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Submission to WorkSafe WA
on
Work Health and Safety Model Regulations and Codes of Practice

Consultation Regulation Impact Statement

EXECUTIVE SUMMARY

1. MBAWA contends the essential elements of the COAG Agreement of 2008 to introduce a harmonised federal model safety framework of:-

- Reducing safety regulation
- Reducing costs for business as a result of reducing safety regulation; and
- Improving safety standards

will not be met in Western Australia under the current framework.

Master Builders WA makes this assertion against the background that very few businesses in Western Australia operate across the state border. This observation has also been made in the Risk Impact Statements (RIS) for Victoria and South Australia. In addition, these RIS reveal small to medium sized business will shoulder inordinate costs in the implementation of the proposed federal model safety laws for little, if any, benefit in reduced costs or improved safety standards. Master Builders says this will be a similar outcome in Western Australia should the federal harmonisation model be adopted in its current flawed iteration.

2. Master Builders contends the federal model safety laws have been rushed to the point that stakeholders have had little genuine input into the development of the federal legislation and Codes of Practice as Safe Work Australia (SWA) drives the process to meet unrealistic imposed political deadlines.

3. Master Builders fails to identify what increased level of safety benefits can be delivered by the proposed federal model safety laws that the current state safety regime is not already delivering nor can deliver. That is, what is the quantitative differential in the level of improvement in safety performance of the federal model safety regime?

4. Master Builders proposes WorkSafe WA undertake a more inclusive version of introducing a new state safety framework reflecting developments in the federal model safety laws, as appropriate, but that the review process adopt a more realistic time line and engages with industry stakeholders as opposed to the flawed SWA approach.

5. Master Builders says the experience of Qld in introducing the flawed federal model safety laws needs to be taken into account to avoid a similar poor outcome in Western Australia.

1. Introduction

This submission is made by Master Builders Association Western Australia (MBAWA).

MBAWA is one of the oldest registered employer associations in the Registry of the Western Australian Industrial Relations Commission with our registration having remained current since 1904.

MBAWA was formed in 1898 to represent the best interests of its respective builder members and those who participate in the building and construction industry in Western Australia. That core element remains at the heart of MBAWA's registered rules today.

Today MBAWA has about 1,800 members comprising:-

- National commercial builders
- Large state based commercial builders
- Specialist commercial sub-contractors
- Residential builders
- Residential sub-contractors
- Kindred employer groups
- Government agencies

Our membership carries out building and construction work throughout all of Western Australia in commercial construction, residential construction, resource construction and civil construction. Our members are located throughout Western Australia.

MBAWA also maintains a continuous presence throughout the state via our regional offices in Bunbury, Albany, Geraldton and Kalgoorlie to provide services to our regional members and to represent their interests.

MBAWA is also a member of the Master Builders movement that comprises autonomous Master Builder Associations in each State and Territory making up eight in total which then provide support for Master Builders Australia. Collectively, the Master Builders movement represent over 33,000 businesses nationwide.

Master Builders Australia has provided input into the development of the model federal harmonised safety laws and codes of practice on behalf of the Master Builders movement including MBAWA. This provides MBAWA with an ideal opportunity to pass comment on the development process adopted by Safe Work Australia (SWA) in progressing the introduction of the model federal harmonised safety laws and issues raised by the Movement in the process and, therefore, this Regulation Impact Statement (RIS).

MBAWA includes the federal submissions to SWA as part of our submission.

2. Economic Importance of the Building and Construction Industry

As at August 2012 there were 124,230 persons employed in the Western Australian building and construction industry having fallen from 138,390 from May 2011 due to reduced levels of commercial and residential construction activity in Western Australia. The reduced level of activity is attributable to the continuing flow-through effect of the GFC of 2008 combined with ongoing volatile European economic circumstances with consequential tightening of finance available for private sector construction projects. The building and construction industry in Western Australia employs 9.8% of the state's workforce and contributes about 10% to the Gross State Product.

The building and construction industry is a major economic driver of the Western Australian economy. To place a dollar value on this economic importance MBAWA refers to the Construction Forecasting Council data on the value of construction activity in the state.

