Contents

Attachment:

- WorkCover WA glossary and data disclaimer supplied in reference to data provided in support of addressing Regulatory change #5 - Fall prevention

Classifier Questions

CQ1. Thinking about a typical or hypothetical business or organisation, what industry does it mainly operate in?

The disability services sector is a sub-set of the Health and Community Services industry or Health and Social Assistance industry depending upon the context.

CQ2. What specifically does the business do?

Please see page 2, Submission Cover Sheet.

CQ3. What is the approximate annual OSH compliance cost of the typical business?

Due to the diversity and scope of the businesses represented by this submission, this information is not available in the timeframe requested. However, based on limited canvassing, the annual WHS compliance cost is estimated at 1-2% of revenue. Using the **low estimates** (see CQ4 below), this represents $74,200 for the average organisation and $8.89 million for the aggregated non-government disability sector.

CQ4. What is the approximate annual revenue for the typical business?

Given the size and diversity of the sector, it is difficult to talk in terms of 'typical'.

To provide an indication of the range and distribution of revenue/size in the sector (Disability Services Commission 2011-12 Annual Report):

- 6 non-government disability service organisations received less than $50,000,
- 53 non-government disability service organisations received between $50,001 and $1 million,
- 38 non-government disability service organisations received between $1,000,001 and $5 million, and
- 23 non-government disability service organisations received more than $5 million*. *There are a number of very large organisations. For example, one organisation had a 2010-11 revenue of $59,850,636 (2010-11 Annual Report), which included funding from sources in addition to Disability Services Commission, e.g. Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs.

In 2011-2012, (120) West Australian non-government disability service organisations received $444.68 million (Disability Services Commission 2011-12 Annual Report). While, this equates to average revenue of $3.71 million, the amount is misleading and significantly under-estimated.

Importantly, the true average and aggregate West Australian not-for-profit disability sector revenues would be significantly higher than the previously referenced amounts because disability service organisations also receive funding from other State and Commonwealth departments. Two major areas of disability services, which attract additional funding beyond that provided by the Disability Services Commission and other State government departments/agencies are Disability Employment Services (facilitating and supporting

open employment) and Australian Disability Enterprises (facilitating and supporting supported employment).

An indication of the size of this additional disability sector activity and source of revenue (not factored into preceding estimates) is the amount of funding provided by the Commonwealth Department of Employment, Education and Workplace Relations (DEEWR) for organisations providing Disability Employment Services in 2010-2011 - $713,896 million (DEEWR Annual Report 2010-11). While the West Australian funding component has not been provided, it is nonetheless a further indication of the size of the disability sector.

Also to be considered in the context of the size of the disability sector and the related size of the impacts of Work Health and Safety legislative and regulatory changes are the trends for an increased sector size:

i. The West Australian Government is not only providing more funding for disability services, it is also increasing the proportion that goes to the non-government disability sector. In 2007-08, non-government disability sector organisations received 58% of the total allocation for disability services of $366.0 million. In 2011-12, non-government disability sector organisations received 68% of the total allocation for disability services of $657.5 million. In nominal terms, funding increased from $213.0 million to $447.1 million, an increase of 111%. And overall funding for disability services nominally increased by 80% from 2007-08 to 2011-12. (Disability Services Commission Annual Report 2011-12)
ii. There is bipartisan support for a National Disability Insurance Scheme (NDIS) with preparatory work underway and launch sites to commence in 2013. The Productivity Commission has estimated a 90% increase in funding for disability services under an NDIS, which represents an additional $6.5 billion on the current $7.5 billion spent nationally. (Productivity Commission Inquiry Report. Disability Care and Support. No. 54, 31 July 2011. Australian Government Productivity Commission)

CQ5. About how many people work for the typical business or organisation in WA?

The size varies. Arguably, ‘typical’ does not exist given the sector’s diversity. Organisations range from less than 50 employees to over 1,000. Commonly, there is also a large proportion of part-time workers.

For example, one of the largest sector organisations has the following profile:

- 367 full-time, 458 part-time and 598 casual workers – a total of 1,423 workers, representing almost 791 FTE
- In addition, there are 1,078 ADE employees with disability.

CQ6. Does the typical business or organisation operate only in WA?

Predominantly, yes.

CQ7. About how many people work for the typical business or organisation interstate?

In the few cases where an organisation also operates in another state or territory, the number of employees would be more than 50.

CQ8. Where is the typical business located in WA?

By number, the majority of disability service organisations would be in the Perth metropolitan area. However, disability service organisations are also located outside of Perth to meet the needs of people with disability in regional, rural and remote Western Australia.

Impact of Most Relevant Regulatory Changes

Given the size and diversity of the disability sector, rather than responding only with the requested top (4) regulatory changes incurring benefits or costs, most relevant regulatory changes will be addressed.

The top four changes incurring costs are:

- Asbestos register (#3, following);
- Noise – audiometric testing (#9, following)
- Noise – risk management (#10, following)

1. Regulatory Change: Asbestos – air monitoring and clearance

Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Class A (unrestricted) asbestos removalist licence holders are required to use a ***competent person to carry out air monitoring*** when friable asbestos is being removed. Employers, main contractors, self-employed people and persons in control of a workplace must ensure that any asbestos removal work is done by a licensed asbestos removalist. The latter ***should obtain a clearance certificate from a competent person*** as a licence condition, as recommended in a code of practice.	***A person conducting a business or undertaking*** who commissions asbestos removal work requiring a Class A asbestos (non-friable or bonded asbestos containing material) removal licence must ensure that an independent ***licensed asbestos assessor undertakes air monitoring***. [Reg. 475] In the case of work involving friable asbestos, a person who commissioned removal work ***must obtain a clearance certificate from a licensed asbestos assessor, or for other asbestos removal work, a competent person***. [Regs. 473, 474 and 477(6)]. The licensing of licensed asbestos assessors is prescribed in some detail and involves the applicant completing a VET course or tertiary qualification as a pre-requisite. [Reg. 495]

Table Source – p20 of the Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper

1.1 Disability Service Organisations affected:

Potentially all organisations may be affected at some time as all are likely to operate within building stock that contains asbestos. However, the incidence or frequency of asbestos removal work is likely to be low.

Costs relate to:

- There will be an increased onus of responsibility on the person conducting a business or undertaking (PCBU). The changes require the PCBU, rather than the asbestos removalist to “ensure that an independent, licensed asbestos assessor undertakes air monitoring”. Previously, the onus was on the removalist to use a “competent person” to undertake air monitoring. This change will require additional PCBU time to comply.

- In addition, the requirements for an “independent” and “licensed” assessor are likely to entail additional costs.

Conversely, all people exposed to environments where asbestos removal work is undertaken are likely to be safer as a result of the more rigorous monitoring, training and licensing requirements.

1.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace								✓ although reduced
Ease of compliance with WHS			✓					
Other changes – cost			✓					

1.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

While not quantified, the frequency of asbestos removal expenditure is thought to be low with costs dependent upon the scale of asbestos removal.

