THE AUSTRALIAN INDUSTRY GROUP SUBMISSION

Response to:
Government of Western Australia

Work Health and Safety
Model Regulations and Codes of Practice

Consultation Impact Statement
Information and Issues Paper

October 2012

AUSTRALIAN INDUSTRY

GROUP

This submission is made on behalf of The Australian Industry Group (Ai Group) in response to the *Information and Issues Paper for the Consultation Regulation Impact Statement* (RIS) issued by the Government of Western Australia in 2012.

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other industries. The businesses which we represent employ more than 1 million employees.

It is an organisation committed to helping Australian industry with a focus on building competitive and sustainable industries through global integration, skills development, productive and flexible workplace relations, infrastructure development and innovation.

The organisation provides practical information, advice and assistance to help members run their businesses more effectively. It ensures through policy leadership that members have a voice at all levels of government, by representing and promoting their interests on current and emerging issues.

Ai Group members operate small, medium and large businesses across a range of industries.

We are represented in ongoing tripartite consultative forums, and other consultative processes, with state governments and occupational health and safety regulators.

Ai Group is a member of Safe Work Australia, with representation on the Strategic Issues Group – OHS/WHS (SIG-OHS/WHS), a working group of Safe Work Australia which is overseeing development and implementation of the regulations. As the laws have been developed, we have participated in the tripartite debates undertaken at Safe Work Australia member meetings and through our involvement on the SIG-OHS/WHS.

Ai Group's information, advisory, consulting, legal and training services brings our staff into contact with a broad range of businesses across Australia who share with us the opportunities and challenges that arise when running a business in the current regulatory environment. Every day our specialist Work Health and Safety (WHS) staff interact with employers who need advice or assistance to meet their current health and safety obligations. This practical exposure to WHS issues within businesses, combined with the expert knowledge of our experienced advisers, informs our considerations and ensures that the legal, technical and day to day practical implication of those laws in the workplace are all taken into account.

As a member of Safe Work Australia, and its SIG-OHS/WHS, Ai Group has had the opportunity to utilise this knowledge and expertise to express the views of "persons conducting a business or undertaking" during the development and finalisation of the Model WHS Act and the draft WHS Regulations and related Codes of Practice. Ai Group was pleased that many of the issues raised on behalf of persons conducting a business or undertaking have been addressed in the finalised Model WHS Laws.

THE IMPORTANCE OF THIS HARMONISATION MODEL

Since the commencement of the National OHS Review in 2008, Ai Group has been consulting with members about the principles and details of the Model WHS Laws. Employers have consistently advised us of their desire to have one set of laws that are consistently enforced across Australia.

It is our view that the "old" system of managing OHS created confusion for all employers, not just those operating across jurisdictions. It is extremely difficult to argue that the laws were providing clear guidance on how to manage an issue, when Australia had up to 9 different approaches to each issue within the detail of the laws.

Our role in SIG-OHS/WHS has highlighted to us more than ever the many, often subtle, variations between the OHS/WHS laws that exist(ed) around the country. It is clear that the final set of laws has required that every jurisdiction and the various stakeholders rethink the way that WHS laws are constructed, administered and enforced.

A set of harmonised laws creates the basis for further development and enhancement as required in the future.

Ai Group does not agree with all of the decisions that were made during the harmonisation process. We will be monitoring implementation issues as the laws are adopted across all jurisdictions and, making recommendations for changes at the national level if appropriate.

However, it is our view that the time for debate about what should be in the laws is over. We will not use this process to relitigate decisions that were made through a detailed consultative process which included an opportunity for public comment to be made and considered.

Clearly, each jurisdiction needs to address areas of concern and to implement appropriate transitional arrangements to minimise the cost impact on business and maximise the effectiveness and efficiency of the activities of the regulator. Ai Group strongly supports this approach, which should be accompanied by broad provision of information to the business community about their WHS obligations.

Whilst we have received some negative feedback about certain aspects of the laws, it is our view that the total package provides an opportunity to emphasise the importance of approaching the management of work health and safety (WHS) in a proactive manner.

