controls set out in the safety case and are regulated on that basis. Elements of the WHS (General) Regulations will hinder this from occurring, as they are overly prescriptive. See NSR's comments on some proposed regulations below.

Work Health and Safety (General) Regulations				
#	Clause	Recommendation	Issue	Comment
2	R6.32 of the OSH Regulations	NSR recommends that: • the requirements of Regulation 6.32 of the *Occupational Safety and Health Regulations* (**OSH Regulations**) should be retained.	NSR considers that removing this Regulation is likely to: • increase the costs of compliance with High Risk Work Licensing (**HRWL**) compliance; • increase the administrative tasks required to be undertaken by mine operators; and • potentially have a negative impact upon safety in WA.	NSR is concerned that removing Regulation 6.32 of the current OSH Regulations will lead to additional operational and administrative tasks that will increase a company's compliance costs. Currently, a Registered Training Organisation (**RTO**) must retain all records relating to the training and assessment of the person for 5 years after the assessment is made. This allows mine operators to liaise with the RTO quickly and easily to verify a HRWL is valid and up to date before any work is undertaken. Removing this Regulation and the requirement of the RTO to retain HRWL training and assessment records will potentially cause increased compliance costs for mine operators (e.g. additional time taken to verify HRWL) and may lead to incomplete training records being available. The mine operator will either have to: • rely on the worker to provide the information where a mine operator engages a worker after they have obtained their HRWL. This means that they may only be able to provide a certificate and not copies of their answers to the training questions which may be required by a company to fully assess the competency of a person to work on its site. This means that companies may potentially be unable to access all required records or will have to incur additional costs for providing potentially unnecessary additional training to individuals; or • correspond with an RTO it arranges training with to get it to provide it with copies of all worker records. NSR will then have to organise an effective filing method for those documents, which it has not had to do before. This would create additional administrative tasks, which takes time and will also add to costs, which will take away funds that may otherwise have been available to improve safety. Removing this Regulation increases the risk of a worker being able to exploit the system and work without a valid HRWL. NSR is aware that there has historically been issues with workers not having HRWL's and providing '*fake'* HRWL. Whilst NSR will carefully check the HRWL's of a person working on its site, it recognises that other employers may not always be so careful. The risk of a safety breach is significantly increased if the people working on site do not have the appropriate HRWL in place. This Regulation is one of the steps which assists

Work Health and Safety (General) Regulations				
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				mine operators in verifying HRWL's and preventing this from occurring. Having RTO's retain records is an important part of the audit process of HRWL's. NRS notes that in the 2016 Work Health and Safety Regulations for WA Discussion Paper, it was the intention that the requirements of Regulation 6.32 of the OSH Regulations be retained the records. NSR considers that this obligation on RTO's should be maintained. NSR submits that preserving this Regulation will assist companies with the auditing process of HRWL holders and prevent additional and unnecessary work having to be carried out, while also ensuring that workers have the appropriate HRWL which allows them to work safely on the mine site. This Regulation promotes safety on the mine site and its removal could lead to difficulties in obtaining accurate records, which would ultimately have a negative impact on safety on mine sites.
3	R38(4), R401(1)(g), and R401(3)	NSR recommends that Sub-Regulations: • 38(4); • 401(1); and • 401(3), should be removed and replaced with a clause that instead requires regular consultation between the HSR and the company and which acknowledges that such consultation may require HSR to be provided with management plans.	NSR is concerned that the proposed expansion of HSR powers is not the most effective means of improving safety and the way companies interact with HSRs.	NSR is concerned that extending HSR powers to allow access to review control measures, including wherever a provision requires a risk assessment will not necessarily support and assist the mine operator to achieve a best-practice workplace health and safety. NSR considers that having regular consultation between the HSR and the safety team of the mine site would achieve the best workplace health and safety outcomes consistently across the mine site for safety issues of the HSR's concern. NSR also considers that a requirement for genuine consultation should take place (but not necessarily agreement to be reached) to lead the company to better safety outcomes. Extending HSR powers to include having access to review control measures, or specifically asbestos control measures. upon request will not necessarily achieve best-practice work health and safety. This is often achieved through consultation with workers from a diverse range of skills and experience in working on safety procedures. If a HSR has a safety concern, NSR encourages them to reach out and consult with it and it accepts that for some successful consultations to take place, reviewing control measures may need to occur.

Work Health and Safety (General) Regulations				
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				NSR is concerned that the currently proposed sub-Regulations have the potential to result in an administrative burden that may not be necessary when proper consultation takes place and may be a cost that is incurred without any potential improvement to safety. NSR considers, that to enable HSRs to be put in a position to be better able to add to workplace safety, the regulatory requirement should require PCBUs to engage in genuine consultation (but not necessarily reach agreement) and acknowledge that such consultation may require the provision of some control measures to be reviewed rather than to include a provision which authorises a HSR to have access to control measures, or asbestos control measures as they see fit.
4	R58	NSR recommends that: • having less prescriptive requirements will be less burdensome on mine sites whist still; and • the requirement for audiometric testing is captured in the *Mine Safety and Inspection Regulations 1995* (WA) (**MSI Regulations**), and businesses should be trusted to do the right thing.	The prescriptive requirements on audiometric testing will pose operational difficulties and unnecessary costs without necessarily adding to the "safety" of the workplace.	NSR is concerned that the requirement of audiometric testing of noise on all workers who use hearing protective equipment will have significant cost implications, particularly for a mine site where the majority of its workers use hearing protective equipment without any clear demonstrated improvement in safety for workers. NSR considers that the current provisions in the MSI Regulations provide sufficient protection to workers and allows audiometric testing to be undertaken in circumstances where, for example, the worker is exposed to noise at work which may have an adverse effect on the worker's health and hearing and those requirements should be retained. In this regard, the MSI Regulations currently: • provide for health surveillance of workers exposed to health hazards, meaning that audiometric testing may form part of a health assessment under rule 3.27(1) of the MSI Regulations, in respect of a worker who engages in specified occupational exposure work at the mine if (a) there is an identifiable disease or other adverse effect on health if the worker; and (b) there is a reasonable likelihood that the disease or adverse effect may occur under the particular conditions at work; and (c) there are recognised techniques for detecting indications of the disease or adverse effect; and • permit the State Mining Engineer to require any additional health monitoring under rule 3.27(2) of the MSI Regulations. In the USA, the Occupational Safety and Health Administration (**OSHA**) and the Department of Energy (**DOE**) regulations require an employer to establish a Hearing Conservation