1.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

The additional time required by a PCBU and costs added to the cost of removal work are not estimated to be significant.

1.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

There will be ongoing costs whenever asbestos removal work is commissioned, but as with changeover costs, they are not estimated to be significant.

2. Regulatory Change: Asbestos – naturally occurring

Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
An employer or self-employed person must not use asbestos at the workplace, other than to remove and dispose of it, unless it is used only in analysis or bona fide research and such use has been approved by the WorkSafe Western Australia Commissioner [OSH reg 5.31(1)]. However, a person does not commit an offence under regulation 5.31(1) if the asbestos is in its natural state and has not been moved for its natural location [OSH reg 5.31(2)].	A person with management or control of a workplace must manage the risks to health and safety associated with naturally-occurring asbestos at the workplace. [Reg 431]. In addition, if naturally-occurring asbestos is: • identified at a workplace; or • likely to be present at a workplace, a person with management or control of the workplace must ensure that a written **Asbestos Management Plan** is prepared in relation to the naturally-occurring asbestos. [Reg 432] The Asbestos Management Plan must be reviewed and, as necessary, revised. [Reg 433]. A person conducting a business or undertaking must ensure that appropriate training is provided to workers who carry out work where naturally-occurring asbestos is likely to be found. [Reg 434].

Table Source – p22 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

2.1 Disability Service Organisations affected:

Naturally occurring asbestos may affect disability service organisations operating in the Pilbara region, where workers may operate outside. However, advice (QED Environmental Services) suggests that other than known problem areas like Wittenoom, this regulation is more of an issue only when drilling is taking place.

There are approximately 28 organisations providing disability services and supports in or near the Pilbara region. Costs will be incurred for:

- The preparation of an Asbestos Management Plan, which must be reviewed at least every 5 years; and
- Training for workers who may be exposed to naturally-occurring asbestos.

2.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace								✓ although reduced

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Ease of compliance with WHS			✓					
Other changes – cost of compliance		✓						

2.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

In the context of naturally occurring asbestos under existing regulations, it is estimated that the costs incurred by disability sector organisations are minimal to nil.

2.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

For organisations with workers who may be exposed to naturally occurring asbestos, initial changeover costs relate to preparation of an Asbestos Management Plan and worker training development and implementation.

(a) A precursor to an Asbestos Management Plan is generally a qualified assessment/survey by a Licensed Assessor. This varies based on the time taken and distance travelled to perform the survey. The time to conduct an Asbestos Assessment will depend upon the size and geographic spread of sites to be surveyed and the ease of access.

Broadly indicative quotes* obtained for Asbestos Assessment (including sampling) ranged from $1,000 to $2,000 for a house and $2,500 to $7,000 for an office or factory facility. On top of this, travel costs may be indicated, e.g. $1,500 based on return airfare from Perth, one-night's accommodation and car hire.

The provision of an Asbestos Management Plan/site from the consultant who had conducted the Assessment Survey could entail an estimated $100/site. An alternate quote suggested $2,000 to $2,500/organisation and is based on Assessments quoted at the lower end of the previous ranges. The Consultant's recommendations for the Plan may require supplementary local risk assessment by the PCBU, i.e. additional staff management time/costs.

(b) A quote* for a Consultant-developed Asbestos Awareness PowerPoint training presentation as a one-off purchase was $500. Also to be factored in, would be staff time to implement and participate in this training. Initially, on changeover, all staff would need to receive training.

*Estimates are based on verbal quotes from Emission Assessments and QED Environment Solutions. Both organisations offer personnel with Class A training and licenses obtained in the ACT, which involves qualifications equivalent to those proposed under Model Regulations. It is noted that these quotes are in excess of the $2,600 estimate provided in the *2007 Victorian RIS* as cited in the *Decision Regulation Impact Statement for National Harmonisation of Work Health and Safety Regulations and Codes of Practice, Safe Work Australia, 7 November 2011 (page211).*

2.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

The Asbestos Management Plan would need to be reviewed at least every 5 years. If conditions had not changed substantially, the cost for review is likely to be minimal. However, any significant changes may require repeat Assessment by an external qualified Assessor, at a not insubstantial cost (2.4).

Ongoing costs would also include ongoing asbestos awareness training of new staff. The additional 15-20 minutes/new staff member induction is not regarded as significant and the training resource purchased/developed at changeover is likely to be suitable for ongoing training purposes.

Over and above initial induction training, asbestos awareness would need to be included in refresher training. The extent of the refresher training would depend upon individual organisation's asbestos risk profile and the nature of worker exposure/interaction.

3. Regulatory Change: Asbestos register

Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Although there is no regulation covering age of buildings that require an asbestos register, the WA public sector Asbestos Steering Committee (which included WorkSafe WA) ***advised government agencies to maintain a register for buildings constructed before 1990***. This is based on the history of asbestos building product manufacture and use in WA.	A person with management or control of a workplace must prepare and keep ***an asbestos register at the workplace for all buildings built before 2003***. [Reg. 425] The details to be in the register are specified in the regulations and include the location, type and condition of the asbestos or ACM. If asbestos is not present, the register must state that no asbestos or ACM is identified or likely to be present from time to time.

Table Source – p23 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

3.1 Disability Service Organisations affected:

All disability service organisations would be affected as the onus is on the "person with management or control of a workplace" (p23, Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper). This is interpreted as meaning the leaseholder, rather than the owner. It is not known what percentage of buildings operated by disability service organisations currently have an Asbestos Register, but it is thought to be much less than what will be required post harmonisation (or arguably even now to be compliant with current arrangements).

Significantly too, the home of an individual with disability is frequently a workplace. Verbal advice from WorkSafe WA (Bill Mitchell, 28 September 2012) suggests that if the individual with disability is deemed the person conducting the business or undertaking (PCBU), then their home (if built before 2003) will require to be assessed to determine if it should be on an Asbestos Register. This will entail asbestos assessment costs ($1,000 - $2,000, as per quotes listed in 2.4). The number of individuals currently likely to be deemed PCBUs under the Model laws is not known as the issue of when or if a person with disability will be regarded as a PCBU is still uncertain. Importantly, with the growing trend for more control and choice to be made by the person with disability, the numbers of individuals with disability in the potential role of PCBU will increase.

If the PCBU role is not held by a person with disability (i.e. the worker or disability sector organisation is the PCBU), then their home does not need to be assessed for asbestos, even though it is a workplace. It is worth noting that if this interpretation alters (i.e. homes as workplaces must be tested for asbestos if they are built before 2003, irrespective of who is the PCBU), the costs will be enormous.

3.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace					✓			
Ease of compliance with WHS			✓					
Other changes - cost	✓							

The potential causes of asbestos exposure in the sector include:

- Workers' actions, e.g. by damaging asbestos-based fencing, drilling a hole in the wall, building wear and tear;
- People with disabilities and challenging behaviours making holes in walls (e.g. punching); and
- Building renovation or demolition.