A clear example of how the Act has the capacity to change the focus of duty holders are the requirements of s.27 of the Model WHS Act, for officers (as defined) to exercise due diligence to ensure that the organisation complies with its duties and obligations under the Act. It is our view that this is a far more effective approach to determining officer obligations and liabilities than the provisions which are currently contained in s.55 of the WA OSH Act (and which are similar to provisions in most other pre-harmonised laws).

During our consultation with employers throughout the development of the laws, and subsequently in the jurisdictions that have introduced the WHS laws, we are finding a heightened understanding amongst organisations, and their officers, of the proactive nature of officer obligations under the WHS laws, and a more practical understanding of what this means within workplaces. We expect that this will translate into an increasing role of officers in ensuring that they understand, and that the organisation manages, the key work health and safety risks in their business.

Another key opportunity to highlight the expectations of regulators, and the law, relates to the obligation created within the WHS laws for duty holders to consult, cooperate and coordinate with other duty holders who have an obligation in relation to the same matter. It is Ai Group's view that this approach is already required in order to meet the general duties under the Act; however, many employers appear to be unaware of this expectation which is generally only illustrated through successful prosecutions of multiple duty holders in relation to a single incident.

The WA government has made it clear that it will not be adopting all of the provisions of the WHS Act. As outlined in the issues paper these relate to: penalty levels; union right of entry; capacity of HSRs to direct a cessation of work; reverse onus of proof in relation to discrimination matters; and the power for the DPP to review a decision by WorkSafe WA not to prosecute.

Whilst it is disappointing that the Model WHS Bill will be adopted with some amendments in WA, it is Ai Group's view that these issues are "administrative" in nature. By this we mean they do not affect the overarching duties and responsibilities that are placed on duty holders. As such, the adoption of the WHS Act, as proposed by WA, will achieve the level of harmonisation employers have been seeking; an understanding that how you manage OHS/WHS in Western Australia is no different to how you manage it in the rest of the country. However, this certainty will only be achieved if the WHS regulations are adopted in WA without amendment.

In relation to the development of the Model WHS Regulations and Codes of Practice, some concerns have been raised about the level of prescription in some cases, and the lack of prescription in others. This has arisen largely because of the different approaches taken historically to some risks.

For example, the current WA OSH regulations include prescriptive requirements for welding, which do not appear in the WHS Regulations, but are addressed in much more detail in a WHS Code of Practice. Pre-harmonised laws in other jurisdictions had neither regulations, nor Codes to address this issue. Hence, in WA it could be argued that the "standards" are being lowered because there is no longer a regulation; whilst elsewhere it could be argued that the "standards" are being increased because there will now be a Code, rather than guidance.

However, the reality is that before and after harmonisation all regulators would have expected employers to control the risks associated with welding. This is a clear duty under all OHS/WHS laws as outlined in the overarching obligation in section 19 of the WA OSH Act: "to, so far as is practicable, provide and maintain a working environment in which the employees of the employer (the ***employees***) are not exposed to hazards…"

Hence, in most cases the changing structure of the regulations and codes do not affect the obligations of duty holders to eliminate or minimise risk.

There are some areas where the laws do create new licensing or administrative requirements for duty holders, service providers (e.g. asbestos removalists) and workers.

These changes have been agreed at Safe Work Australia after significant debate, consultation and public comment. Where these issues will create, for WA employers, an increased cost, regulatory burden or difficulty obtaining necessary services to enable compliance it is crucial that there are appropriate transitional timeframes included in the legislation to enable an orderly and effective implementation of the laws.

SPECIFIC COMMENTS ARISING FROM THE ISSUES PAPER

Definitions in the Act

It is identified in the issues paper that, whilst the focus of this assessment is on the regulations, comments will be welcomed in relation to the key definitions in the Act: workers; workplace and a person conducting a business or undertaking (PCBU).

There has been much discussion about the impact of constructing the duties of the Act around workers and PCBUs, rather than focusing on the historical employment relationship. Some people have raised concerns that this creates confusion in workplaces where there are high levels of contracting and/or labour hire arrangements.

However, it is Ai Group's view that this approach is far more consistent with the expectations of the regulators and the courts in relation to the complex interactions in some workplaces. It is clear from the WA OSH Act that the lack of clarity about who has duties to whom needed to be addressed by the laws. Sections 23D, 23E, and 23F, inserted in 2004, were clearly designed to address the increasing occurrence of workplaces where direct employment is not always the major form of engagement.

