



SUBMISSION  
TO MARSDEN JACOB ASSOCIATES

ON

WORK HEALTH AND SAFETY MODEL REGULATIONS  
AND CODES OF PRACTICE

## **INTRODUCTION TO THE ALCOCK BROWN-NEAVES GROUP (“ABN Group”)**

A commitment to quality, innovation, safety and community spirit has driven the ABN Group to become a leader in the Australian residential building market.

Building over 3000 homes a year across the country, the ABN Group has constructed more than 50,000 homes in total since it was established in 1978. Ranked 2<sup>nd</sup> in the 2012 HIA Housing Top 100 list, the ABN Group has established itself as an industry heavy weight.

The ABN Group employs nearly 1400 people across more than a dozen companies. An estimated 1000 teams, involving over 3000 individual contractors who are all committed to delivering homes that their owner can be proud of.

An absolute zero tolerance in regards to Work Health and Safety is adopted by the ABN Group and considers the health and safety of its employee's, contractors, site visitors and members of the public to be of utmost importance.

## EXECUTIVE SUMMARY

The ABN Group welcomes the opportunity to comment on the Work Health and Safety Model Regulations.

In short, the provisions do not offer any improvements in safety outcomes. In fact, the opposite is more likely. They lack practical guidance, impose unnecessary additional costs on business and will bury businesses in Red Tape.

The ABN Group has explored the cost of the impact upon average single and two storey homes. A single storey home will increase by around \$25,000 and a double storey home will rise by about \$17,000.

Housing is continuing to face an affordability crisis and any increase in housing cost of this magnitude will have disastrous effects on home buyers and the greater construction industry and in particular, small business not to mention the consequences for the whole economy.

It is our view that the WHS Bill should not be adopted as it offers no safety gain, imposes unnecessary administrative burdens on businesses and will destroy housing affordability.

Comments on key issues that follow include:

- Falls from Heights
- Falling Objects
- Safe Work Method Statement
- Threshold for Principle Contractor Obligations
- Facilities for Construction Sites
- Excavation Work Notification
- Australian Standards
- Site Security
- Overlapping Duties
- Duties of Designers
- Noise and Personal Protective Equipment

## **WORK HEALTH & SAFETY MODEL REGULATIONS AND CODES OF PRACTICE**

### **1. Falls from Heights**

The Falls from Heights section of the Model Regulations will have drastic implications in terms of work flow and housing affordability.

The proposed Model Regulations provides no certainty and will result in confusion about what control measures are required.

It is our view that should the Model Regulations be introduced as proposed, it will have an adverse effect on safety, as confusion about what is required will outweigh any benefits in safety outcomes.

The ABN Group recommends that the threshold for providing physical fall prevention measures should remain at 3 metres, hence physical fall protection for single storey homes would be negated.

The ABN Group has explored the cost impact on standard housing should the Model Regulations be adopted. It is estimated that the average cost of a single storey home will rise by \$25,000 and a double storey home will rise by \$17,000. ABN Group recommends that BCA Classes 1, 2 (low rise) and 10 be excluded from these provisions.

### **2. Falling Objects**

The proposed provisions do not provide practical guidance or certainty on what is required. Erection of catch platforms is not considered a practicable measure. A roof carpenter for instance may well be on a roof for a couple of days, therefore erecting a catch platform will only add unnecessary cost to the average house.

The estimated cost associated with these provisions is largely dependent on the outcome of the falls provisions. However, it could well add a further \$2000 to \$3000 to the cost of the average house.

### **3. Safe Work Method Statement**

The additional requirement to keep SWMS for up to 2 years will be another impost on business. It once again increases Red Tape which the Model Regulations was intended to reduce. Safe work not paper work should be our motto.

#### **4. Threshold for Principle Contractor Obligations**

The Model Regulations states that where a construction project cost is greater than \$250,000, the PCBU who commissions the project is considered to be the principle contractor and as such, additional obligations in relation to SWMS, first aid, site security, PPE, falls from heights and training apply.

The \$250,000 threshold as proposed will include housing projects from first homebuyers upwards.

The ABN Group recommends that instead of a monetary threshold, it is by definition of BCA Classes 1, 2 (low rise) and 10 being exempted from these provisions.

#### **5. Facilities for Construction Sites**

Specific reference is required as to what facilities are reasonable for housing construction sites.

It is not reasonable or practicable to require meal rooms or hot water facilities. Reduced lot sizes make it impossible to accommodate such a requirement.

