

30 January 2015

The Executive Director  
WorkSafe WA  
Locked Bag 14  
Cloisters Square  
WA 6850

Dear Sir

**RE: Submission on WHS Bill 2014**

The Master Builders Association of WA provides the attached submission in connection with the above Bill.

Should any clarification be sought regarding our submission, please do not hesitate to contact the undersigned on 9476 9800.

Yours faithfully,



Kim Richardson  
MASTER BUILDERS ASSOCIATION

**Submission to WorkSafe WA**

**on**

**Work Health and Safety Green Bill**

## **1. Introduction**

- 1.1. This submission is made by Master Builders Association Western Australia (Master Builders).
- 1.2. Master Builders is one of the oldest registered employer associations in the Registry of the Western Australian Industrial Relations Commission with our registration having remained current since 1904.
- 1.3. Master Builders was formed in 1898 to represent the best interests of its respective builder members and those who participate in the building and construction industry in Western Australia. That core element remains at the heart of Master Builders registered rules today.
- 1.4. Master Builders has about 1,750 members comprising:-
  - National commercial builders
  - Large state based commercial builders
  - Specialist commercial sub-contractors
  - Residential builders
  - Residential sub-contractors
  - Kindred employer groups
  - Government agencies
- 1.5. Our membership carries out building and construction work throughout all of Western Australia in commercial construction, residential construction, resource construction and civil construction. Our members are located throughout Western Australia.
- 1.6. Master Builders also maintain a continuous presence throughout the state via its regional offices in Bunbury, Albany, Geraldton, Kalgoorlie and Esperance to provide services to our regional members and to represent their interests.
- 1.7. Master Builders is also a member of the Master Builders movement that comprises autonomous Master Builder Associations in each State and Territory making up eight in total which comprise Master Builders Australia. Collectively, the Master Builders movement represent over 33,000 businesses nationwide.
- 1.8. Master Builders provided input to Master Builders Australia involving the development of the model federal harmonised safety laws and Codes of Practice on behalf of the Master Builders movement. This provides Master Builders with an ideal background to comment on the Green Bill.

## **2. Economic Importance of the Building and Construction Industry**

- 2.1. As at November 2014 there were 145,710 persons employed in the Western Australian building and construction industry having increased from 124,230 in August 2012. The building and construction industry in Western Australia employs about 10% of the state's workforce and contributes about 10% to the Gross State Product.
- 2.2. The building and construction industry is a major economic driver of the Western Australian economy. To place a dollar value on this economic importance Master Builders refers to the Construction Forecasting Council data on the value of construction activity in the state.

Residential construction activity	Non-residential construction activity	Engineering construction activity
2013-014 \$10.58b	\$5.73b	\$43.66b
2017-018 \$11.39b	\$5.61b	\$32.27b

- 2.3. The Construction Forecasting Council data projects stability in the level of non-residential and residential construction over the next three years whilst a reduction in heavy engineering construction and railway/harbour activity is forecast. This reduction arises as construction in the resource sector declines and transitions to production.

## **3. Background**

- 3.1. The Council of Australian Governments (COAG) committed to harmonising the occupational health and safety laws in Australia in July 2008.
- 3.2. The Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety in Part 1.4 of the Agreement, Objectives, sets out the core outcomes of the COAG Agreement. These are:-
- 1.4 The fundamental objective of the reform covered by this Agreement is to produce the optimal model for a national approach to OHS regulation and operation which will:
- (a) Enable the development of uniform, equitable and effective safety operations and protections for all Australian workers;
  - (b) Address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
  - (c) Create efficiencies for governments in provision of OHS regulatory and support services; and
  - (d) Achieve significant and continual reductions in incidence of death, injury and disease in the workplace.

- 3.3. Master Builders sets out the extract of the COAG Agreement as it is the cornerstone of the outcomes of the Agreement. Master Builders argues the outcomes of the WA safety performance ought then be tested against those 4 outcomes. Master Builders expands upon this point in its submission.
- 3.4. The WA government took a pragmatic position in July 2008 on the question of harmonisation of occupational health and safety laws. Rather than agree to a slavish approach of simply adopting the COAG outcome, unlike some other States and Territories, the WA Government set out it would adopt a more state focussed outcome. That pragmatic position was to carve out four issues that would distinguish the Western Australian harmonised model from the proposed federal model safety laws.