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				Program (**HCP**) and annual audiometric testing when a worker is exposed to noise over 85 decibels over an 8 hour time weighted average. In establishing this regulation, research has been conducted to study noise exposure and response in terms of hearing loss. Research has identified that noise above 85 decibels may cause damage, as provided by the National Institute of Deafness and other Communication Disorders in the USA. The Department of Mines, Industry, Regulation and Safety (**DMIRS**) guidance notes on the management of noise for WA mining operations to refer to, which supports the research from the USA: *"It is widely accepted that, in order for a noise level to be acceptable (although not necessarily "safe")… should be not more than 85 dB…at the receiver's ears. Workplace noise levels below 85 dB(A) are therefore desirable"*. NSR believes that if changes are made to the current provisions contained in the MSI Regulations, then the requirement for audiometric testing should only be imposed on workers exposed to noise above 85 decibels (being the level at which damage may be caused) rather than all workers who "frequently use protective equipment to protect them from the risk of hearing loss associated with noise". NSR uses hearing protective equipment on all workers who are exposed to noise at any level, which includes very low level noise that according to scientific research does not cause hearing damage. It does this despite there being no science to demonstrate a need for hearing protection when workers are exposed to level of noise below 85 decibels on a constant basis over 8 hour shifts. NSR considers that it may be effectively penalised for having such a proactive safety policy by having to incur more costs than many companies if the audiometric testing provisions are introduced as currently proposed. Audiometric testing is also problematic in that it cannot identify and distinguish the cause of the hearing loss. For instance, a mining operator may be providing very effective hearing protection, but a worker may be undertaking activities which damage their hearing outside of work such as listening to loud music via earphones or attending lots of concerts. Given this risk NRS consider that it should only be required to test and potentially be required to take steps for workers who are exposed to noise above 85 decibels.

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				Costs Proposed Regulation 58 requires all workers who wear hearing protection (regardless of their exposure to noise) to undertake audiometric testing, which has significant cost implications. Audiometric testing can require up to 16 hours of quiet time prior to the test. This will result in an increase in costs arising from lost work time (e.g. 16 hours of quiet time before the test and attendance at test) in addition to the cost of the audiometric testing for each worker who uses hearing protection. NSR is concerned that there are significant costs associated with the proposed audiometric testing requirements without any clear demonstrated improvement in safety and with no clear science demonstrating a likely impact on hearing where noise exposure is below 85 decibels. **Level of Prescriptiveness** NSR submits that imposing such a prescriptive Regulation may also have a negative impact on safety. Whilst it would not be the case for NSR, such a regulation may give rise to a potential for companies to focus on paper compliance and to not introduce new technology that may add to the number of people who use hearing protection on a site due the associated additional costs of audiometric testing. **Practicality of implementation** Further, there are also likely to be difficulties associated with having the testing set up, as experienced in New South Wales which led to a 4 year extension for a similar Regulation. **Summary** NSR submits that the MSI Regulations and guidance notes provided by the DMIRS together with the current provisions in the MSI Regulations are sufficient legislation and guidance to ensure workers on mine sites who are exposed to noise which may have an adverse effect on their health have their hearing tested and considers the current requirements should be retained. NSR considers it unlikely that any major company would be able to keep up with this requirement and the associated costs. The cost of this requirement should go instead towards developing solutions for reducing machinery noise.

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5	R70, R74-R75	NSR recommends that: • Regulations 70, 74 and 75 are too prescriptive and should be removed and dealt with under guidance material	NSR is concerned that including overly prescriptive requirements is likely to: • impose significant operational burden on businesses; • increase compliance costs; and • make it more difficult for mining companies to transition to a safety case regime (and thereby loose the added safety benefits usually associated with that regime being applied).	NSR is concerned that having too much prescription in the regulations applicable to mine sites will make it more difficult for the industry to operate their mine sites using the safety case regime. It is more beneficial to the State if companies operate on the basis that they are responsible for identifying and managing their own hazards using the controls set out in the safety case and are regulated on that basis. There is an Australian Standard with respect to confined spaces and a DMIRS guidance note on operating in confined spaces. Companies are required to manage the risks of confined spaces to a reasonably practicable level under its general duty of care and with the clear guidance available NRS does not consider a level of prescription that could inhibit its ability to move to a safety case regime is either required or justified. To allow mining companies the flexibility to adopt safety improvements as they develop and to have world's best practice safety, NSR considers it would be more appropriate for the regulations to contain general obligations and the current guidance materials to remain in place.
6	R144, R146 and R157	NSR recommends that: • the existing definitions in the Electricity Regulations are retained; and • some additional examples should be added into Regulation 157 clarify that electrical equipment is permitted to be worked on live if it is necessary	NSR is concerned that: • having regulations which contain duplication is likely to create confusion in assessing which legislation takes precedence; and • the exemptions to the live electrical work are nonspecific, and this has a risk of causing	NSR is concerned that the proposed Regulations 144 to 146 include terms that are duplications of the terms and definitions within the Electricity Regulations. For example: "**Electrical work**" is defined in rule 4A of the Electricity Regulations to mean: • *work on electrical machines, instruments, installations, appliances or equipment to which electricity is supplied or intended to be supplied at a nominal pressure exceeding 50 volts alternating current or 120 volts ripple free direct current; and*