A Register and general increased organisational and worker awareness of where asbestos is located and how it can become dangerous can only be beneficial to workers'* and other occupants' health. (*Workers includes others who may also be exposed, e.g. sub-contracted plumbers and electricians; volunteers and students.)

Australian Disability Enterprise workers providing property maintenance services to outside organisations may have significantly more risk of exposure due to the nature of their work and potential reduced awareness of the location of asbestos in workplaces that are not controlled by disability sector organisations.

3.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

While not confirmed, it is estimated that current sector expenditure in creating and maintaining Asbestos Registers is minimal.

3.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

It is anticipated that most building stock operated by the not for profit disability sector does not have Asbestos Registers covering buildings constructed before 1990, let alone 2003. A limited survey has established wide variation. Some organisations are relatively

prepared (buildings pre 1990 only on a Register where required), while many others are not.

Based on a mid-range quoted cost of $1,500 for houses and $5,000 for commercial-type properties (see 2.4), the sectoral cost is therefore likely to be considerable. For example, one organisation has 28 commercial properties, including 27 built before 2003. 454 workers, including 238 with disability, work in these buildings. None of the 27 buildings have been audited for asbestos and no workers receive any asbestos-related training. Asbestos assessments alone may cost $135,000, which represents 92% of the current total annual amount allocated by that organisation to work health and safety. Another organisation has 24 houses built before 2003 that provide group accommodation for people with disability. None of these have been assessed for asbestos and no workers receive asbestos-related training. Using previously quoted cost estimates, asbestos assessments for this organisation would be $36,000.

If individuals with disability who have control of their funding are deemed to be PCBUs, this will affect an estimated minimum 1,280* individuals and houses currently. Based on the $1,500 assessment estimate, this represents a minimum of $1.92million. Again, the current trend would see more individuals with disability required to incur this cost.

*1. 1,280 people self-managed an individual recurrent funding allocation via Local Area Co-ordination to meet their disability needs, which in total amounted to around $14.6million (2011/12 Disability Services Commission Annual Report).

*2. An additional 1,319 people received a non-recurrent discretionary payment ($30-$5,000) that was also self-managed (Disability Services Commission source).

*3. Another reason that 1,280 is an under-estimation is because it doesn't include individuals self-managing funds, which were received from sources other than the Disability Services Commission, e.g. workers' compensation, total and permanent disability insurance and Motor Vehicle Insurance Trust payouts.

If asbestos is detected, additional costs will accrue related to:

- Development of an Asbestos Management Plan;
- Training workers at changeover, induction and ongoing – asbestos awareness*, knowledge of the location of the Register and the Asbestos Management Plan; and
- Labelling asbestos locations – an estimate of $1,600 for 1,000 labels plus installation costs of $7,500.

*Importantly, where homes or other locations are workplaces and they have not been tested, workers should have a general understanding of where asbestos might be and how this might influence their work.

3.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

The Regulations are interpreted as meaning that buildings identified as requiring to be included on a Register (i.e. built before 2003 and containing identified asbestos), will need to be reviewed at least once every 5 years. Based on an assumed prerequisite of qualified (re)assessment to check the integrity/condition of known asbestos, substantial ongoing costs (as per 3.4) will be incurred. Ongoing staff training (induction and refresher) will also be required.

The alternative is to replace older facilities known to contain asbestos with facilities built after 2003, which is highly likely to come with significant additional changeover costs, albeit reduced ongoing costs.

4. Regulatory Change: Asbestos training

Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
There is a ***WA course to obtain a Class B licence***. ***There is no WA course for Class A licences***.	There are ***increased training requirements***. The new regulations establish an extensive training framework for licensed asbestos removalists and assessors. There will be Vocational Education and Training (VET) training courses for ***individual asbestos removal workers***, ***asbestos removal supervisors (Class A)***, ***asbestos removal supervisor (Class B)*** and ***asbestos assessor work***. [Regs. 460, 493 and 495] Version 7 of the CPC08 Construction, Plumbing and Services Training Package was endorsed by the National Skills Standards Council (NSSC) on October 26th and is now available on training.gov.au This latest version of CPC08 includes four new units of competency related to the removal of asbestos containing materials, which are detailed below. **CPCCDE3014A** Remove non-friable asbestos **CPCCDE3015A** Remove friable asbestos **CPCCBC4051A** Supervise asbestos removal **CPCCBC5014A** Conduct asbestos assessment associated with removal It is intended that these units will be required before the asbestos licences can be issued by regulators.

Table Source – p24 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

4.1 Disability Service Organisations affected:

All organisations requiring an Asbestos Assessment/Register to be created or reviewed, which as stated previously (3.1), is likely to include all sector organisations will potentially be affected.

4.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace					✓*			

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Ease of compliance with WHS				✓				
Other changes - cost			✓					

*comments as per those made in 3.2

4.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

Where Asbestos Assessments have been commissioned, it is estimated that the current regulations covering training requirements do not impact costs significantly.

4.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

Based on the increased training requirement to obtain requisite licenses in the new regulations, it is anticipated that organisations providing asbestos assessment services will increase their prices to cover their increased costs. An anticipated increased demand for such services may also drive up prices. The extent of increased costs caused by increased training requirements is unknown.

4.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

Comments made about changeover costs (4.4) also apply in connection with ongoing costs. However, in the medium term, ongoing costs may well settle with demand-supply market adjustments and resultant price competition. In addition, over the longer term, there will be a tendency for a greater percentage of building stock to be built after 2003, i.e. reduced requirement for asbestos assessments and registers.

5. Regulatory Change: Fall prevention

Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Employers and main contractors, self-employed people or a person having control of a workplace must ensure that: a. ***edge protection is provided*** and kept in place where there is a risk of a fall of ***two or more meters*** from the edge of a scaffold, fixed stair, landing, suspended slab, formwork or falsework at the workplace; and b. for any other edges where there is a risk of a fall of ***three or more metres, edge protection or a fall injury prevention system*** must be provided.	Where it is not ***reasonably practicable*** to eliminate the risk of falls from one level to another, then the person conducting a business or undertaking must provide adequate protection against the risks by: a. providing a fall prevention device ***if it's reasonably practicable*** to do so; b. if the above is ***not reasonably practicable***, provide a work positioning system; or c. where the above two measures are ***not reasonably practicable***, provide a fall arrest system [Reg 78 & 79]

Table Source – p27 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

5.1 Disability Service Organisations affected:

All disability sector organisations are affected by the removal of the two metre (edge protection) and three metre (edge protection or fall injury prevention system) thresholds for falls prevention/minimisation.

5.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace							✓	
Ease of compliance with WHS			✓					
Other changes - cost		✓						

To gain an understanding of the cost of falls from a height, WorkCover WA were able to supply the following information (tables 1 and 2), based on their database as at 31 January 2012. A related glossary and data disclaimer are provided as an Attachment. The data refers to the Health Care and Social Assistance industry, of which, disability services is a sub-set.