Those four issues were:-

- Penalties
- Union right of entry
- Health and safety representatives capacity to stop work, and
- Reverse onus of proof.

Notably, the penalties proposed under the federal model laws were one of the first issues the WA Government wanted to distance itself from in any updated WA safety legislation. Further, the WA Government also made it clear it would assess the impact, including costs to Western Australia, of introducing those aspects of the federal model safety laws before implementing them for change sake alone. That is, there would need to be a net benefit to Western Australia in implementing those elements of the harmonised model safety laws in the state where it was appropriate to do so. The converse being, the WA Government reserved its right to either modify those planks of the federal safety laws it agreed to implement, or might not implement particular aspects of the federal model safety laws as it saw fit. Master Builders notes these sentiments have been echoed by the Minister in his Parliamentary speech of 12 August 2014 on the Green Bill. That is, the WA Government does not support entering into uniform schemes (on safety) for their own sake. Master Builders supports that notion.

- 3.5. Master Builders endorsed the WA Government position in 2008 and also advocated for that to the then Minister for Commerce placing itself at odds with other state based employer groups which called for the adoption of the harmonisation model in Western Australia. We take this opportunity to reaffirm our strong support for that position of 2008, and continuing support for that position today. Master Builders in 2015 is also no longer alone amongst employer groups in Western Australia on this important point. Put another way, employer groups recognise the wisdom of the WA Government position in 2008 which has now been validated over time and confirmed by the experiences of other jurisdictions that followed the harmonisation path without fully weighing all the consequences

that would arise as a result. The good, the not so good and poor outcomes that were not considered beforehand.

3.6. Master Builders points out the 2008 WA Government Policy position on the federal harmonisation model laws was reinforced by the then Minister for Commerce in May 2009. The then Minister said; the WA Government was *“unable to support the recommendations regarding:*

- *The introduction of a conciliation concept for resolution of issues*
- *Power for Health and Safety Representatives to stop work*
- *Reverse onus of proof for discrimination*
- *Right of entry*
- *Level of penalties (emphasis added)*

The WA Government Policy position of 2008 was reaffirmed in 2009.

3.7. Master Builders notes four of the above five points in paragraph 3.4 have been reflected in the Green Bill and welcomes that outcome in line with stated Government Policy. However, Master Builders fails to understand the departure from Government Policy of not adopting the federal model safety laws penalties structure. That is, the Bill mirrors the federal model safety legislation penalties regime contrary to the 2008 and 2009 Policy position.

3.8. Master Builders is unaware of any announcement by the WA Government since 2008/2009 that signals a change in its clear Policy position on this significant aspect of the Bill. Master Builders does not support this change in Policy position in the absence of any plausible reasons advanced to support the change. Master Builders opposes this aspect of the Bill.

3.9. Master Builders notes the Minister for Commerce in his speech to the WA Parliament on 12 August 2014, on the proposed Work Health and Safety Legislation reinforced the WA Government position that it;

*“does not support entering into uniform schemes for their own sake or consider harmonisation is a desirable end in itself.....*

*In view of the lack of a sound case for blanket uniformity and failure of the harmonised process, the state government’s view is that the best approach is to develop a version of the model WHS legislation that is tailored to Western Australia’s environment.”*

3.10. Master Builders supports the position the WA safety legislative framework must reflect the needs of the Western Australian workplace and Ministers’ acknowledgement harmonisation has not been achieved despite the best intentions of COAG in 2008.

3.11. Therefore, given the extract of Minister’s Parliamentary Statement of 12 August 2014, in paragraph 3.6 of this submission, Master Builders identifies no basis for

the adoption of the penalty regime set out in Bill that simply mirrors the model safety legislation for harmonisation sake alone. That position directly conflicts with the Minister's Statement of 12 August 2014, and previous WA Government Policy position of 2008 and 2009. Master Builders expands upon its opposition to the proposed penalty regime below.

