

# CFMEU

## CONSTRUCTION

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WHS Reform  
Department of Mines, Industry Regulation and Safety  
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Dear Madam/Sir

### **CFMEU SUBMISSION ON WORK HEALTH AND SAFETY REGULATIONS FOR WESTERN AUSTRALIA**

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The Construction, Forestry, Maritime, Mining and Energy Union, Construction and General WA Divisional Branch (CFMEU) is Western Australia's principal trade union in the construction industry. Safety has always been at the core of the CFMEU's business.

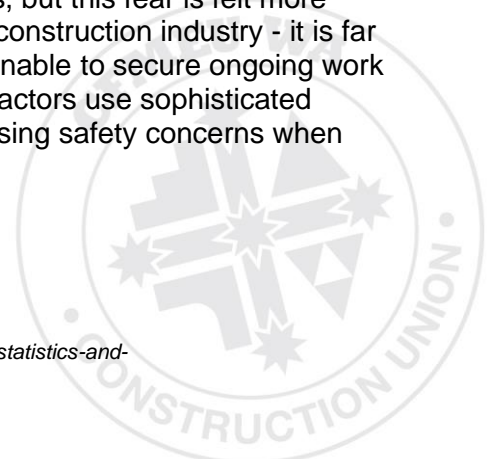
The CFMEU is affiliated to Unions WA. The CFMEU supports Unions WA's and the Australian Metal Workers Union WA's (AMWU) submissions on the Model Work Health and Safety Regulations (WHS Regulations) for Western Australia and makes additional comments relevant to the construction industry.

The construction industry has had the third highest rate of fatalities, on average nationally, in the period between 2007-2016<sup>1</sup>. The deliberate and/or negligent use of non-conforming building products and the use of building products in a manner which do not comply with the *Occupational Health and Safety Regulations 1996* (OSH Regulations) and/or the National Construction Code is widespread.

This appalling safety record is in the context of an industry which is increasingly characterised by casualised workforces, fragmented labour-hire structures, self-regulation by construction companies and sham contracting. These factors not only obfuscate OHS responsibility at a practical level, but also give rise to workers being pressured not to raise safety concerns for fear of jeopardising their ability to secure ongoing work. It is the CFMEU's experience that workers from all industries fear dismissal as a result of raising safety issues, but this fear is felt more acutely by construction workers given project-based nature of the construction industry - it is far more likely that a construction worker will simply find themselves unable to secure ongoing work at the end of the project. Indeed, many large employers and contractors use sophisticated methods of discriminating against workers who are proactive in raising safety concerns when considering future employment.

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<sup>1</sup> Safe Work Australia, Fatality Statistics by Industry, <https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/fatilities/fatality-statistics-industry>



The physically dangerous nature of construction work, coupled with above-stated industrial context highlight the importance of the OHS reform process and harmonised legislation/regulation in Western Australia.

For these reasons, the CFMEU strongly supports the introduction of the Model WHS Regulations, with amendments. In preparing these submissions, the CFMEU has had regard to factors such as:

1. Jurisdictional relevance;
2. The current Western Australian OSH regulatory framework;
3. Australian Standards;
4. Codes of Practice; and
5. The Regulatory framework from other jurisdictions.

From the outset, it is important to recognise that the current OSH regulations, whilst in many ways antiquated, in some key areas are more prescriptive, effective and suited to the Western Australian context. Notably, the OSH Regulations explicitly reference the Australian Standards and relevant Codes of Practice contrary to the Model WHS Regulations. This is an important distinction, as without the presence of Australian Standards and Codes of Practice within the Model WHS Regulations, the harmonised regulatory framework would in the CFMEU's view, be less prescriptive, have little by way of practical guide and preventative strategies and have a (general) deregulatory effect.

**Recommendation 1**

The relevant Australian Standards are referenced in the Model WHS Regulations wherever possible (as in the OSH Regulations).

**Recommendation 2**

The relevant Codes of Practice are referenced in the Model WHS Regulations wherever possible (as in the OSH Regulations).

## **PART 4.4 FALLS**

### Part 4.4 Management of Risk of Fall

The leading cause of serious injury and death in the construction industry is falls from height. Falls from height can have dramatic effect on a worker's health and wellbeing.

Whilst the Model WHS Regulations are consistent with the OSH regulations in defining a fall as in effect a "fall from one level to another", the Model WHS Regulations are in no way sufficiently prescriptive when pitched against either the OSH Regulations or particularly the *Queensland Work Health and Safety Regulation 2011* (Qld Regulations).

The CFMEU is of the firm view that the QLD Regulations are preferred to manage the risk of falls from height, with further prescription being required in relation to welding, holes in floors from the OSH Regulations and emergency procedures from the Model WHS Regulations.