Work Health and Safety (General) Regulations				
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		for testing, servicing and commissioning of the equipment.	work that would be best undertaken on live equipment to be done without the equipment energised and this may lead to less safe electrical equipment being used in the workplace.	• *work comprising an assessment of an electrical installation to ensure that the installation of any work done on the installation complies with the requirements of these regulations*. "**Electrical work**" is defined in the proposed Regulation 146 to mean: • *connecting electricity supply wiring to electrical equipment or disconnecting electricity supply wiring from electrical equipment; or* • *installing, removing, adding, testing, replacing, repairing, altering or maintaining electrical equipment or an electrical installation.* NSR is concerned that the existence of both the Electricity Regulations and Regulation 146 which contains significant duplication and overlap is likely to cause confusion and misunderstanding as to which regulations apply. The potential confusion and misunderstanding will have a negative impact of safety. Implementing the proposed Regulations that duplicate the Electricity Regulations already in existence will cause confusion and increase compliance costs. Regulatory duplications can shift an employer's focus from improving safety in the workplace to dealing with paperwork and figuring out which definition to follow. NSR further notes that this could have significant cost implications in the event that a prosecution were to arise due to a mining company mistakenly following the wrong regulatory requirement as a result of confusion as to what obligation it is required to comply with. Further, NRS understands that EnergySafety has previously considered these provisions and advised that the definition of "electrical work" provided in Regulation 4A of the *Electrical (Licensing) Regulations 1991* was the appropriate definition to use in WA and that the adoption of the proposed definitions of "electrical equipment" and "electrical installation" from the model WHS Regulations would create inconsistencies with the electrical safety regime in WA. NSR submits that the definitions found in the Electricity Regulations are the appropriate definitions for electrical terminology, as companies are familiar with the terms and requirements of the Electricity Regulations.

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				The current Regulation 3.59B(5) of the OSH Regulations permits work to be done on live equipment where it is required for testing, serving or commissioning the appliance. The proposed new Regulation 157 contains the following exceptions: • "necessary in the interests of health and safety"; • necessary for the work to be carried out properly; • necessary for the purposes of testing under Regulation 155; and • no reasonable alternative means of carrying out the work. An example of what is "necessary in the interests of health and safety" is included - ie that lifesaving equipment is live whilst work is carried out on it. There are no other notes included in the exemptions. NSR considers that either a note indicating that necessary for the work to be carried out includes where it is necessary for the purposes of testing, fault finding, serving and commissioning in order to avoid any questions arising where qualified electricians are undertaking such work as to whether the work is permitted. This could be useful in order to avoid the potential of individuals looking for potentially less safe or less effective ways of testing of servicing equipment which could in result in less safe electrical equipment being used on site.
7	R235(4)-(5)	NSR recommends that: • R235(4)(a)(i) that requires a "**competent person**" who has *"acquired through training, qualification or experience the knowledge and skills to carry out a major*	NSR is concerned that requiring the crane inspector to be deemed as a "competent person" by the regulator and be a registered engineer will be inflexible and costly for mine sites.	The proposed Regulation 235(4)-(5) requires the person conducting the crane inspections to be both a competent person and a registered engineer to conduct crane inspections. NSR is concerned that this proposed Regulation will significantly limit the amount of eligible inspectors to undertake this work, particularly in remote areas and may not achieve its objective to improve safety. A **'competent person'** is qualified to undertake a crane inspection and may have significant experience. However, unless they are a registered engineer they will not be eligible to undertake the work under the proposed regulations. In NSR's experience, engineers with relevant qualifications may not always be readily available to attend remote sites. NSR submits that the engineer qualification should not be a requirement. As an alternative , an

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		inspection of the plant" should be preserved; and • R235(4)(a)(ii) that requires the "**competent person**" to also be *"registered under a law that provides for the registration of professional engineers"* should be removed in its entirety.		indication of the competent person's expected knowledge/experience for cranes inspections would be more important and useful. The additional requirement for a registered engineer is difficult to implement and ensure compliance. In WA there is no law that provides for the registration of professional engineers. As such, it would be difficult to identify the appropriate competent person and to ensure compliance with this proposed Regulation. NSR believe that inspections should be able to be conducted by competent persons, but there should not also be a requirement that they have to be an engineer.
8	R306(4)	NSR recommends that Regulation 306(4) should be amended to require a "**competent person"** who has "acquired through training, qualification or experience the knowledge and skills to carry out the task", rather than restricting this Regulation to a geotechnical engineer.	NSR is concerned that specifically requiring a geotechnical engineer to ensure the sides of a trench are safe from collapse is inflexible and costly for mine sites.	NSR is concerned that restricting Regulation 306(4) to require a geotechnical engineer to ensure the sides of a trench are safe from collapse does not address the competence of the geotechnical engineer. If there is no *"competent person"* requirement, there is a risk that a situation arises where a person may be a geotechnical engineer but have no experience of a mine site and/or the task. This in itself possesses a safety risk. The specific requirement for a geotechnical engineer limits the number of people that are qualified to undertake the task, and ensuring that they are experienced (although this is not required by the proposed Regulation) narrows the number of people further. This can be anticipated to increase the costs of compliance while making it more difficult to source the appropriate person to undertake the task, which is not necessarily improving safety. NSR believe that replacing the requirement for a "geotechnical engineer" to a "competent person" will help improve workplace health and safety by acknowledging experience over qualification. Requiring a geotechnical engineer to assess sides of trenches is a disproportionately high qualification for the task. Instead, providing a framework around the qualifications required for a competent person to assess the trenches would be more appropriate.
9	R360 and R362	NSR recommends that: • the proposed Regulations in 360 and	NSR is concerned that having two regulations that are prescriptive is likely to:	NSR is concerned that there is a potential duplication between Regulations 73 and 74 of the Dangerous Goods Regulations and Regulations 360 and 362 of the proposed WHS Regulations. Both the Dangerous Goods Regulations and the proposed WHS Regulations