#### **4. Penalties**

4.1. As indicated above, Master Builders does not support the simplistic position in the Bill of adopting the penalties set out in the federal Work Health and Safety Act 2011 which is clearly contrary to stated WA Government policy. For clarity, Master Builders submission regarding penalties is not limited to those set out in sections 31, 32 and 33 of the Bill but apply to all penalties set out in the Bill.

4.2. The Minister, in his Parliamentary Statement of 12 August 2014, observed the Regulation Impact Statement commissioned by the WA Government regarding the proposal to harmonise WA's safety laws with the federal model safety laws found the following:

*"The benefits of harmonisation per se are therefore often not directly relevant to small business which operate the 96 per cent of workplaces and account for 49 per cent of employment across WA.*

*It also found some of the model WHS regulations would present challenges for employers in small business and those in regional areas, which is obviously not a desirable outcome of a process established to create optimal legislation."*

4.3. The building and construction industry is predominantly made up of what can be described as "micro businesses" which engage less than 5 workers. Estimation by the Australian Bureau of Statistics put the composition of these micro businesses at about 90% - 95% of employers in the building and construction industry on a national level. That composition would be no different in Western Australia. Also, many small employers that work within the building and construction industry do so throughout all of Western Australia, a reason why Master Builders has regional based branches in Albany, Bunbury, Esperance, Geraldton and Kalgoorlie. Therefore, the Minister's words of 12 August 2014, of the challenges faced by small employers and regional employers have a direct relevance to the state's building and construction industry.

4.4. The Bill's definition of a Person Conducting a Business or Undertaking captures micro businesses as it defines a PCBU where a person conducts a business or undertaking alone or with others. Master Builders recognises section 5(4) of the Bill sets out a person is not a PCBU where the person is engaged solely as a worker in, or as an officer of, that business or undertaking. However, the PCBU definition embraces many small employers where the employer does not work alone as this is the nature of the building industry. It is therefore, Master Builders' submission that the range of financial penalties in the Bill will be overly harsh on

small employers, especially micro employers. The result of severe penalties will be to send small employers broke. This is the outcome the Minister implies is a consideration for he and his Government in his speech to Parliament on 12 August 2014, in that he observed that he would *"maintain the compliance burden at an acceptable level."*

- 4.5. Master Builders contends it follows, as the Minister is mindful of the need to maintain an acceptable compliance level, the proposed penalty increases fail to meet the Minister's threshold test of what constitutes a compliance burden at an acceptable level. For clarity, Master Builders makes plain many penalties in the Bill, other than those set out under sections 31, 32 and 32, also fail the Minister's test with respect to small/micro business. Master Builders argues there ought be no change to the current penalty regime under the OSH Act 1984.
- 4.6. Master Builders also says the proposed adoption of the model WHS penalty regime is out of kilter with the improving safety performance in WA since the OSH Act was introduced in 1984, and more so in recent years. See section 7 of this submission for further comment on this point. The adoption of the proposed model WHS penalties is more reflective of a declining performance in workplace safety standards rather than one of an improving performance.
- 4.7. Master Builders contend the proposition to reflect the model WHS penalty framework is misguided as it ignores the improvement in safety performance in WA over the past 3 decades. It simply adopts a "me tooism" approach to be consistent with Federal, State and Territory safety legislative frameworks. Such reasoning is lazy and not reflective of the stakeholder contribution to improving workplace safety standards in WA, rather, it acts as a penalty and will be interpreted as a retrograde step more reflective of a declining standard in workplace safety. In essence, rather than recognise improvement in a positive manner, improvement is greeted with harsh treatment under the Bill.
- 4.8. Master Builders foreshadows some will criticise its position on the proposed increase in penalties in the Bill but Master Builders looks to the recent announcement of changes to the Work Safety Laws of the Peoples Republic of China reported to have taken effect from 1 December 2014. The highest penalty under those recent changes is \$3.25million(US) against an employer. The industrial fatality record of Australia and Western Australia are worlds apart when compared to that of China. A research paper by authors Zhu Zeng, Yun Luo and Shoa Tian of 2013 titled "Extensive Research on Heinrich Rule of Total Amount of Macroscopic Accidents in China" reveals industrial accidents in China in 2011 numbered 347,728 which sadly resulted in 75,572 work place fatalities. An item titled "Accident Prone" dated 4 June 2013, in the Economist which dealt with industrial accidents in China reported in 2012 the workplace fatalities in China at over 70,000 workers. This translates to about 200 workplace deaths per day. These figures stand for what they represent with some international safety commentators suggesting the above official workplace fatalities are understated by Chinese officials. Master Builders makes no comment about the efficacy of the data and accepts the official records as issued.



