



**SUBMISSION  
MODEL WORK HEALTH AND SAFETY LAWS  
OCTOBER 2012**





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## Executive Summary

Western Australian employers are overall supportive of the concept of harmonisation of OSH legislation as it is likely to provide the basis for more nationally consistent approaches to management of specific risks.

The aims of harmonisation are seen as positive and useful to businesses and workplaces. It has been imperative to CCI that the interests of the Western Australian business community be taken into account in the development of the new legislation and that negative impacts to employers be minimised.

In reality not all of the objectives of harmonisation are likely to be realised due to various factors associated with process, policy and time pressures. The Western Australian government has shown good judgement by delaying implementation of the new legislation to allow for concurrent implementation of the model mining safety laws.

The Western Australian government has also identified four areas of concern in the Model Act, inclusion of which would not be in the best interest of Western Australian businesses. CCI therefore supports the government in maintaining its stance on these matters.

Implementation of the model Work Health and Safety laws (WHS) in Western Australia poses practical concerns for employers and must be managed by the government so as to provide adequate and appropriate information, education and reasonable transition times.

There are likely to be significant transitional costs and ongoing administrative burdens which employers cannot quantify with certainty. It must be recognised that although these costs cannot be completely quantified with specificity at this stage they represent significant anticipated input on the part of employers. Implementation of a new regime is no small exercise and the effects will be felt primarily by employers.

It is important to note that the current feedback mechanism and the limited scope of the paper, in the context that it covers only regulatory change and not the overarching changes which the model Act will introduce, are likely to cast doubt on the integrity of the consultation findings in terms of true impact on employers.

In progressing the harmonisation agenda it is critical that the following areas are managed appropriately to reflect the scale and detail of the changes:

- education, information and guidance material about the changes and what employers are required to do;
- the transition period and transitional arrangements;
- consideration of the reviews and experiences of other jurisdictions where the model laws are already in effect; and
- resourcing of WorkSafe WA to provide the education and information that employers will require to effectively understand the new requirements.

## About CCI

The Chamber of Commerce and Industry is the peak employer group representing businesses big and small in Western Australia. CCI has over 7500 members across a broad variety of industries and in vastly different regional areas.

As part of its member services, CCI provides direct advice and assistance to member employers in relation to workplace issues such as occupational safety and health, workers' compensation, industrial and employee relations and immigration.

CCI also plays an active role in policy making in various spheres related to OHS, from representation on policy forums such as the Commission for Occupational Safety and Health of Western Australia, the WorkCover WA Board and nationally at Safe Work Australia (via the Australian Chamber of Commerce and Industry). To better represent employers on a broad level, CCI is also closely affiliated with many smaller local chambers in various localities around the State and works collaboratively with the Australian Chamber of Commerce and Industry on national matters.

To fully comprehend the issues and concerns of employers in relation to OSH CCI has long established employer forums, committees and working groups which consist of relevant industry participants. CCI has forums dedicated to OSH matters in general industry and employers actively participate in the development of policy positions and identification of OSH issues.

CCI is a regular contributor to regulatory reviews and consultation regarding OSH matters and is able to put forward the position of Western Australian employers with confidence due to the interactive nature of CCI's policy making teams. Representatives from CCI and the business community prepare detailed submissions to reviewers, decision makers and government on an enormous variety of topics and CCI publishes policy papers related to issues of greatest concern to business on a regular basis.

CCI appreciates the opportunity to submit the views of its members to the stakeholder consultation papers in relation to model Work Health and Safety laws. CCI is not submitting information via completion of the on-line survey created by Marsden Jacob Consultants as this document was too cumbersome and difficult to use.

## Harmonisation Process and Outcomes

CCI has been supportive of the concept of harmonisation and the intended goal of consistency, clarity and improvement.

CCI has been actively involved in consultation about the model Work Health and Safety Act and Regulations at local and national level since commencement of the process of harmonisation in 2008.

WHS are issues which pose significant challenges for employers. The resources and expertise required to manage these matters in the workplace mean that employers expend significant money, time and effort in understanding requirements and implementing measures to achieve safety at work and compliance with legislation.

In particular, CCI had the expectation that harmonised OSH legislation would

- remove inconsistencies and compliance burdens
- remove overlapping regulatory requirements
- reduce the vast amounts of related regulation; and
- improve and increase guidance material.