The ABN Group recommends that BCA Classes 1, 2 (low rise) and 10 be excluded from these provisions.

#### **6. Excavation Work Notification**

The ABN Group does not support the requirement to give prior notification of any excavation greater than 1.5m

This provision will cause unnecessary delays and only adds to the ever increasing administrative burden.

Approvals for sewerage and drainage are part of the building permit process, and no further requirements should be imposed.

#### **7. Australian Standards**

The Model Regulations refer to numerous Australian Standards.

Standards change from time to time which can inadvertently change the intent of the Model Regulations as they become quasi Regulations.

This will mean that small businesses will then need to subscribe to the relevant Australian Standards at an additional cost. Any Legislation should be total free of charge.

The ABN Group recommends that the Model Regulations do not reference Australian Standards.

## **8. Site Security**

The WHS Regulations require the work place to be secure so far as practicable against unauthorised entry.

The Housing Industry requires practical guidance on what is required. A one size fits all option is not practicable.

Should this provision lead to full perimeter fencing of all housing sites it will add a further cost impost to the average home without an increase in safety outcomes.

Learning's from other Jurisdictions should be considered. Often the fencing itself creates a safety issue, restricts deliveries and causes greater traffic congestion as site access is impeded.

The ABN Group recommends that BCA Classes 1, 2 (low rise) and 10 be excluded from these provisions.

## **9. Overlapping Duties**

The *Model Work Health and Safety Act (WHS Act)* makes a significant change to the nature of the primary duty. The duty is not based on the employment relationship. Instead, the duty is owed by a person conducting a business or undertaking (PCBU) to workers engaged or caused to be engaged by the person and to workers whose activities are influenced or directed by the person.

Clause 19 of the WHS Act states:

- (1) A PCBU must take reasonably practicable steps to ensure the health and safety of:
  - a. Workers engaged, or caused to be engaged by the person;
  - b. Workers whose activities in carrying out work are influenced or directed by the person whilst the workers are at work in the business or undertaking.
- (2) A PCBU must take reasonably practicable steps to ensure that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

The PCBU's duty includes the provision and maintenance of a safe work environment, the provision and maintenance of safe plant, structures and

systems of work; provision of adequate facilities and the provisions of any information, training, instruction or supervision that is necessary to protect persons from risks to their health and safety arising from work carried out as part of the business or undertaking.

The terms “person conducting a business or undertaking” and “worker” are defined broadly. A “worker” includes employees, a contractor or subcontractor, an employee of a contractor or subcontractor, an employee of a labour hire company, an outworker, an apprentice or trainee, a student gaining work experience and volunteers.

Subcontractors, including the self-employed, would be considered to be conducting a business or undertaking. Hence a subcontractor would be both a worker and a PCBU for the purposes of the WHS Act.

Clause 20 of the WHS Act establishes the duty of a person with management or control of a workplace. The primary duty of care provides that a PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

The definition of “reasonably practicable” in the WHS Act deliberately does not specifically include a test of control.

There is a risk that under the model WHS laws with this notion of a PCBU that builders will not be able to rely on the expertise of contractors in determining whether or not there is a liability, so the proposed changes pose risks for compliance and certainty for the residential sector, which relies upon subcontract labour.

Potential PCBU problems would commonly arise on building sites where a principle contractor engages a number of subcontracted tradespeople.

The ABN Group recommends that in order to resolve potential risks associated with overlapping duties the definition of the terms and responsibilities for PCBU, Worker and Workplace are redrafted.

## **10. Duties of Designers**

The Model Regulations requires a designer to specify in writing any hazards relating to the design of the structure.

Once again this adds an unnecessary administrative burden on small business given the relative simple construction methods of a standard home.

The ABN Group recommends that this provision be excluded from BCA Classes 1, 2 (low rise) and 10.

## **11. Noise and Person Protective Equipment**

As previously stated the definition of PCBU, Worker and Workplace, needs to be redefined. Again, the overlapping duties will cause confusion and will have potential adverse effect on safety. A subcontractor on a housing site is best place to ensure that personal protective equipment are correctly used, maintained, repaired or replaced.

A builder within the Housing Industry generally has numerous homes underway at any one time and cannot and should not be responsible for the personal protective equipment requirements of subcontractors and their workers.

The ABN Group recommends that the definition of PCBU, Worker and Workplace be redefined to avoid confusion with overlapping duties.

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