Work Health and Safety (General) Regulations				
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		362 should not be implemented; and • the proposed Regulations 360 and 362 should refer to sections 73 and 74 of the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations* (**Dangerous Goods Regulations**).	• cause confusion and give rise to the potential to negatively impact safety; and • add to compliance costs.	require a PCBU to ensure that emergency and safety equipment is readily available at a workplace that deals with hazardous chemicals. This duplication is likely to cause confusion for companies in understanding which Regulations will apply. This creates administrative difficulties and unnecessary costs for businesses interpreting regulations and increases the risk that the Regulations will not be applied correctly. NSR considers that these Regulations are not required as the obligations are already set out in the Dangerous Goods legislation. Considering system duplication requires an increased effort to meet regulatory requirements that result in essentially the same WHS goal. While it is crucial to focus on WHS standards, imposing unnecessary burdens on businesses can reduce productivity and flexibility and impact on safety. NSR notes that the existence of duplications in regulations could lead to significant cost implications in the event that a prosecution were to arise due to a mining company mistakenly following the wrong regulatory requirement as a result of confusion as to what obligation it is required to comply with. Regulatory duplications can shift an employer's focus from improving safety in the workplace to dealing with paperwork and figuring out which definition to follow. NSR considers the definitions found in the Dangerous Goods Regulations as the appropriate regulations for legislating the requirement to have safety materials available in workplaces where hazardous materials are present, as companies are familiar with the terms and requirements.
10	R376	NSR recommends that: • the duty to provide a copy of the health monitoring report to the regulator should remain the duty of the medical practitioner rather than the person conducting a business	NSR is concerned that imposing a duty on a PCBU to provide the health monitoring reports of the workers to the Regulator, rather than the medical practitioner, may create privacy and	NSR is concerned that the privacy and confidentiality issues that arise from proposed Regulation 376 may hinder safety rather than improve it. For example, requiring the PCBU to provide health monitoring reports rather than a medical practitioner may prevent workers from disclosing certain medical issues that ought to be disclosed due to their embarrassment or feelings of personal invasion by their employer. NSR believes retaining the duty to provide health monitoring reports to regulators will be more likely to ensure safety compliance as there would be more of an incentive for workers to disclose personal health concerns to a medical practitioner, knowing that the health report will

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		or undertaking (**PCBU**).	confidentiality concerns for workers.	be kept private and confidential (subject to any authority or consent to disclose) and not necessarily provided to their employer. Imposing this obligation on PCBU's will add to administrative burdens. Company's pay medical practitioners to assess the health of their workers, which includes issuing their findings to the regulator. By imposing this duty on the PCBU, the medical practitioner would have to issue each report to the employer who would then relay the reports to the regulator. NSR believes this is an unnecessary step and will not necessarily improve workplace health and safety. NSR recommend that the duty to provide a copy of the health monitoring report to the regulator should remain as the duty of the medical practitioner rather than the PCBU. It is suggested that the regulator should create a portal for medical practitioners to upload the results for a person on a health monitoring regime, provided the information is kept private and confidential.
11	R425	NSR recommends that: • asbestos registers should only be required for buildings constructed prior to 31 December 1990; and • the requirement to prepare the asbestos register should be the responsibility of the owner of the building.	The extension of the timeframe for which asbestos registers are required to 31 December 2003 does not recognise the ban on the use of asbestos materials that has been in place in WA since 31 December 1990. NSR is concerned that imposing a requirement on each PCBU in the workplace does not recognise the likely duplications that may arise for rented premises	NSR is concerned that imposing the responsibility to prepare an asbestos register on the tenant of a building if the building was constructed prior to 31 December 2003 is unreasonable and would create additional administrative and cost burdens on companies. Sub-Regulation 425(6)(a) provides an exemption to the requirement to prepare an asbestos register for buildings constructed after 31 December 2003, being the date that the Australia-wide ban on the import, manufacture and use of all types of asbestos and asbestos containing material took effect. NSR notes that the use of asbestos construction material has been banned in WA since 31 December 1990, so there does not appear to be a need for the obligation to be extended to require the assessment done on buildings built after that date and prior to the Australia wide ban. NSR considers it would be more practicable for the obligation to prepare the asbestos register to be imposed on the owner of the building rather than an employer. In this regard, where a premises is rented tenants will have to liaise with their landlord as to the date it was built and if there are multiple tenants in the building there would be duplication of work if each tenant had to obtain their own register. For instance, each tenant would use the lobby and lifts etc and require an assessment done of those areas. There would be no additional safety