- 4.9. Master Builders draws attention to the circumstances in China and contends the workplace safety record of Western Australia, as set out in section 7 of this submission in no way reflects the tragedy of workplace fatalities in China. Master Builders says the Bill proposes a penalty regime, particularly in section 31, for a PCBU that almost equates to the new penalties set out in the Work Safety Law of the People's Republic of China. Master Builders contends there can be no comparison of the track record on safety in Western Australia and that of China, but the proposed Bill does just that, and portrays Western Australia as having a similar poor record on safety as China requiring an equally severe legislative response. Such a proposition does not stand up to scrutiny.
- 4.10. Master Builders foreshadows some parties will argue the proposed penalty regime in sections 31, 32 and 33 ought be adopted on the basis that a human life is no less of value in WA than other states and territories. Master Builders does not quibble with that notion and agrees workers have a right to a safe work environment. Master Builders has committed significant resources to improving safety standards in the building and construction industry over the past 25 years as has the industry stakeholders. Master Builders also recognises more needs to be done and continues to work with stakeholders to reduce workplace injury and risk.
- 4.11. Master Builders position is that emotive or subjective argument does not make for good legislation. There is no objective reasoning advanced for the significant uplift in penalties proposed under sections 31, 32 and 33 of the Bill. Master Builders says the "me too" argument coupled with emotive debate when compared with the lack of evidence to support the proposed change has little substance. Master Builders does not attack the earnest approach by those that present that argument but legislation needs to have an underlying foundation based on fact not emotion. The proposed change to the penalty regime set out in sections 31, 32 and 33 is a bridge too far on the current data that applies to WA.
- 4.12. A further concern for Master Builders is the inequity in several of the penalties set out in the Bill other than those in sections 31,32 and 33. In raising these concerns, Master Builders makes plain it does not support the introduction of the penalty regime that mirrors the Work Health and Safety Act 2011, as currently proposed. Retention of the status quo under the OSH Act has merit based on the improving safety record of WA. The inequity in the penalty provisions of the bill, other than in sections 31, 32 and 33, got to, for example; sections 188, 189 and 190 which deal with the odious conduct of a person hindering a WorkSafe Inspector, impersonating an Inspector or threatening an Inspector. A comparison of those penalties with other penalties that can be imposed upon a PCBU seem uneven in application. For example:

Section	Offence	Penalty
<b>79</b>	PCBU not allowing HSR to attend meetings	\$10,000 individual \$50,000 body corporate
<b>188</b>	Hindering/obstruction Inspector	\$10,000 individual \$50,000 body corporate
<b>189</b>	Impersonating Inspector	\$10,000
<b>190</b>	Assault/threats/intimidation of Inspector	\$50,000 individual \$250,000 body corporate
<b>193</b>	Non-compliance with Improvement Notice	\$50,000 individual \$250,000 body corporate
<b>197</b>	Non-compliance with Prohibition Notice	\$100,000 individual \$500,000 body corporate
<b>200</b>	Compliance with non-disturbance notices	\$50,000 individual \$250,000 body corporate
<b>210</b>	Failure to display notice	\$5,000 individual \$25,000 body corporate
<b>Part 8 Discrimination</b>		\$100,000 individual \$500,000 body corporate

