



Your ref: *WS 1512/2011*

Our Ref: *FAA-03188*

Enquiries: *Dave Peckitt (9388 4965)*

Mr Alex Marsden
Marsden Jacob Associates
Level 1, 220 St George's Tce
PERTH WA 6000

Dear Mr Marsden

MODEL WORK HEALTH AND SAFETY REGULATIONS – PUBLIC CONSULTATION

Thank you for the opportunity to comment on the above. Our comments (attached) mainly relate to asbestos management which is a key section of responsibility within the Department of Health's Environmental Health Directorate (EHD).

The EHD has responsibility to provide technical and risk based advice and guidance to stakeholders on asbestos related issues as they pertain to the non-occupational environment. The EHD also has responsibility to oversee and ensure the *Health (Asbestos) Regulations 1992* are effectively implemented by Local Government. These Regulations are currently under review and it is intended as part of that review to achieve consistency with Occupational Safety and Health legislation where practical.

This Department is generally supportive of the Model WHS Regulations being adopted in WA from the perspective of providing greater 'regulation' over asbestos removal and training and accreditation of asbestos professionals who work or intend to work in the industry.

Our main areas of concern are the following:

- Adequacy of resourcing by WorkSafe to take additional enforcement, auditing and administrative roles. It has been experience of WA Health that WorkSafe has to date, not been adequately resourced to respond promptly to complaints and issues referred to it. Additional requirements (if adopted) would only exacerbate the problem unless, additional resources are provided.
- There is likely to be a need for additional numbers of competent persons, licensed asbestos assessors to oversee asbestos removal work, conduct clearance monitoring and the like. As WA is a very large State there would need to be some assurances that industry is geared up to service the foreseeable needs for such professional services over and above asbestos removalists.
- The new requirements will inevitably result in additional costs to industry and government sector that have responsibilities to comply with Occupational Safety and Health legislation. The question is whether any cost benefit analysis has been carried out to quantify if the additional costs can be absorbed and will they achieve the desired results and outcomes.

Environmental Health

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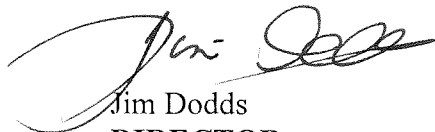
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I trust the above and attached information will assist in your deliberations on potential impacts of the model WHS Regulations being introduced in WA.

Further enquiries may be directed to Messrs Llew Withers or Dave Peckitt at the EHD on (08) 9388 4964 or (08) 9388 4965 respectively.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jim Dodds', written in a cursive style.

Jim Dodds

**DIRECTOR
ENVIRONMENTAL HEALTH DIRECTORATE**

19 October 2012

Att.

DEPARTMENT OF HEALTH COMMENTS IN REGARD TO CONTENT OF THE WORK HEALTH AND SAFETY MODEL REGULATIONS ON ASBESTOS AS MAY APPLY IN WESTERN AUSTRALIA

Department of Health Role

The Department of Health of Western Australia (WA Health) has a number of responsibilities in regard to protecting the public from risk including by being administrator of the *Health (Asbestos) Regulations 1992* (HAR) which primarily apply in the residential private sector and public areas. The DOH is in the process of reviewing these Regulations with the view to achieving consistency with Occupational Safety and Health legislation where this is practical.

Scope of Comments

WA Health will largely restrict its comments to the asbestos elements of the Model Health and Safety (WHS) Regulations, in particular the issues identified in the Spreadsheet (p 19 to 47) of the *Model Work Health and Safety Model Regulations and Codes of Practice – Consultation Regulation Impact Statement - Information and Issues Paper – August 2012* by the Western Australian Government.

WA Health Comments

WA Health general experience with asbestos removals and demolitions (that involve asbestos) has not been good in that these activities result in large numbers of complaints to WA Health and Local Government about poor practice and many instances of asbestos contaminated sites and contaminated recycle material. In a number of cases, these incidents relate to contractors and businesses that constitute workplaces.

In this context WA Health would support greater regulation of asbestos professionals and demolishers especially, in areas that may impact on public health (such as cottage demolition). It is however important that before Model WHS legislation is adopted in WA, to ensure that WorkSafe is adequately resourced to respond to complaints and issues brought to their attention. This has been a problem area to Local Government for some time where WorkSafe have not been able to respond within an appropriate time frame to deal with matters that come under their jurisdiction.