It also remains important that the successes and strengths of the Western Australian scheme not be supplanted by a new harmonised scheme with negligible benefit and increased burden to employers simply for the sake of change.

CCI applauds the Western Australian government for its sensible approach to this process. This is evidenced in the Minister's maintenance of a firm position in relation to 4 areas of particular concern which would otherwise be introduced under the model Act, and delaying introduction of the new legislation until the model mining package is ready to be introduced.

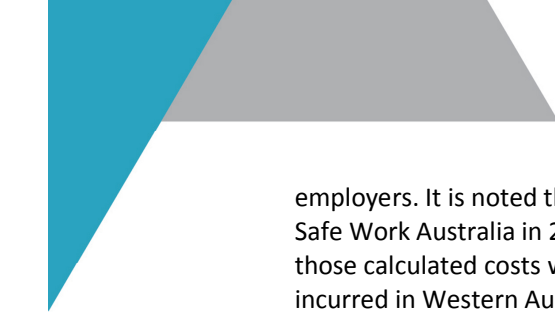
There is some doubt as time goes on whether the process of harmonisation remains a worthwhile pursuit when significant players in the process have withdrawn physically (Victoria), practically (Queensland) or ostensibly (South Australia).

Employers are confused and concerned that the process does not appear to be on a specific track and is not on the path to any particular outcome which will provide the benefits which harmonisation was expounded to represent. However, employers consider it necessary to "get on with it" once the mining package is ready and progress the harmonisation process along its current path. Employers have already invested significantly to prepare for anticipated introduction of the model laws and seek certainty in legislative and compliance requirements to enable effective planning for the immediate and medium term future.

## Consultation

CCI has consulted with employers about the Regulatory Impact Discussion Paper and feedback request from Marsden Jacob and Associates. CCI's submission on the specific questions raised has been submitted using the survey tool provided by the consultant.

The feedback mechanism and limited scope of the paper, in the context that it covers only regulatory change and not the overarching changes which the model Act will introduce, is likely to cast doubt on the integrity of the consultation findings in terms of true impact on



employers. It is noted that the national Regulatory Impact Statement (RIS) commissioned by Safe Work Australia in 2009 provides some costing as to impacts but it is CCI's view that those calculated costs would be conservative compared to actual costs which will likely be incurred in Western Australia.

The Marsden Jacob and Associates survey tool itself was difficult to use and asked questions about cost which were almost impossible to answer. CCI itself attempted to calculate the costs requested in the survey in relation to the expense associated with attending to OSH matters now and likely cost to attend to OSH matters in the future and was unable to arrive at a methodology to calculate this amount. This experience is expected to be replicated by other respondents and is likely to result in a deficit of evidence or a set of anticipated costs which are not reflective of actual costs.

Employers are particularly concerned about the increased responsibilities imposed by the model Act and the fact that these don't appear to have been properly (or at all) assessed in relation to impact in Western Australia and the overarching principles which will come into play. The concept of "a person carrying on a business or undertaking (PCBU)", which extends the class of people who will fall into the category of primary duty holder, the extended definition of "worker" and the provisions related to officer responsibilities aren't included in the current consultation papers.

Employers have also noted that where operations are carried out in other states it has been a complex and comprehensive change-over of documentation, understanding of new obligations, education of the workforce and other parties such as contractors and clients. It has also been confusing as terms, definitions and concepts are new and untested as to scope and meaning.

The sheer volume of the new model legislation is daunting and means even more regulation to peruse, understand and with which to remain up to date.

If it is sufficiently supported by good quality information from regulators about specific areas of responsibility, employers are optimistic that the new legislation will create the following benefits:


- more consistent ways of thinking about work health and safety obligations across jurisdictions and industries;
- greater clarity and uniformity with respect to licensing and training requirements; and
- more clearly defined responsibilities for parties involved in work and able to influence work health and safety outcomes.

## The Cost to Employers

Individual employers have estimated that in order to prepare their workplace for the new legislation and to implement changes it will require a broad investment of time and resources. It is almost impossible to quantify this investment as different businesses will have different existing structures and different expertise in-house.

Not surprisingly, many employers agree with the findings of the impact assessments undertaken by Safe Work Australia and the Victorian Government that transitional costs to business will be very significant. CCI mapped the below transitional actions as an indication of the breadth of activities which will need to be undertaken in workplaces.