Work Health and Safety (General) Regulations				
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			and potentially exposes more inspectors to risk.	benefit in having multiple assessments done. There is also likely to be a reduction in risk that only one set of persons inspecting the building are potentially exposed inspection risks. Placing the obligation on the building owner will also create duplications where tenants terminate their lease and the premises is subsequently leased to another company. It would be unreasonable to require the new company to prepare an asbestos register when one has already been conducted for the premises. NSR recommends the obligation to produce an asbestos register continues to be for buildings constructed prior to 31 December 1990 and be imposed on building owners.
12	R430(1)(d), R430(2)	NSR recommends that Subregulations 430(1)(d) and 430(2) be removed and replaced with a clause that instead requires regular consultation between the Health and Safety Representative (HSR) and the company and which acknowledge that such consultation may require HSR to be provided with management plans.	NSR is concerned that the proposed expansion of HSR powers is not the most effective means of improving a HSR's role in safety.	NSR is concerned that extending HSR powers to allow access to the asbestos management plan will not necessarily support and assist the mine operator to achieve a best-practice workplace health and safety. NSR's issue is not with access to the asbestos plan in particular (asbestos not being a significant issue on NSR sites) but more with the general principal about access to plans being prescribed. NSR considers that having regular consultation between the HSR and the safety team of the mine site would achieve the best workplace health and safety outcomes consistently across the mine site for safety issues of the HSR's concern, including asbestos management. NSR considers that a requirement for genuine consultation to take place (but not necessarily agreement to be reached) would lead to better safety outcomes. Focussing on specific plan access is not the same as focussing on workplace safety issues, which is the centre of the WHS Act and Regulations. Extending HSR powers to include having access to the asbestos management plan upon request will not necessarily achieve best-practice work health and safety. This is often achieved through consultation with workers from a diverse range of skills and experience in working on safety procedures. If a HSR has a safety concern, NSR encourages them to reach out and consult with it and it accepts that for some successful consultations to take place management plans may need to be provided. NSR is concerned that the currently proposed Sub-Regulation has the potential to result in an administrative burden for NSR that may not be necessary when proper consultation takes place and may be a cost that is incurred without any potential improvement to safety. NSR considers, that to enable HSRs to be put in a position to be better able to add to workplace

Work Health and Safety (General) Regulations				
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				safety, the regulatory requirement should require PCBUs to engage in genuine consultation (but not necessarily reach agreement) and acknowledge that such consultation may require the provision of some management plans rather than to include a provision which authorises a HSR to have access to one particular plan.
13	R497	NSR recommends that: • the WA local requirement for asbestos removalists should be removed to allow companies to source asbestos removalists from all states and territories in Australia.	NSR is concerned that Regulation 497 is too restrictive and inflexible.	Whilst asbestos is not a particular issue for NSR it is concerned that the proposed WA local restriction on asbestos removalists will prevent companies from seeking an asbestos removalist located interstate that is considered highly skilled and experienced in the particular type of asbestos removal. Proposed Regulation 497 may hinder safety rather than improve it, if it means forcing businesses to resort to a local removalist who's expertise may be limited as opposed to an interstate removalist. The enforcement of local restrictions will prevent companies from seeking the most qualified asbestos removalists. NSR believe that enforcement of this Regulation would be contrary to the purpose of the WHS Act and Regulations, which is to improve safety. Safety is paramount to NSR and careful consideration is given when sourcing workers who perform high-risk work. As such, restrictions that unjustifiably narrow the pool of options for NSR to consider is more likely to hinder workplace health and safety than improve it.

Work Health and Safety (Mines) Regulations				
#	**Clause**	**Recommendation**	**Issue**	**Comment**
14	M7, M8, M42	• For clarity, NSR recommends that: the definitions of "mine" and "mine site" should be amended to specifically exclude Remote Operation Centres (**ROC**).	NSR is concerned that the definition of a "mine" and a "mine site" does not clarify whether exclusions apply to ROCs.	NSR is concerned that leaving the definition of a "mine" and "mine site" without specifying the things that are excluded from the definition may lead to unintentional consequences such that a ROC located hundreds of kilometres away from the mine are considered to be part of the mine. This is because they are part of operating the mine and the definition includes the operations. NSR considers that the inclusion of a ROC as part of the mine will be problematic given the personal duties that are placed on individuals such as the Site Senior Executive (**SSE**) for the safety of access and egress to the mine and for daily inspections. It would be impractical for ROCs to be included as part of the SSE's responsibilities given the issues of distance. Given this, NSR considers changes are required to clarify that ROCs will not fall within the scope of the definition of a "mine" and "mine site". In this regard, NSR notes that there is current regulatory precedent for the inclusion of exemptions as to what is included in mine sites such as that contained in the MSI Regulations which clarifies that residential or recreational facilities that are not located on a mining tenement and directly associated with mining operations are excluded from the definition of "mining operations".
15	M23 - M27	NSR recommends that: • it is made clear that corporate MSMS can be developed by operators for use on more than one site.	NSR is concerned that: • it is unclear the extent to which parts of the MSMS may (for operators of multiple sites) be developed at a corporate level and applied across more than one sites.	NSR is concerned about the workplace health and safety implications that could arise if a separate MSMS is required for each mine site. Decentralisation of the MSMS could have repercussions on health and safety as it could give rise to confusion as to the requirements across different sites. NSR operates multiple mine sites and has invested significant resources in centralising policies and procedures to reduce confusion, particularly among contractors and workers working across more than one of NSR's mine operations. NSR centralises those MSMS processes that extend and are applicable to all sites whilst identifying site specific risks that require a site specific process, also cutting down on confusion for workers transitioning between sites, providing a common safety standard/interpretation and expected controls.