WA Health supports the need for formalizing and improving accreditation of asbestos professionals and helping to ensure greater independence of monitoring resulting from asbestos removal operations.

Specific comments on each of the WorkSafe highlighted asbestos changes are as documented follows:

Asbestos: air monitoring and clearance

There appears to be an error in the spreadsheet (new requirements) in indicating that a Class A asbestos removal license applies to non-friable or bonded ACM, instead of friable.

WA Health is aware of poorly qualified people undertaking asbestos removal work, sometimes in conflict-of-interest situations. It is particularly encouraging in this subject area to see a new requirement for asbestos air-monitoring to be carried out by an 'independent' licensed asbestos assessor to remove any possible bias or conflict of interest.

Asbestos: analysis of samples

WA Health supports the need for fully accredited or approved laboratories to be nominated for asbestos identification as this is consistent with most other contamination management legislation and reduces the possibility of inadequate and compromised analysis. It is not clear however if the existing Reg. requirement to 'ensure that the presence and location of asbestos at the workplace is identified' is to be retained?

Asbestos: certified safety management systems

Again there appears to be an error in the spreadsheet (new requirement) in indicating that a Class A asbestos removal license applies to non-friable or bonded ACM, instead of friable. It is also not clear if the need for a 'certified safety management system' is intended to apply to both Class A and B license holders.

WA Health is not otherwise sufficiently conversant with the above subject area to make meaningful comment.

Asbestos: naturally occurring asbestos

WA Health supports the need for naturally occurring asbestos (NOA) to be managed properly in any workplace as is proposed in the model legislation. This is consistent with good risk management practice and also with environmental health regulatory guidance, including that of WA Health.

Asbestos: register

The requirement to prepare and maintain registers of possible asbestos containing workplaces is consistent with recommendations arising from the National Asbestos Management Review. The nominated date for registers to apply to buildings constructed before 2003 is also consistent with the national ban on the import and use of asbestos that came into effect from 31 December 2003.

Asbestos: removal – notifications

The requirement to notify the regulator of **any** licensed asbestos removal work seems a good way of helping to reinforce the need for proper practice by the removalist and provide an additional audit tool for regulator. However, WA Health is aware that the implementation costs by WorkSafe may outweigh the benefits. It is most important that the regulator is adequately resourced if this requirement is implemented in WA.

Asbestos: training

WA Health supports the need to extend and improve the training of all asbestos removal or management professionals, unless the quality and the auditing of their work can be achieved by other means. However, WA Health is aware that there may be considerable implementation costs and delays in implementing any such WHS requirements. WA Health is involved with developing competency based training modules relating to properly managing asbestos during DIY home renovations.

It needs to be clarified as what specific level of training and competency is required for a person to become a 'licensed asbestos assessor' and 'competent person'. Such persons would presumably need to have a high level of training to supervise asbestos removal work, conduct air monitoring, clearance monitoring and the like.

Asbestos: removal licenses

WA Health supports the need for higher standards to be applied to all asbestos professionals before granting of licenses. There is however no information provided about licensing arrangements for a person to become a licensed asbestos assessor? This needs to be clarified as it creates some uncertainty. See additional comments in next section.

Licensed asbestos assessor and competent person

It is noted that under the Model Regulations there is now a definition of licensed asbestos assessor as well as an expanded definition of competent person. It would be useful to clarify if there is any difference in the level of qualifications/training and role for the former, as this is not specifically defined in the new definitions. If there is no difference, the question needs to be asked why there needs to be a licensed asbestos assessor when it could be captured under competent person? Why is it necessary for an asbestos assessor to be licensed and not a competent person?

Additional Comments on other subject areas:

Hazardous chemicals: risk assessment and record keeping

It is noted that the new provisions would remove the need for risk assessments (by the employer, main contractor), as a result of a person being

exposed to 'hazardous substances'. It is considered that risk assessments are an important step to assess any potential risks of exposure from hazards and should not be removed. This is particularly important with the advent of new chemicals and substances where potential impacts may not have been evaluated.

Noise

The proposed new requirements relating to audiometric testing, managing risks and personal protective clothing equipment are supported in their entirety.

Dave Peckitt
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Environmental Health Hazards Unit

John Howell
Senior Scientific Officer
Environmental Health Hazards Unit

19 October 2012