- 4.12.1 Master Builders points out penalties prescribed in section 190 of threats, intimidation or assault of an Inspector in conducting their official duties carries the same weight of penalty for a breach of the Bill in that a PCBU fails to comply with an Improvement Notice in section 193. Master Builders contends threats against an Inspector in carrying out their duties is a serious offence and ought attract a significant penalty as a real deterrent to such unacceptable conduct. However, the Bill weighs the penalty for such serious conduct the same as non-compliance with an Improvement Notice that may represent a mere technical breach of the legislation. The mischief in the latter breach falls much lower than threats or assault against an Inspector.
- 4.12.2 Master Builders also refers to the penalties set out in section 197 involving non-compliance with a Prohibition Notice. Master Builders considers non-compliance with such Improvement and Prohibition Notices a serious matter and warrant a significant penalty. However, arguably, the prescribed penalties under section 190 ought have a greater weight than those prescribed in section 193 as section 197 sets a higher weighting for failure to comply with a Prohibition Notice. That is, penalties under section 190 and 197 ought have similar weight and therefore the penalties under section 193 and 197 be reduced to reflect that weighting.
- 4.12.3 A further consideration is the defensive position Master Builders, other employer groups and legal advisers to a PCBU issued with an Improvement or Prohibition Notice by an Inspector would be, which will be to immediately challenge the content of that notice under section 207. That will have an immediate impact on the regulator as WorkSafe will need to

direct resources to review notices issued by Inspectors on every occasion and confirm, vary or cancel such notice. Section 228(1) of the Bill sets out a notice issued under section 193 (Improvement Notice) is automatically stayed pending an internal review by the regulator. The economic imperative for a PCBU to seek an internal review of a notice issued under section 193, 197 and 200 speaks for itself.

- 4.12.4 Master Builders says the increase in reviews of notices issued by Inspectors will deflect the Regulator's resources away from its core business and have to assess the veracity of notices under appeal by a PCBU. This will not be a best use of the limited resources of WorkSafe and will be counter-productive. A re-think on the penalty regime under the Bill is needed therefore.
- 4.12.5 Master Builders contends the penalties set out in section 190 lay down a benchmark of what the most severe financial penalties ought be under the Bill given threats/intimidation/assault of Inspectors when conducting official business cannot be condoned under any circumstances, other than offences under sections 31, 32 and 33 which are different categories.
- 4.12.6 A recent Federal Court decision (SAD 141 of 2014) involving unlawful industrial action by the CFMEU on an Adelaide construction site on 1 May 2014, involving threats and intimidation of a Commonwealth Inspector in the course of his duties by a union official, resulted in the Judge calling for such unacceptable treatment to be similarly dealt with as threats against police officers. Master Builders says the comments of the Judge in this matter reinforce its submission about the penalties in section 190 setting a "high tide" mark in the Bill for penalties other than those set out in sections 31, 32 and 33.
- 4.13. Master Builders concludes this part of its submission by relying upon two threshold points issued put by the Ministers for Commerce on the penalties on the question of harmonisation of the WA safety legislation which are:-
- The state WA Government position of 2008 and 2009 that the WA Government would not pick up the penalty regime of the then proposed model safety laws; and
  - Minister's Statement of 12 August 2014, in which he recognised the burden imposed on small and regional business in Western Australia of the proposed new safety legislative framework. Several of the penalties contained within the Bill do not reflect that thrust of the Minister's comments on that point and must be revisited.

## **5. WHS Regulations**

- 5.1. Master Builders notes there have been no draft Regulations issued with the Bill which limits comment to the Bill alone. Master Builders is mindful of the federal Model WHS Regulations but absent any guidance from the WA Government on whether, or not, stakeholders can rely upon the federal regulations for input, Master Builders is unable to make comment about the Regulations.
- 5.2. As Master Builders had input into the development of the draft Regulations associated with the drafting of the WHS Act 2011 from 2010, the absence of being able to comment on the Green Bill's Regulations is considered a serious deficiency.
- 5.3. Master Builders considers this leads to a defective consultation process in that stakeholders are constrained in providing a comprehensive response as the Bill refers to Regulations which stakeholders do not have access to. In effect, stakeholders have only part of the proposed safety legislative framework to assess and are denied the opportunity to pass comment on the proposed Regulations. This limits the ability of the Regulations being better shaped to meet the needs of the Western Australian workplace. A position the Minister notes as a need in his Parliamentary speech of 12 August 2014.