Table 1: Workers' compensation claims in the Health care and Social Assistance Industry caused by falls, trips and slips: 2009/10 to 2010/11

	2009/10		2010/11	
	Number of claims	Cost (derived)	Number of claims	Cost (derived)
Falls trips and slips	693	$16,542,963	663	$ 11,962,984

Table 2: Workers' compensation claims in the Health care and Social Assistance Industry caused by falls, trips and slips: 2009/10 to 2010/11

	2009/10		2010/11	
	Number of claims	Cost (derived)	Number of claims	Cost (derived)
Falls from a height*	100	$2,886,286	106	$1,778,591
Falls on the same level^	587	$13,499,101	548	$10,099,277
Stepping, kneeling or sitting on objects	6	$157,577	9	$85,116

Based on the Type of Occurrence Classification System 3rd edition (Safe Work Australia):

***** Falls from a height include -

- A fall from ground level to below ground level;
- Landing awkwardly after a jump from a height;
- Falling off an animal; and
- Falling down stairs.

Falls from a height exclude -

- Falling from a moving vehicle; and
- Falling from a moving bicycle, motorcycle or similar.

^ Falls on the same level include -

- All slips, trips, stumbles, steps and jumps where a fall does not follow;
- Falls of short distances, such as off a curb or into a gutter;
- Falls up stairs; and
- 'Falls' with no further description.

The aforementioned data reveals that **the majority of claims, by number and cost, relate to falls on the same level**. In 2009/10, falls from a height only accounted for 14.4% of the total number of falls, trips and slips and 17.4% of the total cost of workers' compensation claims. In 2010/11, falls from a height represented 16.0% of the total number of falls, trips and slips and 14.8% of the total cost of workers' compensation claims.

Thus, the impact of the Regulation change and savings in terms of better outcomes are less than what might be expected if falls from a height featured more prominently in workers' compensation claims data.

5.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

The exact costs of complying with current falls prevention regulations is not known.

5.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

An audit of existing practices affected by the new regulations, in particular the removal of height thresholds, will be required. Then, new standard operating procedures and other preventative measures (e.g. new equipment or building modification) are likely to be indicated. There will also be associated staff training costs.

However, it could be argued that organisations that are currently compliant with (universal) risk management should not incur additional time/expense with the new Model Regulations.

5.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

Estimated ongoing annual costs per organisation will relate to worker training (induction and refresher) and increased management time spent monitoring for compliance. Balanced against this are savings due to a potentially reduced number and/or severity of incidents associated with falls from a height.

6. Regulatory Change: Hazardous chemicals – risk assessment and record keeping

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Hazardous chemicals: risk assessment and record keeping	The employer, main contractor and self-employment ***must conduct a risk assessment*** and assess the risk of injury or harm to a person as a result of a person being exposed to "hazardous substances". This must involve identifying each "hazardous substance", a review of the relevant Material Safety Data Sheets and identification of the likelihood of injury or harm from exposure. If this identifies a significant risk, then ***a report must be prepared on the assessment*** and the action to be taken to comply with relevant regulations. This report must be kept in a register at the workplace.	While the general duty of care for safety and health is relevant, there is ***no specific requirement for a risk assessment for "hazardous chemicals" or preparation of a risk assessment report***.

Table Source – p30 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

6.1 Disability Service Organisations affected:

Most, if not all disability sector organisations would have some form of hazardous chemicals, albeit only basic cleaning supplies. However, some ADE organisations operating in a factory environment may have significantly more hazardous chemicals and in a greater quantity.

6.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace		✓						
Ease of compliance with WHS						✓		
Other changes - cost					✓			

There is concern that this change eliminates a major control by not mandating suitable risk management. The change may lead some organisations and workers to believe that Safety Data Sheets are not compulsory to maintain safety. Importantly, irrespective of whether a person with disability is a person conducting a business or undertaking (PCBU), their home is a workplace and therefore Safety Data Sheets are also required in domestic settings.

6.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

The current costs of complying with existing WHS regulations are unknown.

6.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

No changeover costs are anticipated.

6.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

Going forward, the new Regulations appear to suggest easier and cheaper compliance by removing a specific requirement to undertake a risk assessment or prepare a risk assessment report for hazardous chemicals. The extent of the saving has not been quantified.

7. Regulatory Change: High risk work licenses (HRWL) – boilers (pressure equipment)

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
High risk work licences (HRWL) – boilers (pressure equipment)	There are ***five*** pressure equipment operation HRWL licence classes. Operation of boilers with an output of 500 kilowatts or less does not require a HRWL.	There are ***four*** HRWL licence classes. As part of this, ***three current classes***, Pressure Equipment (Basic), Intermediate and Advanced, have been ***converted to two classes***, Standard and Advanced Boiler Operation. The change means that operators with a Basic Boiler HRWL will need to obtain at least a Standard boiler HRWL in order to continue to operate. The definition of boiler in the model WHS Regulations excludes boilers with less than 5 square metres heating surface or 150 kilowatt output from requiring an HRWL. Therefore boilers of between 150 and 500 kilowatts will be required to obtain an HRWL [Reg 5 & Schedule 3].

Table Source – p33 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

7.1 Disability Service Organisations affected:

Survey responses have not been received from all potential sector organisations affected. However, it is thought that only a few factory-based ADE worksites will find the threshold for a HRWL for boilers dropping from an output of 500 kilowatts to 150 kilowatts relevant.

7.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace								✓
Ease of compliance with WHS			✓					
Other changes - cost			✓					

7.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

Not known

7.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

Additional staff training will be required, specifically for relevant staff to attain a License to operate a standard boiler. The exact size of this additional cost is not known but it is not anticipated to be significant.

7.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

With staff turnover, additional training costs may be required if the new worker does not have the required License.

8. Regulatory Change: Incident notification – prescribed serious illnesses

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Incident notification: prescribed serious illnesses	***Certain prescribed diseases*** contracted in the course of work must be ***reported to the WorkSafe Western Australia Commissioner***. These are tuberculosis, viral hepatitis, Legionnaires' disease, HIV, Q fever, Anthrax, Leptospirosis and Brucellosis.	Persons in control of a business or undertaking are required to notify any infection to which the carrying out of work is a significant contributing factor, including any ***infection that is reliably attributable*** to: • carrying out work with micro-organisms; • providing treatment or care to a person; • contact with human blood/body substances; or • involves handling or contact with animals and certain aspects of animals. [Reg. 699(a)]

Table Source – p36 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

8.1 Disability Service Organisations affected:

All disability sector organisations will be impacted by this change.

8.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace						✓		
Ease of compliance with WHS			✓					
Other changes - cost			✓					

8.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

It is estimate that current costs of compliance under existing Regulations in this area would be minimal.