<b>Work Health and Safety - Employer Investment</b>			
<b>Transitional Action</b>	<b>Time/human resource</b>	<b>Financial outlay</b>	<b>Realistic timeframe</b>
Obtain the legislation including codes of practice and guidance material as may be relevant to the business or undertaking	✓	✓	1 month
Print out relevant parts of the legislation for discussion, distribution, analysis and reference	✓	✓	1 month
Review, assess and interpret the legislation to determine which aspects relate and apply to the business or undertaking	✓	✓	12 months
Change documentation to reflect new legislation responsibilities, titles and terms	✓	✓	12 months
Update and amend documents to reflect changed requirements	✓	✓	12 months
Create new documents to reflect new requirements	✓	✓	12 months
Review and update practical processes and implement new processes to reflect changed and new requirements	✓	✓	12-24 months
Communicate changes to the workforce, contractors, clients and others	✓	✓	12-24 months
Train staff and other people in relation to changes (and what hasn't changed)	✓	✓	12-24 months
Establish reporting pathways and communication networks to reflect new consultation, communication, coordination and due diligence requirements	✓	✓	12-24 months
Monitor developments and adjust systems, documents and processes as cases are tested and further clarity to requirements is produced	✓	✓	5 years
Review of physical workplace items, equipment and environment to ensure compliance with new requirements	✓	✓	12-24 months
Alteration of existing physical items at the workplace, including premises, plant, equipment etc to reflect new requirements and purchase of new compliant items	✓	✓	5 years



To put the table into perspective, it is important to note that it reflects only those broad activities which would be necessary (and is not conclusive as to the actions) where an employer already has well established and implemented systems as would be expected under current legislation. The times indicated reflect the wide scope and application of the new legislation and represent the actions of a well organised, resourced and paced organisation. In reality, the majority of employers will likely struggle to balance the activities required to implement a new system whilst maintaining productivity and meeting client demand.

WHS matters are so broad in the scope they cover and can be so specific in relation to the detail of specific compliance requirements that they create a significant body of work for employers. There is a vast amount of corporate knowledge required to ensure:

- the organisation identifies the specific laws which apply to its operations;
- the organisation understands the laws which apply to its operations;
- the organisation has a physical work environment compliant with requirements;
- the organisation has systems of work compliant with requirements;
- the workforce is trained and competent to carry out the work of the business ;
- there is adequate and appropriate consultation;
- there are sufficient and robust checking and monitoring systems; and
- there are adequate and appropriate records, documents and other data to accurately reflect practices and outcomes.

The introduction of a completely new scheme requires review, analysis and updating of existing business infrastructure and OSH related activities and the roll out of new or altered items. The costs of doing this are likely to be significant for small and medium employers when the human resource costs, lost productivity and related costs are included.

It is therefore critical that the transition period and transitional arrangements appropriately provide for the following:

- information and guidance material that clearly sets out what is required in order to comply with new provisions;
- well-considered and clearly communicated timeframes;
- a staged change-over to new licenses within a reasonable timeframe;
- establishment and training of necessary new providers;
- recruitment and training of a professional workforce of additional inspectors and support staff at WorkSafe WA and Department of Mines and Petroleum Resources Safety to provide the level and type of education which will facilitate successful implementation of the new regime;
- appropriate exemptions for new and/or stricter licensing requirements where it is appropriate to the industry and risks associated with the activities;
- a “lessons learned” drafting mind-set that takes into account the experiences of other jurisdictions to remove negative impacts;
- support and assistance for organisations that employ volunteers to adjust to the changes and new requirements so that this valuable workforce can be retained; and
- support and assistance to smaller businesses to inform them of the new requirements and provision of tools to assist compliance implementation.





## Conclusion

The Chamber of Commerce and Industry of Western Australia's members have indicated that although they foresee considerable cost to business should the new model legislation be implemented in WA, broad scale support exists for harmonisation of OSH legislation.

Scrutiny of the outcome of reviews of the experiences of other jurisdictions will be an important step in the formulation of Western Australia's specific Act and regulations to ensure that the unintended consequences created by the versions of the model legislation which were implemented in those places aren't duplicated in WA. Employers expect WorkSafe WA to take these experiences into account when drafting the Western Australian legislation and in making the transition as smooth as possible. A focus of the transitional arrangements must be to minimise unnecessary costs to business.

Harmonisation is unlikely to achieve all of the initially planned benefits and it is important that the Western Australian government and regulator continues to recognise the significant impact the changes will have on business. The regulator must provide the appropriate support and education to minimise the cost and practical impact of the implementation stages.