## **6. Codes of Practice**

- 6.1. Master Builders also notes there has been no guidance issued by the WA Government in connection with Codes of Practice that will apply under the WHS Bill. This in Master Builders view also leads to a defective consultation process as absent relevant Codes of Practice to assess, stakeholders cannot provide a more fulsome response on the totality of the proposed changes.
- 6.2. Section 274 of the Bill sets out the Minister may approve a Code of Practice for the purposes of the Act. Master Builders is unaware if the Minister intends to:-
  - Retain the existing, and approved, Codes of Practice under section 57 of the OSH Act 1984, or
  - Displace the above Codes and replace those Codes with Codes approved by Safe Work Australia, or
  - Retain some/all of the current WA Codes approved by the Minister and introduce some/all of the federal Codes approved by Safe Work Australia.
- 6.3. Master Builders is therefore, also unable to provide any comment on what Codes may apply under the Bill which makes wider comment on the Bill compromised. This follows as section 275 in the Bill sets out approved "*codes of practice is admissible in the proceedings as evidence....*" In Master Builders view, Codes take

on similar weight as Regulations in a legal sense and absent any ability to review what Codes are to apply under the Bill, stakeholders are denied the opportunity to make a more complete assessment of the proposed legislative safety framework under the Bill.

- 6.4. Master Builders contends this is not best practice in seeking comment from stakeholders on such an important issue as the Bill.
- 6.5. Equally, as Codes are proposed to take on the same weight in an evidentiary capacity as Regulations, employers will be required to meet both the relevant Code and relevant Regulations. This is a major departure from the current position in Western Australia where Codes provide guidance for employers but do not have the same legal force as the Occupational Safety and Health Regulations.
- 6.6. The current arrangements concerning Codes are that non-compliance by an employer with a prescribed Code is not of itself sufficient reason for prosecution by WorkSafe WA. This position is reflected on the WorkSafe website and the Department of Commerce Codes of Practice information sheet. See [www.commerce.wa.gov.au](http://www.commerce.wa.gov.au)
- 6.7. Master Builders contends employers, as a result of section 275 of the Bill, have to meet dual obligations being the Regulations and Codes of Practice. A breach of either renders a PCBU liable to prosecution by WorkSafe WA. Master Builders oppose this dual obligation approach and recommends the retention of the status quo with Regulations providing the necessary framework of specific compliance and Codes acting as guidance material for employers. This approach has worked well in WA and Master Builders identifies little reason to depart from a system that has a proven track record.
- 6.8. Master Builders says the approach put in paragraph 6.7 above is entirely consistent with the Minister's Parliamentary Statement of 12 August 2014, particularly the Minister's comments repeated in paragraph 3.9 of this submission.
- 6.9. A further risk arises in the event section 275 of the Bill if approved is that a Code of Practice may seek to impose greater obligation on a PCBU than set out in the WHS regulations. Master Builders characterises this path akin to the "Henry VIII clause" in that a Code can be approved that exceeds the obligations of a specific Regulation, albeit, the Minister must approve the Code under the proposed section 274 of the Bill. In essence, a Regulation can be overridden by a subservient Code. This uncertainty is not best practice regarding the introduction of legislation particularly when such legislation contains, as proposed, severe penalties of up to \$3 million or jail of 5 years. The Bill, Regulations and Codes must provide certainty which is not delivered by the operation of section 275.
- 6.10. Master Builders also had direct input into the drafting of Codes of Practice associated with the WHS Bill from 2010. This allowed Master Builders to better shape several of the federal Codes. Further, many federal Codes were rushed in their development, a matter acknowledged by the Minister in his Statement of 12 August 2014. It was the experience of Master Builders in that flawed federal

process that many of the federal Codes were very east-coast centric in their drafting, with often little relevance to WA, or concerns raised by WA ignored by the eastern states counter-parts. The latter point reinforcing the Minister's speech to Parliament on 12 August 2014.

6.11. Master Builders does not raise the absence of any guidance from the WA Government about Codes of Practice as an opportunistic criticism, rather, as a constructive one. For example, Safe Work Australia issued a Code of Practice titled "Preventing Falls in House Construction" in July 2012. The initial drafts of this Code referred to the erection of stud frame walls on two-storey housing and need for carpenters to stand-up the wall stud frames from the base of the frames, no less than two metres from the edge of the second storey. Master Builders pressed hard for the draft Code to be amended given the minority of that type of two storey housing construction in WA. Suspended slabs and double clay brick is the norm in local housing construction meaning the federal Code needed to make reference to this type of construction. The SWA Code makes NO reference to this type of construction with diagrams in the federal Code all referring to stud frame construction. The Code, as currently structured has little relevance to residential double storey construction in WA.