8.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

The number and scope of notifiable illnesses has increased significantly. In addition, the general nature of category descriptions (e.g. infection reliably attributable to “providing treatment or care to a person”) is more ambiguous and open-ended than the current specific listing of relevant infections (e.g. HIV, Q fever). This uncertainty may lead to inconsistent interpretation and standards of compliance.

Costs will be incurred for auditing current practices, developing new procedures and training resources and implementing training for supervisors and workers. With an increased awareness, the need for potentially greater range and quantity of personal protective equipment may be identified.

The costs are difficult to quantify but the overall number of hours and related costs are likely to be large. This high estimation recognises that most, if not all, disability sector workers are at risk of exposure to micro-organisms, people, human blood/body substances and/or animals and aspects of animals; and/or the transmission of consequent potentially infectious illnesses.

8.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

Ongoing costs will be incurred to maintain compliance with procedures and provide refresher and new worker induction training. As identified earlier, the ongoing costs of PPE may also be increased.

9. Regulatory Change: Noise – audiometric testing

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Noise: audiometric testing	Audiometric testing is recommended in a code of practice.	Audiometric testing ***applies*** in relation to a worker who is ***frequently required*** by the person conducting the business or undertaking to use personal protective equipment to protect from the risk of hearing loss associated with noise that exceeds the exposure standard for noise. Testing required at commencement of employment and two yearly thereafter. [Reg. 58]

Table Source – p37 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

9.1 Disability Service Organisations affected:

Within the disability sector context, the two main sources of noise above the threshold levels (an eight-hour equivalent, continuous exposure to an A-weighted sound pressure level of 85 decibels or any duration and frequency exposure to greater than or equal to a C-weighted peak level of 140 decibels for impulsive noise) are generally:

(i) Mechanical - Some Australian Disability Enterprise workplaces include problematic machinery noise, e.g. lawnmowers, factory equipment; and

(ii) People with sometimes challenging behaviour (shouting/screaming).

9.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace					✓*			
Ease of compliance with WHS		✓						
Other changes - cost		✓						

*The current awareness of the risk and potential extent of workplace noise-induced hearing loss is anecdotally low, which suggests that this may be an under-estimated and not fully explored area of risk. Importantly, workplace noise affects not only workers (including sub-contractors), but also co-residents and visitors, if it is a group home situation.

9.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

Other than personal protective equipment in known high noise environments, current compliance costs in the sector are thought to be relatively low.

9.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

In Western Australia, the current most stringent and relevant (i.e. non-mining) noise-related legislation is the Workers Compensation and Injury Management Act 1981 (Part III, Division 2, Sections 24A, 24B and 31E; and Schedule 7) and associated Workers Compensation and Injury Management Regulations 1982. Under this legislation, the threshold is 8 hours at 90 decibels* or any period or frequency of exposure to a peak noise of 140 decibels. (*This is a sliding scale, whereby the duration of exposure reduces as the decibel level rises. For every 3 decibels the noise rises above 90 decibels, the duration of exposure halves, e.g. 4 hours at 93 decibels. Shifts greater than 8 hours also reduce thresholds.) Audiometric testing of workers who may be exposed to hazardous noise is required pre-employment and annually thereafter if the worker requests.

Against this current requirement, the differences in the proposed harmonised WHS Regulations appear to be:

- A strengthening, with compliance specifications moving from the current (recommended) Code of Practice (Managing Noise in the Workplace 2002) to the (mandatory) Regulations;
- The lower threshold of 85 decibels; and
- Audiometric testing of workers who are exposed to hazardous noise levels during the course of their work. After the initial pre-employment audiometric testing, workers must be retested every two years.

Estimates for two relevant external cost items* include:

a) Noise testing of a workplace to determine if hazardous noise thresholds are breached – This can be done with static devices or dosimeters worn by workers. Corporate Health Professionals provide such services at $125/hour and estimate that workplaces would take 6 to12 hours for testing and reporting, depending upon the nature of the work environment, i.e. $750 to $1,500. This company stated that they were at the lower end of the market, with hourly rates going up to $200, i.e. $1,200 to $2,400 per worksite noise testing.
b) Audiometric testing of an individual worker ranges from $60 to $80.

(*Reduced access to audiometric testing in regional areas may also mean additional travel-related costs on top of these estimates.)

To illustrate the impact of this Regulation, one organisation with 24 group homes has identified that nine homes may be associated with hazardous noise created by individuals shouting or screaming. 70 to 90 workers work in these homes and none have been tested. Baseline testing of the homes and associated testing of the workers (if the homes exceed

noise thresholds) would cost an estimated minimum $6,750 (9 x $750) for noise testing and $6,300 (90 x $70) for audiometric testing of workers.

In addition to external workplace noise testing and worker audiometric testing, there are internal costs. They relate to associated time spent training, monitoring and recording; and additional PPE and risk management strategies (see 10.4 and 10.5).

Another organisational example relates to a factory-type worksite, which has been identified as potentially exposing 240 workers to hazardous noise. External costs are estimated at $1,800 for workplace noise testing and $16,800 for audiometric testing, a total of $18,600 (using mid-range quotes provided previously).

9.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

Ongoing costs related to hazardous noise workplaces will also be significant, based on audiometric testing of new workers and all workers at two-yearly intervals. In addition, there will be related PPE costs and other risk management measures (see 10.4 and 10.5).

10. Regulatory Change: Noise – managing risks

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Noise: managing risks	Employers must, ***as far as practicable,*** ensure that persons at workplaces are not exposed to noise above the exposure standard.	A person conducting a business or undertaking at a workplace ***must ensure*** that the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise. [Reg. 57(b)] The ***practicability element is not included*** as in the current WA regulation.

Table Source – p37 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

10.1 Disability Service Organisations affected:

As with 9.1, the two main sources of noise above the threshold level of 85 decibels are likely to be machinery (some ADE contexts) and people with sometimes challenging behaviour (shouting/screaming).

10.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace					✓			
Ease of compliance with WHS		✓						
Other changes - cost		✓						

10.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

In addition to personal protective equipment and facility/equipment modification in known high noise environments, current management strategies and costs also include positive behaviour support strategies (e.g. preventing/minimising situations resulting in extreme noise generated by individuals). The exact cost of current compliance is not known.

10.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

The new Regulations imply a higher standard of compliance – A PCBU "must ensure that the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise" and "the practicality element is not included as in the current WA Regulation". Given the variation in noise exposure environments and mechanisms, it is not possible to accurately determine the compliance costs. However, as noise minimisation measures, particularly in the industrial setting (ADEs), can be expensive, the sector changeover cost is likely to be significant.

Costs will include an increased allocation for additional and/or customised PPE. PPE costs range from about 30 cents for foam ear plugs to $400-$500 for an entry level set of headphones with noise-cancelling capability. As noted previously, PPE will be required for not only workers rostered to that workplace, but also sub-contractors and non-workers (e.g. co-residents, friends and family) who may also be exposed to hazardous noise levels in the affected workplace.