Residential construction activity	Non-residential construction activity	Engineering construction activity
2012-013 $13b	2012-013 $5.5b	2012 -013 $37.4b
2013-014 $15b	2013-014 $5.8b	2013-014 $41.1b

MBAWA points out that whilst the non-residential construction activity above represents a higher level in dollar terms to say a decade ago in Western Australia, these figures are somewhat inflated by major state government infrastructure projects such as Fiona Stanley Hospital, new Children's Hospital, Perth City Link rail line sinking project and Elizabeth Quay for example. Engineering construction work associated with the resource sector remains a significant contributor to the state economy. Arguably, the loss of about 14,000 jobs in the construction sector between May 2011 and May 2012 was ameliorated by labour demands in the resource sector.

3. Background

The Council of Australian Governments (COAG) committed to harmonising the occupational health and safety laws in Australia in July 2008. The WA government took a pragmatic position in July 2008 rather than agreeing to a slavish approach of simply adopting whatever COAG agreed to in this process, unlike some other States and Territories. That pragmatic position was to in the first instance set out four issues that would distinguish the Western Australian model from the proposed federal model safety laws. These cover penalties, union right of entry, health and safety representatives capacity to stop work and reverse onus of proof. Further, Western Australia also made it clear at that time it would assess the impact including costs to Western Australia of introducing those aspects of the federal model safety laws before considering to implement them for change sake alone. That is, there must be a net benefit to Western Australia in implementing those elements of the harmonised

model safety laws in the state where it was appropriate to do so. The converse being, Western Australia reserved its right to either modify those planks of the federal safety laws it agreed to implement, or might not implement particular aspects of the federal model safety laws as it saw fit.

MBAWA not only endorsed that position in 2008 but also advocated for that position to the then Minister for Commerce at that time placing ourselves in contrast to other state based employer groups that called for the adoption of the harmonisation model in toto in Western Australia. We take this opportunity to reaffirm our strong support for that position of 2008 and note we are no longer alone amongst employer groups in Western Australia on this important point.

MBAWA pressed this position as we questioned the validity of the main economic argument outlined in the RIS in support of the national application of the model safety laws on the basis of a reduction in red tape and cost for employers by the consistent application of uniform safety laws across state and territory borders. Whilst MBAWA appreciated this argument held some sway in the eastern states as many employers traded across borders, that argument fell down badly in Western Australia, especially in the building and construction industry.

The building and construction industry comprises substantially micro businesses that engage less than 5 employees with ABS data indicating these micro businesses make up about 90% of the industry on a national scale. The industry make up would be no different in Western Australia meaning the likelihood of small businesses such as these trading across state and territory borders being remote, at best. That is, only a minor portion of MBAWA members trade and have a presence across borders and they would represent national builders and some few large national specialist sub-contractors. Therefore, the economic benefit argument on consistency of safety regulation for employers is significantly weakened in our industry.

Support for this contention can be found in the RIS undertaken by PricewaterhouseCoopers for the Victorian government in April 2012 on the model health and safety laws. At page 2 of that RIS in the last paragraph under the heading of “Administrative Benefits” *reveals less than 1% of businesses operate in multiple states.* Arguably, these circumstances apply equally in Western Australia and less so for businesses in the state building and construction industry. That is, one of the two main drivers for introducing harmonised model safety laws in Western Australia based on reducing red tape and, therefore cost, for employers could not be substantiated for a very significant majority of state based employers. That means the economic savings claims for business fall well short of forecast, though unquantified, savings in Western Australia.

As a result, that would only leave grounds of improving safety standards in Western Australia but with the caveat of what is reasonably practicable in accordance with the Occupational Safety and Health Act 1984.

MBAWA then took the position it would assess the draft model harmonised laws and codes of practices on their respective merits as part the review process via Master

Builders Australia. We continue to do so today as draft codes of practice are released for comment by Safe Work Australia (SWA) though the time frames provided by SWA for response often remains totally inadequate for proper consideration and informed input.

4. Federal Model OSH Harmonisation Laws

Following the July 2008 COAG agreement the federal government signalled the intention was that the federal model laws were to take effect from December 2012, however, this ambitious time frame was then shortened to December 2011 by the then Prime Minister.

MBAWA and wider Master Builders Movement always considered the initial time frame would be hard to achieve given the enormity of the task in reaching consensus between nine differing legislative regimes across the nation but the reduced time line of December 2011 was unwise and created an environment of rush to meet the new deadline. As a result, genuine industry stakeholder holder consultation was displaced with SWA simply imposing its views on the process to meet its deadlines and ignoring industry input. Ironically, this undermined the basic philosophy of the Robens approach to safety regulation in Australia of the parties at the workplace being best placed to assess and develop safe work practices. That is, industry stakeholders are much better placed to appreciate, develop, understand and apply best practice safety procedures in industry.