6.11.1 Master Builders did however, have some success in the drafting of the federal Code regarding the erection of "stick roofing" in residential construction section. The Code's provisions reflected, in part, a WorkSafe WA Bulletin 8/2006 on controlling fall risks while working on roof structures in domestic construction. The WorkSafe Bulletin was the result of almost 18 months of consultation between WorkSafe, Master Builders and other residential stakeholders on developing a reasonably practicable solution to erecting stick and metal roof frames in the local residential sector. The initial draft Code proposed costly options to roof erection that did not factor in the WA construction methodology. Master Builders provided the 2006 Bulletin as an example of what stakeholder investment in developing a workable and practicable solution had resulted in. It also reflected the very genesis of the modern safety legislation based on the Roben's approach of the United Kingdom of 1972, that stakeholders are best placed in developing workplace safety solutions rather than some third party divorced from the workplace.

6.12. The point Master Builders raise about the absence of Codes associated with the Bill, is stakeholders do not know what Codes might apply, and many of the SWA Codes will not fit into the WA context without modification given several are eastern based focussed. Whilst some may argue work is performed the same way in WA as around the nation, that does not ring true when one drills down to industry specific issues. The construction of double storey residential construction is one stark example. Given the shift to smaller residential blocks in the WA residential market and increasing application of two storey housing to provide living floor space on smaller blocks, this is no minor matter. Other examples will also abound in the construction sector and other industries undoubtedly.

## 7. WA OSH Performance

- 7.1. Master Builders acknowledges an important driver underpinning the federal model harmonised safety regime is the motivation to reduce workplace injury and fatality, a motivation no party challenges and all strive for. Master Builders and the wider building and construction sector has committed significant resources to improving the level of safety in the building and construction sector over the past 3 decades with WorkSafe WA data confirming improvements in the industry's safety record over that time. Whilst this improvement needs to be recognised, the need for continuous improvement in safety standards is also recognised as an ongoing objective.
- 7.2. In reviewing the Bill, Master Builders notes the Minister's Parliamentary Statement of 12 August 2014, in which the Minister pointed out some important features associated with the workplace safety record on Western Australia. The Minister said:-

*"Western Australia's OHS regime has been and continues to be a sound one. Its effectiveness is clearly evidence by the statistics for lost time, injuries and diseases and traumatic work related fatalities, which since the commencement of the Occupational Safety and Health Act 1984, continue to decline, notwithstanding the increase in WA's population and workforce and increasing complexity of our work environments."*

- 7.2.1 Master Builders endorses the Minister's comments above and has itself, raised this very point in our previous submissions on the Bill. An important threshold question that has not been put in Master Builders' opinion on the need for the Bill is; - What is the estimated improvement in workplace safety performance as a result of introducing a harmonised model safety legislative framework, as opposed to the improvements being delivered by the current Western Australian safety regime. Put another way, Master Builders poses the important question of what will the Bill deliver in improved workplace safety performance that the current state safety framework does not, and will not continue to deliver, including improvements in safety performance measures.
- 7.3. To build upon its submission regarding the improved safety performance in WA, and disconnect between the proposed penalties in the Bill, Master Builders refers to a WorkSafe WA publication titled "Work Related Lost Time Injuries and Diseases in WA 2010-11 preliminary data". Chart 1 of that publication: Frequency rates (LTI/Ds per million hours worked): 2000-01 to 2010-11p reveals a drop in the Frequency Rate from 13.78 in 2000-01 to 9.51 in 2010-11 or reduction of almost 31% over the past decade. Since the Occupational Safety and Health Act 1984 was introduced in 1988 the Frequency Rate has dropped by 73.1%. This confirms the Minister's comments to Parliament on 12 August 2014 regarding the improvement in the WA safety performance.