Also, increased testing (9.4) is likely to identify more situations requiring hazardous workplace noise risk management.

10.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

Once noise abatement measures are in place, ongoing costs will be incurred for training (e.g. behavioural management strategies), monitoring and PPE.

Conversely, if the noise abatement measures reduce the noise below threshold levels at the source (e.g. machinery modification or replacement to lessen noise levels), ongoing costs (PPE and audiometric testing) may be reduced.

11. Regulatory Change: Plant – item of plant registration

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Plant: item of plant registration	As part of the requirements to obtain individual item of plant registration for prescribed items of plant, an applicant must provide a signed statement ***by a competent person*** that the item of plant has been inspected by that competent person is safe to operate. A competent person is defined as "a person who has acquired through training, qualification or experience, or a combination of those things, the knowledge and skills required to do that thing".	As part of the requirements to obtain registration of prescribed items of plant, the applicant must obtain a statement that the plant has been inspected by ***a competent person*** and assessed as being operable. A person is competent to carry out the inspection if they have: ***(a)*** ***educational or vocational qualifications in an engineering discipline*** relevant to the plant to be inspected; ***or*** (b) ***knowledge of the technical standards*** relevant to the plant to be inspected. [Regs. 266 and 267]

Table Source – p41 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

11.1 Disability Service Organisations affected:

The following items of equipment requiring registration (Model Work Health and Safety Regulations – PCC Draft 359, 4.11.2011; Part 2, section 3, page 588) are likely to be part of some disability service organisations' inventory:

- Boilers categorised as hazard level A, B or C
- Lifts

11.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace								✓
Ease of compliance with WHS			✓					
Other changes - cost			✓					

11.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

The current costs of plant registration are likely to be small.

11.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

The new Regulations are more prescriptive about the knowledge and qualifications of a "competent person" to perform plant inspections. By necessitating "educational or vocational qualifications in an engineering discipline relevant to the plant to be inspected", it is likely that inspections may become more expensive.

However, the alternate provision of "knowledge of the technical standards relevant to the plant to be inspected" may mean that costs are neutral.

11.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

Potentially increased costs for plant inspections as a precursor for registration is more likely to be an issue in an ongoing way, rather than at changeover. The amount of any potential increase is not likely to be significant for the sector as relevant equipment is not widespread or numerous.

12. Regulatory Change: Plant – item of plant registration – renewals

Area of regulation	Current requirements under the WA OSH Regulations	New or changed requirements under the model WHS Regulations
Plant: item of plant registration – renewals	"Individual item of plant" registration for certain prescribed plant is required to be ***renewed when there is a change of ownership, it is relocated or altered***. The fee for the above is currently $79.00.	Persons conducting a business or undertaking will need to ***renew*** "individual item of plant" registrations ***every five years*** for certain prescribed plant. WorkSafe WA understands it is intended that the five yearly renewal will apply to plant that is currently registered and operational at workplaces. Therefore, plant that falls within this category will need to be identified and a renewal date established. A means of identifying the location of the plant and determining a means of classifying the plant in order to fairly and evenly spread the transition to the five yearly renewal system will need to be determined. [Reg. 272 and 273]

Table Source – p42 of the *Model Work Health and Safety Regulations and Model Codes of Practice WA Assessment Public Discussion Paper*

12.1 Disability Service Organisations affected:

Organisations, as per 11.1, will be affected.

12.2 Impact of this change on a typical affected business:

Impact	Much Worse (>20%)	Worse (5-20%)	Sl. Worse (1-4%)	Little effect (0%)	Sl. Better (1-4%)	Better (5-20%)	Much better (>20%)	Unsure
Likelihood of injury, death or illness in a workplace								✓
Ease of compliance with WHS			✓					
Other changes - cost			✓					

12.3 Estimated annual costs of existing WHS regulations in a typical business in this area:

The current renewal requirement of "when there is a change of ownership or the item is relocated or altered" suggests that renewal is not often required, which would result in currently minimal renewal costs.

12.4 Changeover costs a typical business will incur to meet the proposed regulations in this area:

Under new Regulations, by mandating a five-year renewal period, organisations with plant requiring registration will incur increased costs (a minimum of $79/item plus internal administration costs). It is noted in the discussion paper, that a means will be determined to “fairly and evenly spread the transition to the five yearly renewal system”.

12.5 Ongoing costs a typical business will incur to meet the proposed regulations in this area:

The five-year renewal period clearly involves ongoing as well as changeover costs.

General Benefits and Costs of Harmonisation

GBC1. Thinking about the whole package of changes, will they lead to any changes in health and safety for the typical business/workplace?

Overall, the changes will lead to an improvement in health and safety.	✓
Overall, there will be negligible or no change in health and safety.	
Overall, there will be a reduction in health and safety.	

If so, then how much and in what way/s?

It is difficult to determine by how much, but the following areas of regulatory change (discussed briefly earlier in this submission) are likely to promote improved health and safety in the disability sector:

- Asbestos Register – promote increased awareness about the prevalence of asbestos in the built environment in particular;
- Greater training and licensing requirements for asbestos removalists and assessors;
- Fall prevention;
- Incident notification – prescribed serious illnesses; and
- Noise – audiometric testing and managing risks.

GBC2. Thinking about the whole package, will the changes provide other benefits, such as more efficient work?

Yes	✓
No	

If so, then how much and in what way/s?

By being less prescriptive, the following regulatory changes will allow for more flexibility and potentially reduced costs and time required for compliance:

- Hazardous chemicals – risk assessment and record keeping;
- Personal protective clothing and equipment (Reg. 44);

- Tilt-up construction, spray painting, welding, abrasive blasting, isocyanates and styrene; and
- Thermal comfort.

GBC3. Do you believe there will be additional compliance or other costs for the typical business because of additional or new requirements in the whole package of changes?

Yes	✓
No	

If so, then how much and in what way/s?

The changes requiring significant additional compliance or other costs have been identified previously and include:

- Asbestos register (preceding section 3);
- Fall prevention (preceding section 5);
- Incident notification – prescribed serious illnesses (preceding section 8);
- Noise – audiometric testing (preceding section 9); and
- Noise – risk management (preceding section 10).

GBC4. Will the additional or new requirements in all the changes have any market or competition impacts on your business?

Yes	✓
No	

If so, then how much and in what way/s?

Please see the discussion in the ‘Other Issues’ section.

Transitional Provisions

TP1. Would alternative transitional arrangements be justified when making these changes?

Yes	✓
No	

TP2. Which 3 Regulatory changes would altered transitional provisions provide the greatest benefit to?

1st change	**Asbestos register**
2nd change	**Noise – audiometric testing**
3rd change	**Noise – risk management**

TP3. What do you think would be the most effective way to reduce these implementation costs?

Transition Options	**1st change**	**2nd change**	**3rd change**
Delaying implementation one to two years			
Delaying implementation three to five years		✓	✓
Delaying implementation by more than five years	✓		

Other transitional support strategies are outlined in the Recommendations section.