MBAWA contends SWA in its haste to meet the impossibly short deadline of 1 January 2012 dismissed industry and stakeholder views on what would be best practice safety practices, codes of practice and legislation for the expediency of meeting a politically charged outcome. This view was reinforced by the SWA CEO, Rex Hoy, at a Master Builders function in early 2010 in Qld in which he indicated the then Prime Minister, Kevin Rudd, had designated the federal modernisation safety laws as a top priority for his government. This is no criticism of Rex Hoy, rather our observation that SWA had adopted the position it did in pressing to meet the deadline of January 2012 given the then Prime Minister's interest. Regrettably, that time line was not varied by the current Prime Minister when she assumed the role meaning the time line remained as an imperative instead of a quality outcome.

The RIS undertaken on the proposed introduction of the federal model osh laws made out an economic argument that gross national savings of between $1.5b to $2b per annum would be achieved each year over the next decade (between $15b - $20b). However, the RIS did not provide a break down of savings for each respective State or Territory making it difficult to assess the economic benefit for Western Australia nor the forecast costs. This necessitates the undertaking of this RIS, especially against the backdrop of the RIS carried out in Victoria and SA this year on this exercise.

One of the central planks of the COAG agenda on safety harmonisation is to cut red tape and improve business efficiency and provide greater protection and certainty in safety for all stakeholders.

MBAWA's experience to date on the development of the federal safety laws and codes of practice is that the threshold tests of reduction in red tape and improving business efficiency is not being met and will not be met in Western Australia by a long way. The extensive submissions by Master Builders Australia will verify our assertions on this point.

A further concern for MBAWA and other stakeholders about the rushed approach of SWA in this exercise has been the times we stakeholders have been provided with draft material by SWA, sometimes up to 800 pages at a time, to review, digest and supposedly provide cogent input in less than 5 days. This enforced short response time is the direct result of the rushed time frame to complete this massive exercise and has provided little meaningful consideration of the material with it reasonable to conclude SWA has little interest in any genuine consultation on the draft material. Rather, SWA is driving its own agenda and its own outcome irrespective of differing stakeholder views in order to meet the politically imposed time frame, not a more realistic and responsible time line. That is, SWA is driven by its own agenda rather than what is in the best interest of a good outcome for stakeholders.

5. WorkSafe WA Submission on the Draft Model Work Health and Safety Regulations and Codes of Practice

MBAWA was heartened when WorkSafe WA provided its submission to SWA in April 2011 that reflected the thrust of our 2008 contentions. As these submissions were provided by the state's safety regulator, they carry significant weight in our respectful view.

There are several telling aspects of this submission such as:-

At page 3

"The Western Australian Government supports the development of nationally harmonised occupational health and safety laws addressing contemporary work arrangements. This support is, however, qualified by the need to ensure the interests of the Western Australian community are taken care of and any new arrangements do not lower occupational health and safety standards. Additionally, that support is qualified to the extent that those nationally harmonised occupational health and safety laws impose new onerous obligations on Western Australian businesses."

".....that the model WHS Regulations and the Codes will not lead to an improvement in safety outcomes overall."

At page 4

"In particular, we concerned about the volume of material and the potential impact on small business operators. The process of occupational health and safety law harmonisation clearly considered the large business sector primarily represented by those cross-jurisdiction operations but in the process will likely, albeit potentially

inadvertently, place a significant burden on those outside the large sector with no identified off-setting benefits."

"Our analysis of the likely impacts of the model WHS Regulations and the Codes currently available, noting that further Codes of Practice are either under development or scheduled for development, lead us to the conclusion that for the vast majority of business that operate in Western Australia there will be minimal, if any, benefit while there will be a range of costs dependent on the industry within which they operate."

At Page 5

"We do not agree with the premise taken within the RIS that the significant upfront costs involved with the proposed model WHA Regulations will be out-weighed by the resultant significant upfront implementation costs. It is our view that the identifiable potential benefits are not sufficient to out-weigh nor even off-set the costs associated with the introduction of the proposed model WHS Regulations."

" .....Our general observation is that the model WHS Regulations impose an increase in administrative activities which in themselves do not deliver safety benefits. ....."