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				NSR believes that there is a lack of clarity in Regulations 23 - 27 regarding the extent to which parts of the MSMS may be developed at a corporate level and applied across sites in the interests of improving safety. NSR recommends it is made clear that MSMS may be developed at a corporate level to allow operators of multiple mine sites to retain a centralised MSMS that has been tailored to ensure greater safety across all of its operations and developed over a number of years.
16	M27A	NSR recommends that: • there should be a definition in Regulation 27A of "consultation" to ensure it requires consideration of view but not agreement or consensus.	NSR is concerned with the lack of clarity in this Regulation on the meaning of "consultation".	NSR supports consultation between mine operators and workers on the development, implementation and review of the MSMS, identifying hazards and conducting risk assessment for PHMP and preparing, testing and reviewing the emergency management plan. Clarity is needed on the meaning of "consultation" to ensure that the worker's views are taken into consideration, but there is not a need to obtain "agreement" of workers or the need to achieve the "consensus" of workers, or their representatives. Currently, there appears to a be a risk that industrial interests may be allowed to impede safety changes to the MSMS and this could be contrary to the interests of improving safety on the site. If duty holders are restricted in their ability to implement beneficial changes to the MSMS until full consensus is achieved it could negatively impact safety outcomes. As an example, it may not be possible to achieve consensus on changes to drug and alcohol testing, although these changes may have significant benefits to ensuring the health and safety of workers. In SafeWork Australia's Code of Practice on Consultation it is emphasised that consultation does not require that an agreement be reached on health and safety matters in order to comply with the duty to consult. It is the process of consulting that is prescribed by the law, rather than a particular end result. Compliance is achieved when a reasonable chance has been given by the duty holder to workers to participate in decisions that affect their health and safety. With a view to ensuring it is clear what is expected with respect to consultation, NSR recommends that this Regulation should be amended to include a definition of "consultation", which clarifies that it has to be genuine and requires employers to ensure that views are considered, but that "agreement" or "consensus" is not required as an end result.

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17	M29	NSR recommends that: • Regulation 29 should clarify that principals do not need to approve specialist contractors systems of work and that inclusion of specialist contractors' procedures in the MSMS is not taken as the principal approving the work process; and • it should be made clear that the principal has the right to determine if a contractor must following the principals procedure where the principal has a procedure that may cover how work is being done.	NSR is concerned that this proposed Regulation: • requires more clarity on where a contractor is undertaking specialist tasks which are outside the expertise of the mine operator such that a mine operator is not taken as approving the process of expert work is not qualified to undertake; and • does not reserve the decision to the mine operator as to whether a contractor will work under the mine operator's MSMS or under the contractor's own SMS when they both have procedures for undertaking types of work that are not identical and this has the potential to create real safety risks particularly at points of interface.	NSR is concerned that where a contractor is undertaking specialist tasks which are outside the expertise of the mine operator, the mine operator should not be put in a position where by including the specialist contractors' safety procedures in the MSMS that it is not required to approve the work methodology of the contractor. Where NSR does not have the expertise to undertake the work, it must rely on the expertise of the contractor to put in place safe work procedures. NSR can then only review the procedures to check for obvious issues. NSR notes that case law accepts the ability of principals to rely on the expertise of specialist contractors in the interests of ensuring best safety practices are in place. NSR considers that this Regulation should clarify that mining companies do not have to approve the work process of specialist contractors and that they are not taken to do so if the specialist contractors systems are included in the MSMS by reason of the requirements for one MSMS for the site. NSR recommends that Regulation 29 should be amended to allow the mine operator to review the specialist contractor's safety plan to ensure it fits with the mine's system, and to then reply on the specialist contractor to work out the appropriate work methodology and procedures for the specialist work and to use their expertise to ensure the safety of that work. In addition, NSR considers that when it is using contractors, the regulations need to clarify that it is up to a principal to determine whether a contractor may follow their own safety processes or should follow the mine's procedures where the work needs to be done in a manner such that there is an applicable mine safety procedure for the work, such as working at heights. In this regard, the biggest safety risks that arise when contractors come onto sites are the points of interface with the operating workforce and the contractors. For instance, a principal may need to insist that working a heights is managed using the site's procedure rather than the contractor's own procedure due to the potential points of interface with ongoing operations and the risks that using a system that the operations personnel are not familiar with could give rise to. Providing clarity that the principal has the right to make this determination would assist in avoiding potential uncertainty arising where there are differences in the principal's and contractor's procedures.

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18	M33 - M35	NSR recommends that: • Regulations 33 - 35 should be less prescriptive; and • mine operators should be allowed to continue to use DMIRS guidance notes in relation to PHMPs.	NSR is concerned that prescribing principal hazard will be inconsistent with the risk-based approach taken by the legislation.	NSR is concerned that having a regulation that requires a mine operator to cover certain principal hazards in all mines in their PHMP is too prescriptive and doesn't allow mine operators to appropriately deal with the principal hazards on its site. NSR considers that PHMP's should be individual to the situation of each site. NSR notes that DMIRS has developed guidance notes in relation to some principal hazards and considers that the use of those with flexibility to develop specific procedures for individual sites is the most appropriate way of regulating principal hazards. NSR believes that mine operators are well placed to identify the hazards at a mine and to appropriately assess risks that could arise from those hazards. Certain controls could then be implemented to adequately address those hazards using the mine operator's expertise, rather than prescribed material that may not address the hazard in a particular mine. NSR is also concerned that over prescription has the potential to limit its ability to move to towards managing its sites under safety cases - see its submission under 1 in this regard.
19	M36	NSR recommends that: • the requirement for a handover report to be in writing should be supported.	NSR believes that requiring a written report at shift changeover is to be encouraged.	NSR supports a requirement upon mine workers to provide a written report upon shift changeover, which reflects NSR procedures that are currently in place. It aids in safety improvements across the operations, and provides essential near-contemporaneous records should there be an incident to investigate.
20	M42	NSR recommends that: • the definitions of autonomous equipment should be clarified and refined as set out in NSR's comments; and • mine operators should only be required to	NSR is concerned that: • the imposition of a higher duty of care with respect to autonomous equipment is unreasonable and without justification; and • there is ambiguity with what is meant by “a	The proposed Regulation 42 proposes to impose a duty to ensure the operation of an autonomous plant is "without risk" so far as is reasonably practicable. This is higher than the general duty to "manage risks" so far as is reasonably practicable. NSR is concerned that this higher duty of care is unreasonable and is imposing a duty on a mine operator in relation to matters that may be outside of its control. A PCBU or mine operator should not have to carry the burden of ensuring that an autonomous plant that is purchased from a manufacturer is "without risk". NSR is not involved in the design of the machinery and it would be impossible for them to ensure that the plant is "without risk" as they do not have the technical expertise to do so and are relying on experts in designing the product to ensure the product is safe. NSR consider