Attachment A presents the collective consultative view of WA employers and industry groups to the specific changes to regulations obtained through a number of consultative forums that were facilitated by CCI. It enables consideration of the immediate identified issues in order to better inform the Parliamentary debate.

## Attachment A: Consultation Issues Responses Table

<b>CCI WHS Forum Industry Feedback</b>
<b>Area of Regulation: Asbestos:- Air Monitoring and Clearance</b>
<b>Comment:</b> <ul style="list-style-type: none"><li>• A PCBU must ensure air monitoring is undertaken by the licensed asbestos assessor; however it is not clear whether there is a requirement for the PCBU to obtain or retain the results.</li><li>• A competent person or licensed asbestos assessor is to provide a clearance certificate to the PCBU or person commissioning the removal work. This will further require the PCBU/person to ensure that they do a due diligence check on the licence or competency of the removal personnel; it may also require the PCBU/person to seek validation of the VET or tertiary qualification. In all circumstances, the PCBU/person will need to review and update contractual documentation to reflect the new requirements and implement an appropriate system to conduct verification and due diligence activities. Information will need to be provided about this.</li><li>• It is unclear whether there will be any exclusion for people who work from home with respect to asbestos work? It is considered by employers that in order to gain any leverage for results, then an environmental health officer will need to be employed. Irrespective, there will be immediate and significant costs to engage someone to do the asbestos surveys.</li></ul>
<b>Area of Regulation: Asbestos:- Analysis of Samples</b>
<b>Comment:</b> <ul style="list-style-type: none"><li>• A PCBU or person with control of the workplace must use a NATA accredited laboratory or a “WorkSafe WA” approved laboratory where sampling requires analysis. Such laboratories need to be made known to industry to ensure only bona fide laboratories are sourced by the PCBU. Adequate laboratories will need to be approved to ensure they can respond to the demand.</li></ul>
<b>Area of Regulation: Asbestos:- Certified Safety Management Systems</b>
<b>Comment:</b> <ul style="list-style-type: none"><li>• The persons/PCBU applying for a Class A Asbestos Removalist Licence is to provide evidence that they have a “certified safety management system” which WorkSafe WA has defined as one that complies with Australian New Zealand Standard AS/NZS4801:2001 or an equivalent system. The term “certified” implies that the system has been validated by an independent body (such as those bodies working to RABQSA), and not (as stated by WorkSafe WA) one that is complying with AS/NZS4801:2001. This needs to be clarified. Significant costs are associated with validation of a system to a certification level and will be an upfront burden to achieve by the PCBU.</li></ul>

## CCI WHS Forum Industry Feedback

### Area of Regulation: Asbestos:- Naturally Occurring Asbestos

#### Comment:

- The term “Naturally Occurring Asbestos” is not a term readily recognised by most employers and is typically found in rocks disturbed by roadworks, construction or farming. In some instances, there may be more than one person with management or control of a workplace. For example: person with management of a workplace who is a tenant; a person with control of a workplace who has the power to make decisions and changes to the structure and use of the workplace (This person will usually be the owner of the workplace or a representative of the owner and may own the workplace and engage workers to carry out work there; or may own the workplace but lease it to another person conducting a business or undertaking at the workplace; or may have management or control over the workplace, for example a property management group or agent. The regulation needs to be more prescriptive to eliminate any confusion surrounding the party (parties) with the duty, or guidance material provided that will provide this clarity.

### Area of Regulation: Asbestos:- Register

#### Comment:

- The requirement to have an Asbestos Register at the workplace has changed to include buildings constructed prior to 2003 (currently 1990). The obligation rests with the person with management or control of a workplace; however it is not clear who this rests with when there are more than one person with that management or control (as identified in previous point). This requirement requires further delineation of exactly who the duty rests with and should be identified more prescriptively in the regulation to eliminate any confusion surrounding the party (parties) with the duty. The time period is also significantly more onerous than current legislation and will impose cost on businesses with newer buildings that they know weren't built using asbestos products but which will now require assessment.

### Area of Regulation: Asbestos:- Removal Notifications

#### Comment:

- It is unclear whether the requirement to give written notice to the Regulator 5-days prior to the commencement of any “licensed asbestos removal work” will include the current Class B Licence holders and thereby apply to the removal of bonded asbestos work. The regulation must clearly articulate the scope of application across licence types, and be captured in guidance material.