At Page 6

"Additionally, we are of the view that there will also be significant on-going costs to government in the administration of the model WHS Regulations. A significant portion of those costs are a consequence of increased registration and notification requirement which are unlikely to provide an improved safety outcome in workplaces."

"In our view, the extent of the revision contained in the revised version of the WHS Bill goes beyond the type of 'technical and drafting amendment' envisaged by the WRMC."

To add weight to the views expressed by WorkSafe WA in connection with the affect on small business MBAWA refers to a publication titled "State Industrial Relations Coverage in WA: How many employees are covered?" on the Department of Commerce website. The Department asserts that potentially up to 36.2% of all employees in WA remain covered by the state industrial relations system. With the WA workforce of 1.2 million at May 2012 this represents a major portion of the state's workforce and these employees are employed by small business and/or state government agencies. That is, their employers likely do not operate across the state border meaning there is no benefit on the loss of duplication of safety regulation as they are only bound by the WA safety regime and safety regulation duplication does not arise.

That means a claimed reduction in red tape representing a benefit to these employers via reduction in duplication of safety regulation on the submission of WorkSafe WA and the Victorian RIS, is illusory.

6. Regulatory Impact Statement: Model Work Health and Safety Regulations in South Australia

MBAWA notes this RIS was prepared in April 2012 by the same consultant body engaged to compile the federal RIS for the model safety laws. Unsurprisingly, the conclusion was positive with a forecast modest net saving to the South Australian economy of $15.9 million per annum over each year of the next decade or $159 million if the federal model safety laws are introduced in that state.

At page iv of the RIS the following observations are made:-

"Government regulators, and society in general, will face initial adjustment costs, but the ongoing benefits, largely as a result of expected lower costs associated with workplace injury and illness, are likely to offset these costs. Overall the expected aggregate benefits in terms of lower administrative burden, reducing regulatory duplication, improved efficiency and improved work and safety outcomes are greater than the considerable costs of implementing the model WHS Regulations. (emphasis added)

MBAWA finds this a curious conclusion given it makes no reference to the number of businesses that operate across state and/or territory borders nor to the number of small business that will be impacted by the new regime. Rather, it appears a generalisation has been drawn there will be benefits across the board for all South Australian employers recognising correctly there will be "considerable costs of implementing the model WHS Regulations", but then ignores the cost imposed on small business or benefit they may derive.

MBAWA much prefers the respective views of WorkSafe WA in its April 2011 submissions and the Victorian RIS on the impact on small business of April 2012.

In addition, a table sets out at page iv of the RIS that the South Australian workforce is 790,000 which is about 33% lower than WA being 1.29 million in May 2012. Arguably, any benefit derived by introducing the federal model harmonised safety laws into South Australia will have much more limited affect than in WA given the comparative differentials in each state's economy. This can be gauged by the number of small businesses in each state as at June 2009;

	WA	**SA**
Small business	202,818	138,430

ABS Counts of Aust Business, including entries & exits jun 2007-jun 2009 (cat.no.8165.0)

This suggests to MBAWA that the cost impact for small business in Western Australia will be considerably higher than SA and as the RIS has identified considerable implementation costs for the SA small business sector, these costs will be amplified in Western Australia by potentially up to 46% representing the difference in small business numbers.

7. WA Key OSH Statistics Performance

An important driver underpinning the federal model safety Regulations is the motivation to reduce workplace injury and fatality, a motivation no one challenges and all strive for.

MBAWA notes an important missing link in this debate however is the connection between the perceived improvement in workplace safety performance as a direct result of the introduction of the harmonised model safety regulation as opposed to what improvements are being delivered by the current Western Australian safety regime.

Put another way, MBAWA asks the question what will the federal model safety Regulations deliver in improved workplace safety performance that the current state safety system does not and will not be able to deliver?

In posing this important question MBAWA refers to the publication of WorkSafe WA titled “Work Related Lost Time Injuries and Diseases in WA 2010-11 preliminary data”.

Chart 1: Frequency rates (LTI/Ds per million hours worked): 2000-01 to 2010-11p reveals a drop in the Frequency Rate from 13.78 in 2000-01 to 9.51 in 2010-11 or reduction of almost 31% over the past decade. Since the Occupational Safety and Health Act 1984 was introduced in 1988 the Frequency Rate has dropped by 73.1%.