In addition, the CFMEU also suggests that the following be considered in relation to fall risk regulations:

- (a) That all components of a fall arrest system and injury prevention system are inspected and tagged every 3 months by a competent person (quarterly) and as per Australian Standards and a register is established and maintained. Exactly the same as portable electrical equipment. This is mandatory in the resource sector and common in the tier 1" commercial construction sector;
- (b) Anchorage should be inspected and approved / certified by an engineer, not a competent person. An Engineer understands the forces applied to the system. History

indicates that a competent person succumbs to the pressures of employers, work schedules etc;

- (c) Remove any reference to 3 metres as a requirement to install a fall arrest system;
- (d) Replace 6 monthly inspections of fall arrest systems with 3 months inspections;
- (e) Ensure the equipment deemed not fit for use is tagged out of service and repaired or destroyed; and
- (f) Hand rails at height (formwork decks, edges of concrete slabs) - Timber handrails, flagging and tape should not be used as a barricade at height. The CFMEU's experience is that in the case of timber handrails, they are not designed or constructed by builders or subcontractors to withstand the potential forces that may be applied to the system and they are not installed to withstand these same forces. Flagging and tape are not capable of withstanding these forces. Hand rails installed at height should again be designed, inspected and certified by an engineer.

**Recommendation 3**

Remove Part 4.4, sections 78 – 79 Falls Management of Risk of Fall from the Model WHS Regulations and replace it with Subdivision 2 Falls 306B – 306J of the QLD Regulations.

**Recommendation 4**

Include the reference to 3.52 Welding etc. being done near fall injury prevention system from the OSH Regulations.

**Recommendation 5**

Include the reference to 3.54 Holes etc. in floors from the OSH Regulations.

**Recommendation 6**

Include regulation to require that all components of a fall arrest system and injury prevention system are inspected and tagged every 3 months by a competent person (quarterly) and a register is established and maintained.

**Recommendation 7**

Include regulation to require that anchorage should be inspected and approved/certified by an engineer, not a competent person.

**Recommendation 8**

Remove any reference to 3 meters and as a requirement to install a fall arrest system.

**Recommendation 9**

Replace any reference to 6 monthly inspections of fall arrest systems with 3 months inspections.

**Recommendation 10**

Explicitly prohibit the use of timber, flagging and tape for handrails at height.

**PART 4.6 DEMOLITION WORK**

On 19 November 2019, the Worksafe Western Australia Commissioner introduced a document to CISAC entitled “*Changes to Worksafe Licensing Process with Demolition Licenses*”. The CFMEU fully supports this document and the recommendations therein should be adopted into any future regulation in the Western Australian context.

From a general perspective, licensing of demolition work requires more stringent regulation and assessment than presented in the Model WHS Regulations. The issuing of demolition licenses must require on-site pro-active assessment by the regulator prior to the grant of the relevant demolition license. It is also essential that the regulators assessors must be competent and

have the requisite experience in the demolition industry in order to give an accurate assessment.

In circumstances where explosives are required to undertake demolition, the CFMEU is of the view that a special license should be required coupled with stringent assessment prior to issuing any such license. This element of demolition is specialised and extremely high-risk work with potentially catastrophic consequences. As such the issuing of a license should be:

- (a) one off and for one specific job;
- (b) Job specific risk assessments and engineering documentation should be provided as part of the application;
- (c) all persons involved in the job should be specifically trained in the use, care and management of the particular explosives to be used; and
- (d) the Commissioner should be responsible for the assessment approval and issuing of the license.

**Recommendation 11**

Amend the Model WHS Regulations at 4.6 Demolition Work to require on-site assessment by the regulator prior to the grant of a demolition license.

**Recommendation 12**

Amend the Model WHS Regulations at 4.6 Demolition Work to ensure the regulator's assessors have requisite experience and qualifications (in effect competent) to effectively grant a demolition license.

**Recommendation 13**

Support the Model WHS Regulations in having two classes of demolition licenses (as opposed to three as in the OSH Regulations).

**Recommendation 14**

A special license should be required for demolition work using explosives, coupled with stringent assessment prior to issuing any such license.

## CHAPTER 5 PART 5 PLANT AND STRUCTURES

Upon review, the Model WHS Regulations when compared against both the OHS Regulations and the QLD Regulations, is less prescriptive. This is potentially problematic as (for instance) the CFMEU regularly finds that crane companies in Western Australia do not comply with the current regulations, in not completing independent inspections and strip-downs and having poor servicing or absent servicing and maintenance records. At a minimum, a WorkSafe Inspector should inspect and ensure that all tower cranes are serviced, maintained and installed correctly prior to approving their use on site. This used to be common practice.

The CFMEU is not convinced the Model WHS Regulations are better overall than the OSH Regulations or the QLD Regulations.