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		take all reasonable practicable steps to manage the risks of autonomous equipment.	person that controls the operation of autonomous plant". This is likely to be interpreted as semi-autonomous plant.	that this regulation is in effect seeking to impose the manufacturer's duty on the purchaser of the product. NSR is concerned that as a repercussion of this higher duty, a PCBU or mine operator could be prosecuted for something completely beyond their control. There does not seem to be a good reason why a higher duty should be imposed on mine operators with respect to autonomous plants. NSR accepts that a mine operator has a duty to ensure risks are managed to a reasonable practicable level and suggest that a more reasonable duty in this regard would be to impose a duty to "take reasonable practicable steps to manage the risk", rather than to take ensure the operation is without risk. NSR is also concerned that there is also some ambiguity in the definition as to what an autonomous plant is. NSR suggests the following refinement and clarification of the definitions will assist to remove this uncertainty: 1. Remote controlled plant/equipment – equipment that is controlled by someone in a remote location – whether onsite or further away in an offsite ROC for example; 2. Semi-autonomous plant/equipment – when there is a mixture of remote and autonomous control; and 3. Autonomous/Automated plant/equipment – when the built in control system is controlling the plant/equipment.
21	M75 - M76	NSR recommends that: • the obligation to manage health and safety risks associated with worker fatigue, consumption of alcohol and use of drugs are limited to taking reasonably practicable measures	NSR is concerned that the wording of these Regulations effectively imposes a duty on a mine operator to manage risks outside of their control by having to control what a worker does in their own personal time in order to meet the duty.	NSR is concerned that in imposing a duty to manage health and safety risks associated with worker fatigue, the consumption of alcohol and use of drugs on the mine operators may effectively require them to manage workers' actions whilst off site, over which the mine operator has not control. NSR notes that in the NSW, Victoria, South Australia, Tasmania and the Northern Territory, the legislative requirements for fitness for work are drafted more broadly and simply require that risks arising from the consumption of alcohol and use of drugs are managed on site as opposed to being managed in general. An obligation is also imposed on workers to assess their own fitness for work.

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		and to managing these risks whilst a person is on site.		NSR believe that risk management requirements should be qualified with "so far as is reasonably practicable" and limited to managing those risks on site. This is because it is impossible for a mine operator to manage risk that is outside of their control or what workers do in their personal time, but they do have an ability to control whether a worker is permitted to work in the state in which they arrive at work. NSR recommends that this Regulation should be redrafted to limit risk management requirements with so far as is reasonably practicable and within the mine operator's control.
22	M135 - M136	NSR recommends that: • if refresher training is required, it should be specified along with the required frequency.	Clarity is required as to whether refresher training is required for any of the statutory roles, and if so at what frequency.	Clarity is required on whether refresher training is required and, if so the frequency of that training.
23	M142 - M145	NSR recommends that: • the requirement to keep shift reports in the mine record be deleted.	NSR is concerned that this regulatory requirement to keep shift reports in the mine record will be administratively burdensome and will not add to safety..	NSR is concerned that the prescriptiveness of this Regulation including a requirement to retain the written reports exchanged by supervisors under Regulation 36 at shift handover in the mine record will be administratively burdensome and will not add to safety as they are only a record of the state of the mine at a particular time which will have changed almost as soon as it is created by reason of ongoing operations. NSR consider the requirement to include shift reports in the Mine Record be removed.
24	M146 - M148	NSR recommends that: • a clause should be added that applies to Regulations M146 - M148 that protects an individual from having information from the incidents report used	NSR is concerned about the lack of protection in this Regulation from having the incidents report used against NSR or its workers.	NSR is concerned that by not having a protection in this Regulation for people who raise issues from the information being used against them that workers may not have sufficient incentive to report all incidents out of fear of potentially being prosecuted. With a view of ensuring full and frank reporting is engaged in by all workers, NSR considers that a protection against the information being used in the safety report against individuals should be added to these Regulations. NSR notes there is precedent for the inclusion of such a provision in Qld, information provided in the investigation are reports protected from being admissible as evidence in relation to prosecutions by section 198(4) of the *Mining and Quarrying Safety and Health*

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		against them in any way, including it not being admissible in evidence if prosecuted; and • the obligations to report should also be limited to be so far as is reasonably practicable and a note should be included to make it clear that the duty to immediately report incidents does not prevent any action to rescue or assist an injury person or to make the site safe being taken.		*Act 1999* (Qld). This would also facilitate the provision of information in investigation reports, and therefore improve safety outcomes. NSR also considers that a "so far as is reasonably practicable" requirement in relation to the duty to notify of notifiable incidents should be included, and to clarify that the duty to immediately notify the regulator of notifiable incidents does not prevent any action to rescue or assist an injured person or to make the site safe.
25	Schedule 9	NSR recommends that: • the transitional periods should include an option for companies to make applications for extensions of time extensions if need be.	NSR is concerned that the proposed transitional provisions will not provide enough time for companies to comply with the all of proposed requirements, particularly those that relate to the statutory appointments and audiometric testing and that it will only become apparent which obligations will take longer to comply with as	NSR is concerned that the proposed transitional arrangements that range from 6 months to 2 years may not permit enough time for compliance with some requirements, particularly those that relate to the statutory appointments (in particular for all persons who hold these roles to have specified training) and audiometric testing (where NRS notes a 4 year transition period was allowed in NSW). NSR also notes that other regulations may require more time than 2 years to enable companies to be fully compliant with them but which will require more time is only likely to become apparent as companies work through the process of becoming compliant. NSR considers that a right to apply for extension of time in order to be fully compliant should be included in the regulations with a company being required to demonstrate that it has taken real steps to be complaint in order to obtain an extension.