This question of what improved deliverability can be offered by the federal model laws has not been raised and therefore not answered in the federal, Victorian nor SA RIS but is a fundamental exercise and needs to be asked as well as answered.

MBAWA raises this data as an indicator that the current state safety regime is delivering improvements in workplace safety and that the mere introduction of the federal model safety Regulation by itself will not and cannot provide an immediate panacea to eliminating workplace injury or worse. That is a workplace culture issue requiring a buy in by all stakeholders not the introduction of more red tape as this will not improve workplace safety.

We say the manner in which the model safety regulations have been developed and the background against their development has left many stakeholders out of the debate and/or marginalised meaning the proposed positive benefits of their introduction will not eventuate. Whilst this seems contentious, we simply look to the Queensland experience to see what the outcome will be in Western Australia. We

refer to the Qld experience in introducing the federal model safety regulation in late 2011 later in our submission.

MBAWA therefore asks what the improved level in workplace safety standards will be in introducing the federal model safety Regulation that is more than what the current state safety system is delivering?

To date MBAW has not seen what that differential is.

8. Federal Award Modernisation

Following the election of the Rudd federal government in late 2007 an important task set by the then Workplace Relations Minister, Julia Gillard, was the modernisation of all federal and state industrial awards that fell under the jurisdiction of the then Workplace Relations Act 1996 and former Australian Industrial Relations Commission (AIRC). The WRAct was replaced by the Fair Work Act 2009 on 1 July 2009 and AIRC replaced by Fair Work Australia on 1 January 2010.

MBAWA appreciates some may question the validity of us raising Award Modernisation in this exercise but we will counter with the experience to date of Award Modernisation being instructive of what to expect as the outcome of a introducing a rushed, inefficient and a poorly structured federal model safety regulation regime. Our assertion on this point also reflects the Qld experience on its introduction of the federal model safety laws.

Award Modernisation commenced in April 2008 with the then AIRC not actually starting the modernisation process until December 2008 which was to be concluded under the FWAct by December 2009. This resulted in almost 2,400 federal and state industrial awards covered by the FWAct reduced to 124. That outcome saw the AIRC rushing the federal award modernisation exercise to meet what was an imprudently short time frame of about 12 months. In effect, this massive exercise saw the merging of thousands of differing award employee classifications, wage rates, allowances and other employment conditions into about 5% of the original number of awards with industry stakeholders often contesting what should be included, excluded or amended. The commitment of time and resources was enormous.

One of the core outcomes of the award modernisation process was that modern awards are to be simple to understand and easy to apply, provide a fair minimum safety net, are economically sustainable and promote flexible, efficient and productive work practices.

The upshot of that rushed exercise has been significant amongst industry stakeholders having caused confusion and uncertainty on industry coverage of modern awards, employee coverage under modern awards, differing interpretations amongst industry stakeholders and Fair Work Ombudsman Office on award clauses and their application imposing costs on employers and industry as this ongoing confusion is resolved. FWA is currently conducting a review of modern awards with major hearings set aside to allow industry stakeholders the opportunity to rectify what

are obvious errors in modern awards with the prospects few contested issues between industry parties will be settled in this first review. A further review is set out under the FWAct in 2014 and every 4 years thereafter.

In short, the core outcomes of award modernisation have not been met.

MBAWA raises the federal Award Modernisation exercise as an example of what a rushed and wildly optimistic time frame has as an outcome on industry. The experience in the building and construction industry has been one of having a modern award imposed that in few if any way meets the core tests set out by the then Workplace Relations Minister in 2008 of what a Modern Award would deliver. The outcome our industry has falls well short of what was promised with resulting stakeholder confusion on the modern award application with attendant cost to industry.

MBAWA raises this experience over the past 2 years and expresses its deep reservations the approach taken by SWA to push the harmonisation process to meet the 1 January 2012 deadline has all the hall marks of the rushed award modernisation exercise with similar confusion being an outcome. Whilst MBAWA accepts some may quibble with us on this point and contend we raise the award modernisation process as a pretence to oppose safety harmonisation we simply rely upon the observations of our sister Association, QMBA, on the matter.