It is our view that the concept of PCBU and worker more accurately reflects the obligations of organisations than the current complicated set of provisions included in the WA OSH Act.

In order to ensure that these broad obligations do not create a requirement for multiple duty holders to do the same thing, e.g. provide appropriate welfare facilities, the laws have been written around an obligation to "ensure" that something occurs. Supported by the obligation in the Act to consult, cooperate and coordinate, such an approach will help to develop an approach to WHS that is inclusive (what do I need to do?), rather than exclusive (what can I presume someone else is doing?).

The Regulations

We note that the issues paper identifies 13 areas where the model Work Health and Safety Regulations have differing requirements from the existing WA OSH Regulations. Whilst Ai Group will focus largely on these areas we will address some other areas of importance.

Risk assessments

Throughout the current WA OSH regulations there are specific requirements to undertake risk assessments, e.g. Regulation 3.1 states that:

> A person who, at a workplace, is an employer, the main contractor, a self-employed person, a person having control of the workplace or a person having control of access to the workplace must, as far as practicable —
>
> (a) identify each hazard to which a person at the workplace is likely to be exposed; and
>
> (b) assess the risk of injury or harm to a person resulting from each hazard, if any, identified under paragraph (a); and
>
> (c) consider the means by which the risk may be reduced.

Within the Model WHS laws, there are very few specific requirements to undertake risk assessments. The decision to remove this as a mandated requirement in WHS laws was taken due to a recognition that the laws must focus on controlling hazards/risks, rather than on assessing them. Throughout the Codes of Practice it is highlighted that, whilst undertaking a risk assessment may be an essential part of the process in some circumstances, it is not necessary if "you already know the risk and how to control it effectively".

For many years Ai Group has been a strong supporter of this approach, which was introduced in Victoria in 2007. We have found that it enables employers (PCBUs) and employees/workers to concentrate on how to find a solution, rather than spending extended periods of time trying to undertake formal risk assessment processes, just to comply with the letter of the law.

Under current WA OSH laws, it would be possible for an organisation to implement an exceptional control measure and still be technically in breach of the law for not undertaking a risk assessment.

It is our view that the removal of mandated risk assessments will significantly reduce regulatory burden and associated costs, whilst increasing safety outcomes by increasing the focus on solutions.

Additional Regulations: Demolition licensing and Smoking (environmental tobacco smoke)

Ai Group is generally strongly opposed to any "additional" regulations being incorporated into the regulations by individual jurisdictions. This is because of the confusion that it creates for organisations operating in more than one jurisdiction and also for workers moving from one state to the other. Our specific comments on these two regulations are detailed below.

Demolition licensing

There is a jurisdictional note within the WHS regulations to allow for the inclusion of demolition licensing provisions for those states that previously provided for this within the OHS/WHS laws. This jurisdictional note was included because of the different approach to licensing within the jurisdictions and, most importantly, because there is currently a review being undertaken of the National Occupational Licensing Scheme (NOLS). Safe Work Australia did not want to pre-empt the outcome of this review and so it was determined that the status quo should remain for now.

It is Ai Group's understanding that this decision will be revisited by Safe Work Australia once the NOLS review is completed, with a view to determine whether demolition licensing should be included in the National WHS regime.

For this reason Ai Group supports the inclusion of demolition licensing within WA's version of the WHS laws, a this point in time.

Smoking (environmental tobacco smoke)

Smoking was not included in the WHS laws as most jurisdictions deal with this issue through other laws, such as tobacco control laws. Ai Group is concerned that the inclusion of the smoking provisions in the WA laws will imply that there are no corresponding laws in other jurisdictions. We recognise that this may not be a concern for the WA government in relation to this issue. However, once this approach is adopted by one jurisdiction it makes it more difficult to discourage others from doing the same. Ultimately we could find a set of harmonised laws, with lots of "add-ons" around the country creating great confusion.

It is interesting to note that in Queensland, in order to avoid including additional regulations within the WHS laws, a new Act was established (which mirrored the WHS Act) to cover "recreational water activities"; this allowed for the continuation of the recreational diving regulations without the need to modify the WHS regulations.