## CCI WHS Forum Industry Feedback

### Area of Regulation: Asbestos:- Training

#### Comment:

- The lack of an existing WA course for Class A Licences must be addressed at the earliest time prior to the enactment of the new laws to enable Asbestos Removal PCBUs to have their workers and others trained in time to meet their new obligations. Failure to have this in place will unfairly burden potential licence-holders to meet their training and certification obligations and limit the ability of employers to access services.

### Area of Regulation: Asbestos:- Removal Licences

#### Comment:

- As identified above, the appropriate training courses must be made available in order to enable the relevant prescribed Asbestos Supervisor's to be certified in time to meet new obligations.
- The licensed Asbestos Removal PCBU/person will need to establish appropriate training records that can be retained for a 5-year period following the cessation of employment of a worker. Guidance as to the scope of the information contained in the records and in which form this should take is necessary to ensure that it is readily accessible where required by the Regulator.

### Area of Regulation: Construction Projects:- Appointment of a Principal Contractor

#### Comment:

- The \$250,000 project cost that determines a "Construction Project" will prove onerous on many Western Australian PCBUs due to the geographical size and remote and often isolated locations of work sites that currently add significant construction costs to works that, in other States, would be far less for comparable works.
- Government need to reconsider this particular criterion to ensure it is not going to pose unintended consequences on home renovators and other small businesses operating in remote or regional locations where the costs associated with minor works could exceed the \$250,000 project cost.

### Area of Regulation: Diving Work

#### Comment:

- The broadening of regulations to general diving work will capture industry previously not subject to this form of regulation and application should be considered in a transitional approach. The recommendations of the Occupational Diving Working Party should be taken into account.

## CCI WHS Forum Industry Feedback

### Area of Regulation: Fall Prevention

#### Comment:

- The removal of a height criterion around this regulation could catch some PCBUs by surprise as a general perception may still exist that fall prevention relates to “falls from height”. Guidance materials and education on this matter must be sufficient to ensure that all affected employers are fully cognisant of the broadened application of this regulation to incorporate falls from ground level.

### Area of Regulation: Hazardous Chemicals: – classification, labels, MSDS and controls

#### Comment:

- It is understood that the chemical manufacturing industry has until 2017 to comply with the provisions for GHS Classification and Labelling. It is unclear whether WA manufacturers and importers will have this transitional period for compliance from the date of enactment of the legislation in the State; or from the date that the transitional period commenced in those jurisdictions that introduced the laws on 01 January 2012. This matter requires clarification through an appropriate transitional clause.

### Area of Regulation: Hazardous Chemicals:- Import

#### Comment:

- As identified by WorkSafe WA, there may be errors on labels or safety data sheets where importers are located outside the WA jurisdiction. In the event that this does occur, a PCBU should not be held to account where this error is out of its control, but rather be addressed by WorkSafe WA with the relevant jurisdiction.
- Educative guidance materials and campaigns must address this possibility and the actions that a PCBU can take to mitigate unintended outcomes or potential non-compliances with their statutory obligations.

### Area of Regulation: Hazardous Chemicals:- “Restricted Hazardous Chemicals” – crystalline silica; silica dioxide

#### Comment:

- The 1% reduction in permissible concentration of Silica in abrasive blasting material is a significant drop in permissible concentration. This may have implications for abrasive blasting operations and in particular the cost to industry to seek alternative products that can do the job. A transitional period is indicated in order to enable users, importers and suppliers to be able to source alternative products, or for the PCBU to upgrade their workplace capacity to meet the increased regulatory requirements.

## CCI WHS Forum Industry Feedback

### Area of Regulation: Hazardous Chemicals:- Risk Assessment and Record Keeping

#### Comment:

- Whilst removal of the requirement to conduct a risk assessment for hazardous chemicals and the preparation of a risk assessment report is commendable in its intent to reduce any administrative burden, there is a view by industry that the removal of risk assessment against a standard (such as currently in place) will lead to flooding of the marketplace with junk products including personal protective equipment as this is already happening.
- Another view is that the removal of the requirement from the hazardous chemicals regulation flies in the face of regulation 3.1 which has a requirement to conduct a risk assessment that identifies workplace hazards and risk. Chemicals at the workplace may be excluded where a PCBU does not apply 3.1 to their use, handling, storage, transport and disposal potentially leading to incidents and disease to workers.