**Recommendation 15**

Incorporate Part 4, Division 1, 4.1 to 4.57 of the OSH Regulations into Chapter 5 of the Model WHS Regulations.

## **PART 6.3 DUTIES OF PERSON CONDUCTING BUSINESS OR UNDERTAKING**

### Division 2 High Risk Construction Work – Safe Work Method Statements (SWMS)

Within the construction industry, it common for worksites to have what is known as a “generic SWMS” covering all general tasks, inclusive of high-risk work. Generic SWMS are not effective in high-risk situations such as complex lifts and working at heights within the construction industry.

The SWMS must be developed with the workers involved in the task (they know how they can best perform the job) and where possible in the task specific work area so that a genuine assessment of the hazards and risks can be conducted. It is the CFMEU’s experience that SWMS are normally developed by a supervisor or engineer who cut and paste from previous versions and workers just sign the SWMS and undertake the work. Largely, there is no genuine involvement by workers because builders just want to get the job done. This is problematic as workers will not comply with a SWMS that is not relevant, but they will suffer the consequences when something goes wrong.

The CFMEU is of the view that the regulations should also have regard to supervision span of control for high risk activities. Supervisor to worker ratios are critical for high risk work. From a practical perspective, it is common practice for a supervisor to develop a SWMS, get the workers to sign it, tells those workers to get on with the job while that supervisor leaves the high risk work area to fulfill some other commitment. This is reality, particularly with lower tier builders, many who do government work. The CFMEU is of the view that this issue needs to be “policed” by regulators by requiring supervisors, who sign onto the relevant SWMS, to be present during the high risk task to ensure their duty of care is fulfilled.

#### **Recommendation 16**

A requirement in the Model WHS Regulations for a “task specific” SWMS to be developed prior to undertaking all high-risk construction work.

#### **Recommendation 17**

Introduce regulation to require those Supervisors who develop SWMS to be present during that the work, the subject of that SWMS.

## **PART 6.3 DUTIES OF PERSON CONDUCTING BUSINESS OR UNDERTAKING**

### Division 3 Excavation Work

Excavation work is inherently dangerous. There have been a number of high-profile incidences in the construction industry in recent times, including multiple fatalities caused by unsafe work practices whilst undertaking excavation work. In this context, excavation work should be the subject of stringent regulation, not only to ensure the safety of those workers directly undertaking the excavation work, but those workers engaged in work ancillary to the excavation work. Emphasis must be placed on the reducing the risk of harm.

In addition, excavators are regularly being used as cranes in excavation work (installing piping, work boxes, lowering tools, building materials etc. into excavations). Excavators are designed for digging not lifting, cranes are designed for lifting. In these circumstances, operators of excavators should be made to obtain the relevant crane qualification for the capacity of excavator they are operating if they are going to use an excavator for these purposes. Similarly, workers attaching loads to excavators must be a licensed dogman. Finally, all lifting gear must be inspected and tagged 3 monthly and a register developed and maintained.

Whilst broadly, the Model WHS Regulations do provide a good regulatory framework for undertaking excavation work safely, the CFMEU is of the view that a more stringent framework

exists within the OHS Regulations such as requiring the employer (or the PCBU under the Model WHS Regulations) to, inter alia:

- a) ensure barriers are erected between the person at risk and the likely cause of the danger;
- b) ensure suitable signs that warn of the risk are erected;
- c) persons can move safely around the area: and
- d) have regard to systems such as support, retaining structures and dewatering systems.

**Recommendation 18**

Incorporate Subdivision 6 - Excavation and Earthworks, 3.109 Excavation work, employer etc. to reduce risk from - (1)(a) to (2)(b) of the OSH Regulations into the Model WHS Regulations.

**Recommendation 19**

Incorporate Subdivision 6 - Excavation and Earthworks, 3.108 Excavation work, employer etc. to assess means of reducing risk from – (c) and (d) of the OSH Regulations into the Model WHS Regulations.

**Recommendation 20**

Require all operators of excavators using excavators to undertake lifts to undertake the necessary licensing as a crane operator. Similarly, where workers are attaching loads to an excavator for the purposes of a lift, then those workers should be licensed dogmen.

## **PART 6.5 GENERAL CONSTRUCTION INDUCTION TRAINING**

### **Division 1 General Construction Induction Training Requirements**

Broadly, the Model WHS Regulations with respect to training and induction requirements which set out the general basic requirements for training of workers, provide a more detailed and effective regime as compared to the OSH Regulations, or even the QLD Regulations.

**Recommendation 21**

Support Part 6.5 Division 1 General Construction Induction Training Requirements of the Model WHS Regulations.

### **Division 2 General Construction Industry Training Cards**

Broadly, the Model WHS Regulations with respect to construction industry training cards are more effective than the current OSH Regulations. However, the effectiveness of this regime will be undermined by differences in legislation and regulation in other states. Any new regulation must have regard to labour flows from one state to another.