Ai Group would like to see the relocation of the smoking provisions into other relevant legislation within WA. If it is not possible to do this, we believe the current provisions need to be reworked to more closely mirror the language and approach of the Model WHS Regulations. Further it would be helpful if the regulations could include a "note" to explain why smoking is included in the WA version of the WHS regulations when they are not needed in other jurisdictions.

Asbestos

Asbestos removal

The WA OSH regulations provide a limited amount of detail about the requirements for asbestos removal, stating at regulation 5.45 that the work must be done in accordance with: the *Code of Practice for the Safe Removal of Asbestos* 2nd Edition [NOHSC: 2002 (2005)] (part 9 for restricted removal work); and the licence.

The issues paper identifies a number of modified requirements associated with asbestos removal. These relate to: licensing; notifications; and air monitoring and clearance. We have grouped our responses accordingly.

Licensing

It is noted that there are variations to the processes and training required to obtain, and maintain, a license to operate as an asbestos removalist; this is the case in most jurisdictions adopting the WHS laws. It is Ai Group's view that this is an important step toward establishing a high level of consistency across the country when dealing with asbestos. As there is currently no WA course for Class A licences, it would appear that the adoption of the Model WHS Regulations will provide increased access to training for people removing of the most hazardous forms of asbestos.

However, it is also acknowledged that there will need to be appropriate transitional arrangements put in place to ensure that there continues to be sufficient licensed removalists to undertake work within Western Australia. The issues paper indicates that there are only seven businesses with Class A (unrestricted) licences currently operating in WA; this should allow for an appropriate process to be established to transition these organisations across to the new scheme.

Notifications

The issues paper identifies that currently in WA notifications are only required for Class A asbestos removals, whilst the WHS laws will require notification of Class B removal work. In order to minimise the administrative burden associated with notifications, it is essential that WorkSafe WA sets up a streamlined process, preferably with an online option.

Air monitoring and clearance

Firstly we need to highlight an error in the description used in relation to the model WHS Regulation. Class A asbestos is described in the brackets as "non-friable or bonded asbestos containing material"; this is incorrect. Class A asbestos is "friable" asbestos; non-friable (or bonded) asbestos is Class B work. Accordingly, an independent licensed asbestos assessor is required to undertake air monitoring when friable asbestos is being removed.

Further, it is important to note that the clearance inspection must be done by a licensed asbestos assessor (Class A) or competent person (Class B) that is "independent" (regulation 473).

The key issues here appear to relate to:

- the move from "competent person" to "licensed asbestos assessor" for air monitoring and clearance certificates associated with the removal of friable asbestos;
- a requirement for the person doing the clearance inspection to be "independent"; and
- the requirement that the person who commissions the asbestos removal work "must" (rather than should) obtain a clearance certificate.

Part 11 of the Code referenced within the WA OSH regulations (applicable for unrestricted / Class A removal work) already refers to the requirement for the air monitoring and clearance certificate to be undertaken, and issued by, a person who is independent from the person responsible for the removal work. Independent is not defined.

The model WHS Regulations do define independent: (a) not involved in the removal of the asbestos; and (b) not involved in a business or undertaking involved in the removal of the asbestos, in relation to which the inspection or monitoring is conducted.

The level of impact associated with this change is clearly related to how WorkSafe WA has previously defined "independent from the person responsible for the removal work".

In relation to the requirement for licensed asbestos assessors, it is clear that there will need to be appropriate transitional arrangements put in place to allow for "competent persons" to complete any additional training and/or obtain a license as an asbestos assessor.

In relation to the requirement for "independent" assessors and competent persons, we understand that some concerns have been raised about this in relation to work in remote locations. We would encourage WorkSafeWA to set up appropriate mechanisms to consider exemptions where this is necessary.

Asbestos register

WA currently administers the requirements to have an asbestos register by applying a cutoff date of 1990, based on WA history associated with the use of asbestos in buildings. When implemented the WHS regulations will require that asbestos registers are established for all buildings constructed before 31 December 2003. The rationale for this date is that it coincides with the date on which the use of all asbestos was banned in Australia. Whilst it could be argued that this will increase the administrative requirements for workplaces built between 1990 and 2003, if there is no asbestos in the building, it should be relatively simple to establish the register. However, it is important that an appropriate transition period is put in place.