### Area of Regulation: Hazardous Chemicals:- Therapeutic Goods and Agricultural Veterinary (AGVET) Chemicals

#### Comment:

- There are broader requirements applicable to AGVET chemicals that impose extra requirements for labelling information above that which is currently acceptable under Australian Pesticides and Veterinary Medicines Authority (APVMA) guidelines. APVMA Industry Liaison Committee has identified serious conflicting requirements with respect to the WHS labelling requirements that are also not in line with International management of AGVET chemical legislation and the Globally Harmonised System (GHS). The existing AGVET chemicals legislation is robust in its risk management controls and labelling and the impending changes will not only create confusion to end users; but creates (in its current form) lack of clarify about its application to those consumer products, household aerosols, home garden products and so forth that currently are not captured under Hazardous Substances legislation.

## CCI WHS Forum Industry Feedback

### Area of Regulation: Health Monitoring:- Reports to the Regulator

#### Comment:

- The requirement for a PCBU to provide health monitoring reports to the Regulator rather than a medical practitioner (who currently provides such reports direct to the Regulator) poses serious risk of breaches of confidentiality of medical information. The fact that the PCBU has opportunity to vet all such reports to determine any that identify “problems” is of concern and will require that the PCBU implements very strict operating protocols for managing such information.
- There is further concern that a PCBU is not skilled or knowledgeable enough in medical matters to determine what medical information within a report will identify the sort of health problem that warrants reporting to the Regulator; therefore the medical practitioners may need to reconsider the way in which that information is explained to ensure that there is sufficient clarity to inform the PCBU obligation to report.
- It is unclear whether the worker has a right not to allow the PCBU to access such information without their written consent (as they currently do for worker’s compensation matters).
- Industry feedback has supported that this is a matter of such importance that it should be a priority consideration by WA Government for debate and amendment to retain the existing arrangement whereby the medical practitioner provides a report direct to the Regulator.

### Area of Regulation: High Risk Work Licences (HRWL):- Dogging and “Slinging Techniques”

#### Comment:

- The application of new dogging and slinging requirements may have unintended consequences on industries currently not subject to this requirement, e.g. aged care, community health areas where there is the use of hoists. It is critical that WorkSafe WA provide sufficient supporting and instructive guidance around this regulation to ensure its application is appropriate, and in particular the use of “exercising of judgement” clause and how workplaces will need to demonstrate this to the regulator.

## CCI WHS Forum Industry Feedback

### Area of Regulation: High Risk Work Licences (HRWL):- Exemptions

#### Comment:

- Health and community services industry (including aged care, disability services and hospitals) call for the consideration of industry exemption to any requirement to impose HRWL to the sector on the basis that slinging is currently subject to stringent controls, protocols and worker training regimes.

### Area of Regulation: High Risk Work Licences (HRWL):- Boilers (Pressure Equipment)

#### Comment:

- This regulatory change exposes some concerns about the changes to High Risk Work Licences (HRWLs) where the criterion has changed thereby posing the risk that an operator may not be able to continue to operate where there has been a workplace failure to identify change requirements to their HRWL and to send affected workers to training.
- It is understood that there may be a lack of available training courses in WA to enable operators to attend required training in time to meet their HRWL amended requirements.

### Area of Regulation: High Risk Work Licences (HRWL):- Concrete Placing Boom

#### Comment:

- The licensing process for existing operators of concrete placing booms other than vehicle mounted types is still to be determined in accordance with Schedule 3. This is a Regulator issue that requires addressing in plenty of time for affected operators to gain the required certification and licensing.

### Area of Regulation: High Risk Work Licences (HRWL):- Reach Stacker

#### Comment:

- The new class of reach stacker licensing requires the Regulator to implement a transition period to enable migration of existing operators to the newly established HRWL class. This must be actioned with priority to enable existing operator licence upgrades to transition with minimal effect on the business or undertaking.



## CCI WHS Forum Industry Feedback

### Area of Regulation: Incident Notification:- Prescribed Serious Illness

#### Comment:

- New serious illness notification requirements have the potential to significantly impose burdens on the PCBU. As has been identified under the Asbestos regulations, more than one person may have control of a business or undertaking, and this could be problematic in determining at any given situation who exactly is to make the report.
- Clarity of what is meant by a “serious illness” is lacking and will require further guidance from the Regulator to be developed.

### Area of Regulation: Lead Risk Work

#### Comment:

- No comment on this requirement.