TP4. How much would these ways of reducing implementation costs save?

Delaying implementation is more about gradually phasing in the additional costs, rather than reducing them.

The West Australian not for profit sector has been chronically under-funded, which has been acknowledged in the 2009 Economic Audit Committee Report, 'Putting the Public First, Partnering with the Community and Business to Deliver Outcomes'. In redressing this, the State Government has embarked upon significant procurement and other reforms, alongside the 'Delivering Community Services in Partnership' Policy.

A key change requires non-government disability sector organisations to change from working within government-set pricing of their services to accurately and sustainably setting their prices themselves. This fundamentally requires an accurate understanding of the true costs of providing services. Organisations are only just coming to grips with this process and understanding the true costs of compliance with Work Health and Safety responsibilities (current and proposed) is another layer of complexity and difficulty for a sector that is confronting changes and challenges on many fronts.

Over and above the Regulatory issues identified earlier in this submission, in the context of the disability sector and the Model legislation, Regulations and Codes of Practice, key issues are yet to be clarified, which have major cost implications:

- When, if ever, will a person with disability be deemed to be a PCBU; and
- How to support and not dis-incentivise sole trader support workers (i.e. if they are deemed to be the PCBU and worker) working in the disability sector, when there are growing and competing demands for labour.

Time is needed for determination of how the Model arrangements will apply and what that then means in terms of who bears the responsibilities and costs of being the PCBU.

In addition, increased or staggered transition timing will allow demand-supply mismatches (e.g. number and geographic spread of asbestos, noise and audiometric assessors) and related pricing to adjust. This is particularly relevant for regional organisations, which already have greater costs.

Other Issues Relevant to the Disability Sector

Will a person with a disability ever be the person conducting a business or undertaking (PCBU) in the course of commissioning and receiving personal and other services related to their disability?

While mentioned earlier, it is worth emphasising the importance of this question and the need for a clear and consistent answer. With ongoing repercussions, determinations about who is the designated person conducting a business or undertaking will have a significant impact now and into the future with the proposed National Disability Insurance Scheme.

Without clarity, there is the risk of unnecessary expense and anxiety if people and organisations prepare to fulfil responsibilities that don't exist in fact. On the other hand, misunderstandings can also lead to gaps, where no entity takes responsibility.

Increasingly, the Australian disability sector, with Western Australia arguably in the fore-front in terms of experience, is moving towards offering and enabling greater choice and control for people with disability. There is a spectrum upon which people can receive services from total control by a disability service organisation to total financial control by the individual with disability. Complexity is further added by the existence of many alternate models of service delivery, e.g. shared management and host family arrangements.

In addition, individuals with disability are not a homogenous group with consistent capacities and understanding. The ability of the individual with disability to meet Work Health and Safety responsibilities, particularly those of a PCBU, is very variable and in general, restricted. This reduced capacity is generally compounded by limited financial resources, which struggle to deliver personal quality of life. Thus, it is highly likely that it will not be feasible to impose extra difficulties, legal responsibilities and financial compliance costs on people with disability.

In addition, if there was a tipping point in terms of when a person with disability is deemed to be a PCBU, it will serve to discourage individuals exceeding the tipping point to take greater control over how their disability funding is spent. This would be counter to the direction the sector is moving, in line with international best practice. Thus, it is recommended that individuals with disability are never regarded as the PCBU in the context of their receiving services related to their disability.

If not the person with disability, then who is the PCBU? This question needs answering too as the health and community services industry, of which the disability sector is a sub-set, has been identified as a priority industry in the *National OHS Strategy 2002-2012* and again in the *Draft Australian Work Health and Safety Strategy 2012-2022*. The Health Care and Social Assistance industry also employs the largest number of West Australians, over 139,000 in 2011 ('WA at a glance', ABS Cat.No.1306.5. 2012). PCBU responsibilities must be competently fulfilled by some entity.

Disability service organisations have traditionally fulfilled employer (the current precedent for PCBU) responsibilities. However, as has been discussed, the trend is for decision-making to be devolved to the person with disability and there are already many instances where the disability sector organisation, if involved at all, is at arm's length. In this circumstance, the worker may be directly employed by the person with disability and receive no support from a disability sector organisation. If the person with disability is not the PCBU (the preferred interpretation), PCBU responsibilities appear to default to the worker. The worker would bear both worker and PCBU responsibilities.

In this instance, significant resourcing would be required to support workers' understanding of their risks and obligations and how to address them. A concern would be too that the requirement to meet and carry additional WHS responsibilities and risks may dis-incentivise employment in the sector. Sometimes difficult and sensitive working conditions, coupled with relatively low pay, already create labour supply pressures and shortages in a sector with a trend for significantly increased labour supply demand.

The inclusion of volunteers in the new Model Act definition of 'worker' has two key dimensions, each with associated implications and consequences:

a) For the disability sector organisations that rely upon their 'identified' volunteers

Note: The parentheses around 'identified' (above) are deliberately in place to provide delineation from the following sub-group – b).

With chronic under-funding, the not for profit disability sector has boosted service delivery with the assistance of volunteers; directly, through supporting and/or providing services, or indirectly, through fundraising activities.

The new legislation suggests two courses of compliant action:

i. Continue to use volunteers with requisite investment in their training and supervision; or

ii. Discontinue/reduce volunteer participation and replace with paid workers.

Either option will come at a significant cost to the sector:

i. The current number of volunteers in the sector is not known but most organisations contacted utilised volunteers in some capacity. The number of volunteers per organisation ranged from less than 10 to 195. All volunteers would require induction and refresher training targeted at the specific tasks they perform and the specific workplaces, in which they provide volunteer work. Adding complexity, training would need to accommodate different volunteer availabilities, backgrounds and educational status. A cost-efficient one size fits all and all at once approach is unlikely to be adequate or possible.

ii. The size of volunteer contribution varies but is significant as seen in the following four examples. The dollar value represents the annual cost to the organisation if

their volunteer workers were replaced by paid workers (using a base hourly rate of $19.82). These amounts are conservative and don't include on costs.

- Organisation one with 10 volunteers reports receipt of 5,200 hours volunteer labour annually, valued at $103,064.
- Organisation two with 30 volunteers reports receipt of 3,200 hours volunteer labour annually, valued at $63,424.
- Organisation three with 116 volunteers reports receipt of 15,382 hours volunteer labour annually, valued at $304,871.
- Organisation four with 195 volunteers reports receipt of 42,000 hours volunteer labour annually, valued at $832,440.

b) The people who provide informal and unpaid supports who are unaware that they are 'volunteers' and under proposed legislation, also 'workers'

A prevailing international and Australian trend is to facilitate individuals with disability to access supports and services that are more natural, inclusive and/or informal, which may or may not be paid; rather than supports and services that are formal, paid and disability-specific. This group of people are highly unlikely to see themselves as workers, are likely to be unaware of all but the most obvious work health and safety risks and receive no training or professional support.