The federal model safety laws were introduced by the former Qld state Labor government on 1 January 2012. QMBA reports significant levels of industry disruption and dislocation as all stake holders struggle to come to grips with the new safety regime. The parties have differing interpretations of the new legislation and new codes of practice as does the Qld safety regulator and SWA. That is, there is *no* consistency of interpretation and as the state regulator holds differing interpretations to SWA and the intent of “harmonisation” seems a lost cause. MBAWA understands the new Qld government is reviewing the state safety laws and is likely to make major changes to make the Qld’s safety laws more workable for industry and stakeholders at large. That is, there is there are strong prospects the Qld version of the federal safety laws will vary from the national version and may even align with the stated 2008 position of Western Australia.

MBAWA says the Western Australian Government must heed the lessons of the failed Qld exercise in this important matter.

9. Australian Government Building and Construction OHS Accreditation Scheme

The federal Building and Construction OHS Scheme formed part of the controversial but welcomed introduction of the Building and Construction Industry Improvement Act 2005. The BCIIAct 2005 introduced the Australian Building and Construction Commission (ABCC) as an enforcement and compliance body to police improper and unlawful conduct in the construction industry in an industrial relations context and, the Office of the Federal Safety Commission(OFSC).

The BCIIAct 2005 had its genesis following the 2002 Cole Royal Commission into the Building and Construction Industry and the Final Report of Royal Commissioner Cole. Whilst much has been made of the ABCC and the role it played in policing unlawful industrial conduct in the construction sector, little attention has been focussed on the role of the OFSC.

In essence, the ABCC was tasked with an enforcement and policing role though had no authority to deal with occupational, health or safety issues in the construction industry with that role falling to the OFSC under the BCIIAct 2005 and with the relevant state and territory safety regulators.

The 2002 Cole Royal Commission identified the construction industry was suffering unacceptably high rates of industry injury and fatality, in comparison to other industries, with one of the Recommendations of Commissioner Cole that the federal government should play a major role in improving construction industry safety as a client. This Recommendation was predicated on the federal government being a significant client in the construction sector and being able to impose safety standards as a pre-qualification criteria to work on federal government funded construction projects. That resulted in the creation of the OFSC.

The federal scheme applies on the following basis:-

- To construction projects that are directly funded by the Australian government with a value of $3 million or more

- To construction projects that are indirectly funded by the Australian government where:-
    - The value of Australian government contribution to the project is at least $5 million and represents at least 50% of the total construction project value; or

    - The Australian government contribution to a project is $10 million or more, irrespective of the proportion of federal funding

- OFSC accreditation by a head contractor is a mandatory requirement when tendering for a construction project that falls under the OFSC application criteria. That is, no OFSC accreditation, no ability to apply for construction projects that fall under the above financial criteria.

- Accreditation under the OFSC scheme applies to head contractors only, that is, it does not apply to sub-contractors.

- The OFSC has an exhaustive audit criteria that results in accredited head contractors having comprehensive safety systems in place for their construction projects which includes non-federal funded projects that must exceed AS 4801 as a minimum. This by application captures sub-contractor safety performance that carry out work for the OFSC accredited builder.

- Reaccreditation is required to be made every 3 years after initial accreditation which is an exhaustive reaccreditation process and no mere tick the box exercise.

- Whilst accreditation links directly to federal government funded projects with direct or indirect funding, the safety performance of the accredited builder on non-federal funded is also taken into account under this process.

Feedback from accredited builders who are members of MBAWA has been that the accreditation process is a costly and time consuming exercise with reports the cost can be as much as $80,000 to achieve OFSC accreditation, however, the outcome has realised a positive outcome in that sub-contractor safety standards are improving. This is one of the intended results of the introduction of the OFSC under the BCIIAct 2005 being that industry safety standards must improve as more head contractors become OFSC accredited with more sub-contractors exposed to the higher safety standards on these head contractor projects.

There are currently about 270 head contractors OFSC approved, of which some 26 have a presence in the construction sector in WA.

10. Safety Management Plans

In 2007 WorkSafe WA announced the introduction of mandatory Safety Management Plans (SMPS) for the commercial and residential construction sectors in WA. Commercial sector builders were required to have SMPs from early 2008 whilst the residential sector obligation took effect from 1 October 2008.

These new obligations formed part of nationally agreed arrangements to standardise safety systems in the construction sector.

The key features of the SMP are:-

- Set out a written procedure for ensuring compliance with construction induction training.
- A written co-ordination policy for on-site safety
- A policy demonstrating all on-site employees have knowledge of the above policy
- Hazard identification, risk assessment and risk control of all work on site assessed as high risk
- Having SWMS for all on-site high risk work

11. Where to next?

MBAWA is not opposed to the introduction of improved safety standards and has committed significant resources to improving safety standards in the building and

construction industry over the past two decades in Western Australia. However, MBAWA has always adopted the pragmatic position that what is required in the industry is reasonably practicable, easy to implement by industry and easily understood.