- 7.4. Further, data set out in the WorkSafe WA publication "WA Key OSH Statistics" on Frequency rates (LTI/Ds per million hours worked): 2000-01 to 2012-013 reveals the Frequency Rate has continued to decline from 9.51 in 2010-11 to 8.68 in 2012-13 or a 37% reduction in LTI/Ds since 2000 and represents a 6% reduction in the past 2 years. Master Builders contends the current Western Australian safety framework is delivering continuing improvement based on this information. Therefore, the question of what greater improvements in workplace safety can the Bill and attendant Regulations and Codes of Practice deliver over and above what the current system delivers is a valid question.
- 7.5. Having regard for the improving track record on safety in the workplace in WA, Master Builders contends the penalties set out in the Bill are not supported based on the data set out in paragraphs 7.3.and 7.4 of this submission.
- 7.6. Master Builders refers back to clauses 4.9 and 4.10 of this submission regarding the introduction of increased penalties in the Peoples' Republic of China in December 2014, and message the Bill portrays that WA has a similar abysmal track record of workplace safety as that of China. As a result, the Bill seeks to treat a PCBU in a similar manner as an employer in China and attract similar heavy penalties under that nation's laws. Master Builders says the data of WorkSafe itself does no support such a contention when aligned with the recent data from China.
- 7.7. A final consideration on this point is section 1.4(d) of the COAG Agreement in that the outcome was to achieve significant and continual reductions in incidence of death, injury and disease in the workplace. The WorkSafe WA data on WA's safety performance goes some way to meeting that outcome by itself.

## **8. Access to Comcare Scheme**

- 8.1. Master Builders notes the observation of the Minister in his Statement to Parliament on 12 August 2014, that 96 per cent of all WA workplaces are not affected by the federal model safety laws nor are 49% of WA employees. That is, 96% of employers do not trade across state borders. The reverse of this observation is only 4 per cent of WA workplaces would be impacted by the federal model safety framework as proposed as they do work across state borders. Master Builders contends this is a very small cohort of employers that can justify any move to adopt the federal model safety laws and that position is rightly rejected by the WA Government. Similarly, the proposition of adopting the federal model penalty regime should also fall away for the same reasons.
- 8.2. Master Builders refers to the Inter-Governmental Agreement, Part 1.4(b) which sets out the following:-

"address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;"



Master Builders recognises some large WA employers operate across state borders employing large workforces which fall into the 4% category referred to in paragraph 8.1. Such employers ought have the opportunity to have uniformity of safety laws that apply to their respective business across the nation and their operations and reduce costs as a result. Master Builders does not quibble with that position and supports such employers being able to reduce administrative red tape in the OSH arena which is expensive given the multiplicity of differing safety jurisdictions.

- 8.3. Master Builders points out large national employers have the opportunity, or will shortly have again, the opportunity to apply to the federal Comcare scheme to adopt the federal workers' compensation scheme by applying to have a licence to be covered by that scheme. In 2014 the Federal Government introduced the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 that seeks to expand access to the federal Comcare scheme but importantly, links such applications by the employer to also be covered by the federal WHS Act 2011. That is, a national employer may seek to reduce their administrative red tape burden by applying for a licence to be covered by the Comcare scheme which also imposes the application of the federal WHS Act 2011. That will satisfy 1.4(b).
- 8.4. In effect, the circumstances set out in paragraph 8.3 above allows a large employer that trades across WA borders to have the ability to "opt-out" of the WA safety system on a discretionary basis. That in Master Builders view is an option best left to larger national type employers to decide for themselves, that is, a large employer in WA may have the option to pick up the federal WHS Act 2011 should they wish. In raising this point Master Builders is also mindful the Bill is currently before the Senate awaiting approval.

## **9. Review of Federal Model Safety Laws.**

- 9.1. Master Builders also raises another consideration in connection with the federal model safety laws in that the Federal Government has undertaken a review of the WHS Act 2011 following agreement by the Federal and State Ministers in June 2014. The consultation period ended 1 August 2014, with a report yet to be issued.
- 9.2. The underlying tenet of the above review is to examine ways to improve and reduce red tape and make it easier for businesses and workers to comply with their work health and safety responsibilities.
- 9.3. Master Builders says that as the WHS Act 2011 is under review and changing as the legislation evolves since its very recent introduction in 2011, the decision of the WA Government to place a focus on an outcome better suited to WA on an effective safety regime is also validated.