Consideration is required about how to ensure Work Health and Safety outcomes for both these volunteer workers and the people with disability they support. Basic work health and safety training is most often delivered in-house by disability sector organisations. Very little relevant training is available for freelance workers, including volunteers who are not associated with a disability sector organisation.

Disability Employment Services (DES)

Disability Employment Services promote and facilitate people with disability to obtain open employment in mainstream organisations. There is a concern that the requirement to jointly consult in situations where there are multiple PCBUs will discourage employment of people with disability. Through mandated consultation, potential employers of people with disability will be made aware of their PCBU responsibilities to not only the worker with disability on trial in their organisation, but also the DES worker who comes into their workplace periodically to support or monitor the worker with disability. There is a concern that employers may see the situation as 'too hard'.

Australian Disability Enterprises (ADE)

Australian Disability Enterprises provide supported employment for people with disability who cannot obtain open (mainstream) employment. In the past, these organisations were called 'sheltered workshops'. In the current and model legislation, Health and Safety Representatives (HSR) can play an important role in WHS. However, this assumes that all workers have the capacity to undertake HSR responsibilities, which is not the case in an

ADE. Thus, to fulfil their roles, ADE workers with disability are supported by workers without disability. ADE workers with disability, particularly intellectual disability, have potentially reduced capacity and vulnerability.

In developing new legislation, codes of practice and regulation, there is an opportunity to strengthen ADE worker health and safety by supplementing the HSR role in the ADE context. Other mechanisms may be indicated to provide investigation and advocacy.

Also relevant to the ADE context, National Disability Services WA acknowledges the recently commissioned work by the Commonwealth Department of Family, Housing, Community Services and Indigenous Affairs to develop Work Health and Safety and Industrial Relations training resources suitable for a range of ADE worker capacities, e.g. including plain and easy English versions.

Regional, rural and remote Western Australia

It is generally acknowledged that there are specific difficulties and increased direct and indirect costs of providing services in regional, rural and remote areas of Western Australia. This also applies in the context of the specific measures required for WHS compliance, both currently and under proposed new WHS arrangements. For example, resources to provide training, asbestos assessment and other requisite qualified or licensed services are scarcer and more expensive in regional, rural and remote areas. Logistical issues around supervision and contingency support, particularly for mobile workers in remote areas can also be very difficult. Communication technology-based solutions come at additional cost and can be compromised by the lack of universal internet coverage throughout the State.

Recommendations

1. Establish a national Agreement that a person with disability will not be regarded as a person conducting a business or undertaking in the context of receiving services related to their disability. If the Agreement is not sufficient to withstand challenge in the Courts, modify the Legislation.
2. WorkSafe WA or Safe Work Australia, in collaboration with the sector, develops resources to support workers who will be both worker and PCBU in the context of the provision of disability services. For efficiency and sustainability, these resources should be incorporated into the entry-level 'Certificate III in Disability' training qualification.
3. Transitional Provisions:
   - Delay implementation of all Regulatory changes for the disability sector for one to two years, in recognition of the low margins organisations currently operate on and their infancy in terms of determining true costs (including those required for WHS compliance) and obtaining prices, which cover the costs.
   - Delay implementation of Regulations relating to an asbestos register and noise audiometric testing and risk management, to allow the very significant costs to be gradually incurred over three to five years rather than all in one year.
4. Commission a more detailed scoping of the differential costs of complying with the Model Law, Codes of Practice and Regulations for regional, rural and remote organisations (excluding mining) versus organisations in the Perth metropolitan area. While it could be argued that this current consultation process should reveal the required data, it is anticipated that it won't. Regional-specific organisations are generally smaller than metropolitan-based service providers and often lack the capacity to do more than their core operational business. In addition, they often don't employ someone with specific work health and safety expertise. A more direct and intensive approach may be warranted to gather information and provide support.
5. Based on the size of the additional costs, develop regional-specific remedial measures. Rather than a straightforward increase in funding to all regional organisations, more targeted and cost-effective measures are recommended. For example, strategies might include a grants program to promote innovative regional solutions; a ThinkSafe-type scheme specific to regional, rural and remote organisations; and regular regional road shows promoting best practice in the regional context.
6. National Disability Services, in collaboration with Safe Work Australia, WorkSafe WA and other state and territory counterparts, develops a disability sector awareness training package for WorkSafe inspectors to facilitate their understanding of the disability sector and WHS concerns and contexts specific to it.
7. Develop resources relevant to the disability sector in the context of the 'Incident notification – prescribed serious illnesses' Regulation. As all (120) disability service organisations are affected, it would be cost-effective to fund the development of the resource once. The resultant resource can then be freely shared and distributed.

WorkCover WA data usage limitations (relates to data provided in discussing the Fall Prevention Regulation)

1. Due to the dynamic nature of workers' compensation claims, the interpretation of data supplied must be undertaken with some caution. Data users are advised to carefully consider the provisional nature of the data before using it for decisions that concern personal or public safety or the conduct of business that involves substantial monetary or operational consequences.
2. The accuracy or reliability of the data is not guaranteed or warranted in any way. WorkCover WA has made a reasonable effort to ensure that the data is up-to-date, accurate, complete, and comprehensive at the time of provision. This data is reported to this agency by insurers for the specified period. Data users are responsible for ensuring by independent verification its accuracy, currency or completeness.
3. Neither WorkCover WA, or its agencies or representatives are responsible for data that is misinterpreted or altered in any way. Derived conclusions and analysis generated from this data are not to be considered attributable to WorkCover WA.
4. This data is provided 'as is' and in no event shall WorkCover WA, its agencies or representatives be liable for any damages, including, without limitation, damages resulting from lost data or lost profits or revenue, the costs of recovering such data, the costs of substitute data, claims by third parties or for other similar costs, or any special, incidental, punitive or consequential damages, arising out of the use of the data.
5. Information concerning the accuracy and appropriate uses of the data or concerning other workers' compensation data may be obtained by contacting WorkCover WA.

Glossary – data item descriptions

Data item	Description
Mechanism of injury	The mechanism of injury or disease classification is intended to identify the overall action, exposure or event that best describes the circumstances that resulted in the most serious injury or disease. The full list of inclusions/exclusions for each of the categories used in this report is available from the *Australian Safety and Compensation Council Type of Occurrence Classification System (TOOCS) 3rd edition, revision 1* (available online at safeworkaustralia.gov.au) for data from 2009/10 onwards.
Number of claims	Information pertaining to workers' compensation claims is reported to WorkCover WA by approved insurers and self-insurers. Information is collated based on the financial year in which a claim was lodged with the insurer.
Derived cost	Represents an estimate of costs for un-finalised claims plus the total cost of finalised claims. Cost is attributed to the year in which a claim was lodged

- The data provided was extracted from the WorkCover WA database as at 31 January 2012.
- Data refers to accepted claims only.