### Area of Regulation: Noise:- Audiometric Testing

#### Comment:

- There are significant new burdens on the PCBU in relation to the application of audiometric testing, yet there is a lack of clarity as to the definition of “frequently required” to use personal protective equipment for hearing protection, and poses the risk that it will be interpreted inconsistently within workplaces. There is a need for clear definition of this term to be contained within guidance and educative materials to ensure a more consistent approach to the regulatory application.
- The audiometric testing requirement of the PCBU is towards a “worker”; which could be interpreted to mean any worker (not necessarily only the worker of that PCBU) that could be captured under this requirement e.g. a Contractor or sub-contractor; labour hires etc. This would be an extraordinary burden on a PCBU and poses confusion generally as to duplicated obligations of PCBUs that have dual obligations within a workplace.
- It is unclear how this will be applied in relation to a work experience student or volunteer and will require sufficient guidance and educative information to clarify.
- Currently many workers in WA are subject to repeated audiometric testing when working on specific projects as a requirement of that project. It is unclear whether the new obligations will require testing be conducted with the same frequency in these specific circumstances. Guidance and educative materials will be necessary to eliminate confusion and imposition by project managers for these extraneous (existing) requirements into the future. The cost of audiometric testing is often prohibitive to employers.
- There is a lack of providers in the market that can conduct audiometric testing; therefore it will be important to consider a reasonable transition period for compliance.

- The legislation does not provide any clarity about “existing” workers and the need to capture them upfront for testing, or await the 2-year timeframe stated in the regulation for re-testing purposes. This must be explained in the regulation and/or guidance and educative materials.

### CCI WHS Forum Industry Feedback

#### Area of Regulation: Noise:- Managing Risks

##### Comment:

- It is of concern that the specific practicability element (such as that in the current OSH legislation) is not included in this requirement; however the primary duty of care of the PCBU (underpinned by “reasonably practicable) may apply. This requires clarification through guidance and educative materials.

#### Area of Regulation: Personal Protective Clothing and Equipment (PPE)

##### Comment:

- Whilst the reduction in the reliance on Australian Standards to provide a foundational standard is a commendable mechanism for reducing cost burden on industry, the removal of any reference to a standard for Personal Protective Equipment is fraught with risk of sub-standard equipment being provided. The unintended consequence of this could see workers ineffectively protected against the hazards they are exposed to that would otherwise have been managed within a known safety standard and framework. To this extent, Government should consider a means for addressing this very important level of protection for workers.
- There is industry viewpoint that the market is currently being flooded with sub-standard personal protective equipment readily available at retail outlets. The concern is that without a specific standard for equipment PCBU’s will purchase items expecting them to be suitable and not permitted to be sold as workplace safety items unless they are suitable.

#### Area of Regulation: Plant:- Amusement Devices

##### Comment:

- No comment on this requirement.

#### Area of Regulation: Plant:- Design Registration – Concrete Placement Units with Delivery Booms

##### Comment:

- No comment on this new requirement.

## CCI WHS Forum Industry Feedback

### Area of Regulation: Plant:- Design Verification – Pressure Vessels

#### Comment:

- It is unclear whether the definition of a “design verifier” under AS3920.1 is consistent with that of a “competent person”, nor whether a person who continues to gain a design verifier certification will be deemed by the Regulator as a competent person for the purposes of this regulation. This must be clarified by the Regulator in guidance and educative materials.

### Area of Regulation: Plant:- Design Verification - Cranes

#### Comment:

- Whilst subtle in its definition of a competent person, there is significant implication for those currently deemed competent under existing OSH legislation due to the fact that the current definition cites training, qualification **or** experience, or a combination of these as deeming the person competent. Conversely, the WHS regulation cites that a competent person is defined as a person “who has the skills, qualification, competence **and** experience” to not only verify the design but to also design the plant. This must be made clear and guidance given to fill any shown gaps.

### Area of Regulation: Plant:- Import

#### Comment:

- No comment on this requirement.

### Area of Regulation: Risk Assessment

#### Comment:

There is a strong view by industry that the (model) Code of Practice on Risk management is appalling in that it lacks any clear and user-friendly methodology for the PCBU (particularly one less experienced with risk management concepts) to be able to follow and implement, and in its current format will impose significant cost to any organisation to follow. There will be a need therefore to ensure that the Regulator has a solid educative program in place to assist the PCBUs in their understandings and application.