In addition, sections 9 and 10 of our submission demonstrate a significant level of national consistency in the local building and construction industry. This then links into section 7 of our submission on the basis of what the federal harmonised safety laws can deliver in excess of what is already being delivered in Western Australia presently or in the future?

That is, MBAWA does not say more regulation by itself necessarily delivers safer workplaces but that better safety regulation does, but as an adjunct in assisting the stakeholders improve workplace safety. Regulation does not and never can do this by itself.

Therefore, the stated outcome and intent of the federal model Regulation that there will be a reduction in business cost, there will be improved regulation and efficiency of safety regulators and improved safety outcomes fall well short on delivery on all counts.

MBAWA does not say the proposed federal model safety regulation ought be dismissed or delayed for any lengthy period of time but we do say it needs to be reviewed as per the comments of WorkSafe WA in its April 2011 submission. That is, the proposed federal safety regulation supports the development of contemporary occupational health and safety laws in Western Australia. But that the best interests of Western Australia are served, safety standards are improved, there is a reduction in red tape, business costs are not increased, preferably reduced and the state safety regime is easily understood by those who apply it at the workplace.

In advancing this position MBAWA contends the best approach is that the stakeholders in Western Australia be provided with opportunity to present input into the proposed state safety legislation and various codes of practice. The vehicle for this already exists via WorkSafe WA and the WorkSafe Commission calling for submissions on the draft legislation and codes of practice.

This may be controversial and may result in the federal safety regulation being deferred for say two or three years or more. We say the delay is worthwhile as local industry stakeholders will be able to genuinely assist and participate in the development of a state safety regime that reflects the need of industry and applies a safety regime that is reasonably practicable in its application at the workplace. It may echo the federal safety regulation in many ways but avoid the pitfalls of the Queensland experience and Award Modernisation exercise.

By way of example, MBAWA refers to the development of a WorkSafe Bulletin in 2006 on the erection of roof structures in domestic housing in Western Australia. That Bulletin was the result of about 18 months discussion between residential industry stakeholders on how to reduce the risks attached to erecting stick wood

frame roofs and metal frame roofs in the local housing market. The discussions also included the manufacture of steel framed roof trusses.

The background to this Bulletin was WorkSafe WA had identified falls from height in such work as a workplace hazard and sought to reduce that hazard by improved work practices. The process resulted in the industry stakeholders coming together and devising under a consensus approach a practicable outcome.

As previously articulated in our submission the process adopted by SWA in developing the model safety Regulation and Codes of Practice has been one of it imposing its views on all of industry as a means to meet its politically imposed and unrealistic deadline. This undermines industry and stakeholder ownership of developing workable and practicable safety systems and is in contrast to the above mentioned residential roof construction example.

The Western Australian Government not only in 2008 set out a differing approach to the "one size fits all" standard being promoted under the federal safety Rregulation but in 2010 expressly rejected that notion in the mining sector.

In April 2010, Minister for Mines and Petroleum, Norman Moore MLC, announced the introduction of a levy on the mining sector to fund the employment of more mines inspectors to police safety standards in the state's mining industry. In doing so, the Minister said:-

"The risk-based approach puts the onus on operators to demonstrate they understand the hazards and risks of their workplaces and have implemented the necessary control measures.

The will help ensure the specific safety needs of individual operations are addressed, rather than trying to use a one size fits all approach."

MBAWA refers back to the submission of WorkSafe WA of April 2011 in which it observed "that the model WHS Regulations impose an increase in administrative activities which in themselves will not deliver safety benefits."

In short, the federal model safety framework from our experience is based on developing a paper based safety system as a one size fits all approach. That system has not delivered improvements in safety in the WA mining sector as evidenced by the announcement of Minister Moore in 2010.

MBAWA asserts it will be a worthwhile exercise for WorkSafe WA to adopt a more realistic approach in seeking industry stakeholder input on developing a state safety regulation architecture that meets with its submission of April 2011 to SWA. The investment in time in doing so is wise investment, especially given the experience in Qld. That is, a move to any federal OSH regulation model ought take as long as it takes to develop and introduce in Western Australia rather than adopt a flawed and rushed process.