In addition, section 325 of the Model WHS Regulations seems to allow a Registered Training Organisation (RTO) the ability to issue construction industry training cards by agreement with the regulator. Currently in Western Australia, construction industry training cards are issued by the regulator. The CFMEU expresses concern that, given the recent history of RTO's modifying course time frames and content due to pressure from employers wanting to maintain work timeframes if RTO's have the responsibility of issuing training cards, the system could be open to abuse.

Finally, the CFMEU is of the firm view that the training module required to obtain a Construction Industry Training Card should be face to face, as opposed to online.

**Recommendation 22**

Support Part 6.5 Division 2 General Construction Induction Training Cards of the Model WHS Regulations.

**Recommendation 23**

Approach the implementation of Part 6.5 Division 2 (section 325) which gives RTO's the ability to issue construction industry training cards by agreement with caution.

**Recommendation 24**

Mandate face to face training for Construction Induction Training Cards.

## CHAPTER 8 ASBESTOS

### Part 8 Management of Asbestos and Associated Risks

Section 422 of the Model WHS Regulations sets out the requirements for the location and assessment of asbestos in the workplace and reads as follows:

***422 Asbestos to be identified or assumed at a workplace***

*(1) A person with management and control of a workplace must ensure, so far as reasonably practicable, that all asbestos or ACM at the workplace is identified by a competent person.*

The subjectiveness of a standard competent person requirement leads to major conflicts of interest in the industry. Competent person should be replaced with NATA Accredited (17020) Asbestos Assessor, Licensed Asbestos Assessor (LAA), Contaminated Sites Assessment Practitioner (CSAP) or a duly qualified Occupation Hygienist. Asbestos management plans at State and National levels are being developed specific to persons performing asbestos risk assessments and clearance certification to hold a license of competency.

**Recommendation 25**

Reference to *competent person* in Part 8, section 422 (1) of the Model WHS Regulation should be replaced with NATA Accredited (17020) Asbestos Assessor, Licensed Asbestos Assessor (LAA), Contaminated Sites Assessment Practitioner (CSAP) or a duly qualified Occupation Hygienist.

### Part 8.6 Demolition and Refurbishment

Section 448 of the Model WHS Regulations sets out the review requirements for the asbestos register. The CFMEU is of the view that any review of an asbestos register must be undertaken by an independent qualified assessor to determine its adequacy. Also, WorkSafe need to play a role in the qualified assessment of site asbestos registers prior to work commencing.

Section 451 of the Model WHS Regulations sets out the process for determining the presence of asbestos or ACM in the workplace. Section 451(3) requires that a competent person undertake the relevant determination. As stated above, the subjectiveness of a standard competent person requirement leads to major conflicts of interest in the industry. Competent person should be replaced with NATA Accredited (17020) Asbestos Assessor, Licensed Asbestos Assessor (LAA), Contaminated Sites Assessment Practitioner (CSAP) or a duly qualified Occupation Hygienist. Asbestos management plans at State and National levels are being developed specific to persons performing asbestos risk assessments and clearance certification to hold a license of competency.

**Recommendation 26**

Reference to *reviewed* in Part 8, section 448(a) of the Model WHS Regulation should be replaced include a requirement for that review to be undertaken by an independent qualified assessor to determine its adequacy

**Recommendation 27**

Reference to *competent person* in Part 8, section 451(3) of the Model WHS Regulation should be replaced with NATA Accredited (17020) Asbestos Assessor, Licensed Asbestos Assessor (LAA), Contaminated Sites Assessment Practitioner (CSAP) or a duly qualified Occupation Hygienist.

**TILT UP AND CONCRETE PRECAST CONSTRUCTION ELEMENTS**

The regulatory regime for tilt up and concrete precast construction elements is significantly more stringent in the OHS regulations when compared to the Model WHS Regulations. Crucially, the OHS Regulations mandate, inter alia:

- a) manufacturers of tilt up and concrete elements to contact the Commissioner prior to the manufacturing process;
- b) concrete panel elements to be designed in accordance with standard AS3850; and
- c) concrete panel elements to be transported in accordance with standard AS3850.

**Recommendation 28**

The Model WHS Regulations incorporate Subdivision 1, Tilt-up concrete and precast concrete panel elements sections 3.88 – 3.88J of the OSH Regulations

**SILICA/DUST EXPOSURE**

With recent reports of silicosis and dangerous levels of silica exposure for workers, particularly in stone bench top manufacturing workshops which specialise in the construction of reconstituted stone benchtops, the Model WHS Regulations must prohibit the dry cutting of stone with high silica levels.

**Recommendation 29**

The Model WHS Regulations incorporate provisions which prohibit the dry cutting of stone to reduce silica levels in work areas.