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			the process of becoming compliant is undertaken.	

Potential Laws				
#	Subject	Recommendation	Issue	Comment
26	Industrial Manslaughter	NSR recommends that: • industrial manslaughter provisions should not be included in the WHS Act; and • if the government remains committed to including this offence, a draft of the provision should be made available to all stakeholders to allow proper consultation on each of the proposed changes to the law.	There is no evidence that having industrial manslaughter provisions in other states has improved safety. If an industrial manslaughter provision is to be included it should be made available for public consultation prior to being put to parliament.	The Minister for Mines and Petroleum; Energy; Industrial Relations, Hon Bill Johnston has indicated that the government intends to include two industrial manslaughter offences: "industrial manslaughter class one" carrying a penalty of up to 20 years of imprisonment and "industrial manslaughter class two" carrying a penalty of up to 10 years imprisonment. Both offences will also carry a maximum fine of $10 million for a body corporate. NSR notes that: (a) punitive laws for employers in other jurisdictions have had no impact on eliminating onsite fatalities; (b) there is a risk that industrial manslaughter laws will have a negative impact on safety outcomes by fostering a culture of blame; (c) in the case of serious noncompliance with existing work, health and safety standards there are options to prosecute those who are responsible, including the use of criminal code manslaughter provisions and the provisions will overlaps with and potentially duplicates manslaughter offences dealt with in the *Criminal Code Act Compilation Act 1913* (WA); (d) if industrial manslaughter offences are introduced, it may discourage the free flow of communication between workers due to a fear of prosecution, resulting in less reporting and therefore, potentially more injuries and fatalities; (e) the industrial manslaughter provisions currently in force in the Australian Capital Territory and Qld are inconsistent with accepted principles of criminal law and remove defences that are otherwise available to a person for traditional manslaughter offences and there does not seem to be a reasonable basis for this to be the case only for health and safety offences. It is not necessary to introduce industrial manslaughter provisions into WA. The fact that these laws are not required is demonstrated by the fact that in the two jurisdictions that do have industrial manslaughter laws in place (the ACT since 2004 and Qld since 2017) the provisions have only recently been used (once in each jurisdiction) and both matters are still

Potential Laws				
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				before the Courts. This lack of need to use the provisions demonstrates that they are not really necessary and the current laws are adequate to deal with issues. NSR believe that the solution to workplace fatalities is not punishment, but rather an increased focus on communication, education and prevention. NSR recommend that manslaughter should not be included in the WHS Act and should continue to be dealt with under the *Criminal Code Act Compilation Act 1913* (WA). If the government is minded to continue to put such a provision in the bill to be debated by parliament, it should make the clause available for public consultation. In this regard, it is the detail of the provision such as whether it will apply to third parties such as clients, customers, visitors and neighbours in the work place and the ability of the Courts to convict a person of lesser offences where real issues with the implementation of the provisions may arise. Stakeholders should be permitted to consider the provision and make comments on these issues particular given the provision will contain the highest potential fine and term of imprisonment in the entire Act. Further, NSR considers that if industrial manslaughter laws are to be introduced there should also be a process by which the matter is heard by the Supreme Court and not the Magistrate's Court. In this regard, offences under the Criminal Code are tried in the Supreme Court and there is no reason why there should be any difference in this regard just because the offence arises under the WHS Act. In addition, Northern Star considers that all offences which involve serious injury or allegations of gross negligence should be tried in a more superior Court on the basis that those offences could be considered to be the health and safety equivalent of indictable offences which at least merit a District Court hearing.
27	Directors & Officers Insurance Policies	NSR recommends that: • there should be no prohibition on companies and officers from obtaining insurance for health and safety offences and fines included in the bill; and	Insurance is required to ensure businesses can: • continue to operate; and • attract good leaders. The government is recommending officers take out insurance for	Insurance policies that protect companies and officers in respect of costs associated with breaches of legislation are a commercial necessity. Without insurance, the cost and risk of doing business in Australia might be such as to drive some businesses to lower cost and risk jurisdictions. This would have a net adverse impact on business and productivity in Australia. NSR notes that during a presentation on 29 October 2019, DWER was recommending companies to have such insurance for environmental offences. It seems unreasonable that having such insurance should be acceptable to the government for some offences by companies and officers but not for health and safety offences.

Potential Laws				
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		• the current position should be preserved that allows companies and their officers to obtain insurance for health and safety fines and costs other than those involving gross negligence.	other statutory offences and there appears to be no reason for a difference in the case of health and safety offences where there is no evidence that the existence of insurance lead to inferior WHS performance. The practical outcomes of incidents and beaches of WHS legislation are enough of a motivation to drive a desire to comply with the legislation.	Similarly, insuring directors and officers in respect of liability associated with breaches of legislation is an important step in attracting and retaining quality leadership and management. If such insurance were not available, many potential leaders and managers may decline to be involved in leadership and management positions. This could lead to a significant decline in safety of all operations in the State. A breach of WHS legislation may involve death, serious injury, lost productivity, loss of workforce morale, ag reduction or shut down in operations and significant damage to their reputation. These matters provide a considerable incentive for corporations and their leadership to work towards strong WHS outcomes. In NSR's experience, the real cost of a company following a safety incident is in the cost of properly investigating a matter and putting in place protections to make sure such an incident will not occur again. There is no evidence that the fact that insurance may be available in respect of breaches of the WHS Act and Regulations encourages an inferior WHS performance.