

SUBMISSION

to the

Model Work Health and Safety Model Regulations and Codes of Practice

October 2012



SUMMARY

The MTA WA represents over 1,800 businesses in Western Australia's motor industry. There are 19 divisions that cover every aspect of the motor trade industry from body repairers and mechanics to heavy transport operators and tyre dealers.

Following consultation with industry member businesses, the MTA WA response to the proposed harmonisation of Western Australia's WHS legislation, regulation and codes of practice with the model used in other Australian jurisdictions, follows. The MTA WA shares its concerns with the Western Australian Government regarding the benefits and cost of the proposed changes in terms of potential efficiencies, increased capital expenditure, pressure on employment and work conditions and training requirements and skills required.

The MTA WA suggests change that places undue financial and operational burden on businesses already struggling with economic fluctuations beyond their control, without specific and clear benefits to employees, the public and economy is unnecessary.

ISSUES AS RAISED

Harmonisation Issues not Applicable for WA (ref. Page 4 of 54)

The four areas not included in WA draft legislation because it was considered that they would not deliver direct improvements in safety outcomes in workplaces are:

- *Penalty levels – the proposed penalty levels are significantly higher than the current levels and could be unreasonably punitive, particularly for small business operators;*

The MTA supports this position. There is no statistical evidence to suggest that increasing penalty levels would increase compliance and employee safety in the workplace. Measures to encourage compliance via education and monitoring are considered more effective. Improved auditing of businesses using current WA regulations would improve workplace safety.

- *Union right of entry – right of entry for the purposes of occupational health and safety is already provided for under the Industrial Relations Act 1979. The proposed change is considered to create duplication risking confusion and inconsistencies;*

MTA strongly supports this position.

- *Health and safety representatives' capacity to direct the cessation of work – WA is of the view that this decision should remain with the individual worker and not be placed upon a health and safety representative; and*

MTA supports this position.

Reverse onus of proof in discrimination matters – WA considers that its inclusion is contrary to one of the issues that initiated harmonisation (reverse onus of proof associated with prosecutions, which currently exists in Queensland and New South Wales). Consistent with the relevant jurisdictional note, the Western Australian Government has also decided it will not adopt provisions providing for the Director of Public Prosecutions to review decision by WorkSafe WA not to prosecute.

MTA supports this position. There is the risk that a business could find itself in an ongoing debate.

Key Changes Proposed in WA WHS Regulation and Codes (ref. Page 9 of 54)

Major changes and differences already identified

While many of the provisions in the Model WHS Regulations and first stage Codes of Practice are very similar to Western Australia's existing Occupational Safety and Health Regulations 1996 (the OSH regulations) and codes of practice, there are some that are different or new.

WorkSafe WA has identified 13 areas where the adoption of the model WHS regulations would result in changes to work practices and so may result in benefits and/or costs.

The areas touching on automotive and related businesses are:

- Asbestos
- Fall prevention
- Hazardous chemicals
- High Risk Work Licences
- Incident notification
- Lead risk work
- Noise
- Personal Protection Equipment
- Plant
- Spray painting
- Thermal comfort

Transitional Principles (ref. Page 11 of 54)

The MTA supports the suggested transitional principles, confirming that a 12 month transition period is appropriate where changes are made to equipment required or in reporting. However particular consideration needs to be given to additional costs associated with purchasing extra equipment or in changing/upgrading equipment.

Asbestos:

Analysis of Samples (ref. Pages 21, 22 of 54)

The MTA has no objection to suggested changes with the following proviso.

The requirement in the model WHS Regulations is that 'they must ensure the sample is analysed by a) b) c)'. This requirement is acceptable only if there is not a sudden spike/increase in costs of testing. Often in situations where something is made mandatory there is an increase in previous costs associated with such testing.

Hazardous Chemical:

Health Monitoring Reports to the Regulator (ref. Page 31 of 54)

The MTA has concerns about the proposed WHS changes. The responsibility of forwarding on a health surveillance report to the regulator and the business owner should be the Medical practitioner. An itinerant employer may not forward on reports.

Noise:

Personal Protective Clothing and Equipment (PPE) (ref. Page 37 of 54)

The MTA hold serious concerns regarding the proposed WHS “no reference to ensuring it is in compliance with Australian or Australian New Zealand standards.”

It is important to PPE performance and worker safety that there are clear guidelines on PPE. Does this mean that any PPE equipment manufactured without AUS/NZ standards will be acceptable? Will there be another form of auditing on standard of the PPE?

Plant:

Item of Plant Registration – Renewals (ref. Page 42 of 54)

A list of ‘plant’ considered in this proposed WHS change is required. MTA believes this proposed WHS change is a cost impost to business that does not return clearly defined or tangible safety benefits. How extensive and effective will auditing of non-compliance be? It is anticipated that only reputable operators will comply and this creates a financial business burden in conducting a viable business.

Tilt-up construction, spray painting, welding, abrasive blasting, isocyanates and styrene (ref. Page 44 of 54)

The MTA strongly objects to the proposed WHS change; ‘No prescriptions in these areas’.

The MTA recommends that the current WA OSH Regulations remain in place in relation to the requirement for equipment to meet relevant Australian or Australian New Zealand standards.

Thermal Comfort: (ref. 45 of 54)

The MTA recommends that the current WA OSH Regulations remain in relation to workplace environment. ‘As far as practicable’ would cover occupations that involve extremes in temperature.