Analysis of asbestos samples

The issues paper indicates that there is a changed requirement associated with the analysis of samples. If there is doubt about the presence of asbestos, both sets of laws allows for asbestos samples to be analysed, or for the organisation to presume that the material is asbestos.

The WA OSH Regulations requires the person in control of the workplace to identify asbestos in line with the requirements of the Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]. The Code states that "it is important that samples of materials suspected of containing asbestos are taken only by competent persons and are analysed only by accredited laboratories". The Code further states that an accredited laboratory "means a testing laboratory accredited by the National Association of Testing Authorities, Australia (NATA) or a similar accreditation authority, or otherwise granted recognition by NATA, either solely or in conjunction with one or more other persons".

The WHS regulations specify that a sample must be analysed by: a NATA accredited laboratory; a laboratory approved by the regulator; or a laboratory operated by the regulator.

It would appear that whilst there is some variation in the specific words utilised, it should be possible for all current "accredited laboratories" in WA to fit within the requirements of regulation 423.

Naturally occurring asbestos

The Model WHS Regulations outline specific requirements to manage the risks associated with naturally occurring asbestos. Whilst this is not specified in the current WA OSH regulations, it is our view that organisations who are undertaking work which is likely to disturb naturally occurring asbestos would be expected to have appropriate systems in place to eliminate or minimise risks (as required by the general duty under the Act). Hence, whilst there may be a need to provide transitional arrangements to allow organisations to formalise this into an "asbestos management plan", it should not create a significant increase in administrative requirements.

Construction projects: appointment of principal contractor

The issues paper identifies that under the WA OSH regulations a "main contractor" for a "construction site" must ensure that there is an OSH management plan if there is likely to be five or more persons likely to be working there at the same time. In comparison it is highlighted that, under the model WHS laws, various regulations place prescriptions on a "principal contractor" of a construction project, which is defined as a project costing $250,000 or more.

The way in which this information is presented indicates that obligations will apply to a broader range of projects, and that there will be more requirements placed on the "principal contractor", than are currently imposed on a "main contractor".

However, under the WA OSH regulations a "main contractor" is defined as (a) the person for whose direct benefit all the work done at a construction site exists upon its completion; or (b) if the person mentioned in paragraph (a) has engaged another person, other than as his or her employee, to do or cause to be done all the work at the construction site, the other person so engaged.

Throughout the regulations there are a range of duties placed on the "main contractor, irrespective of the number of persons who will be working on the site. These include, but are certainly not limited to:

- R3.1 – obligations to identify hazards, assess risks, and consider means to reduce the risk;
- R3.2 – ensure access to Acts, regulations etc;
- R3.4 – control risks associated with manual handling;
- R3.6 – ensure safe movement around the workplace;
- R3.8 – have emergency plans.

In fact, an examination of the current WA OSH regulations indicates that most duties are described as being placed on the employer, main contractor or person having control of the workplace.

Hence, it is Ai Group's view that the concept of principal contractor will not increase the obligations on construction sites, where the main contractor already has a broad range of obligations under the regulations.

Diving work

As the diving regulations will provide new specific detail about how to meet the general duty of care in relation high risk diving work, rather than just construction diving work, appropriate transition arrangements will be required.

Fall prevention

The issues paper identifies that the WA OSH regulations currently have two very specific requirements associated with the control of risks of a fall which must be implemented where there is a risk of falls from two or three metres respectively. It may be argued that removing the reference in the regulations to these specific control measures will reduce the level of protection because the duty holder could chose to utilise lower levels of protection. However, given the way in which the hierarchy is described in the regulations the same principals should be applied; and are recommended within the Code.

During the public comment process associated with the model WHS regulations, some feedback was provided to indicate that applying the falls regulations to "all" falls would increase the compliance burden. However, in reality, obligations to eliminate or minimise the risks associated with all falls are established by the general duties of the Act.

Hazardous substances

Classification

The current WA OSH regulations allow for the classification of hazardous substances using either the AC system or the GHS system. The way in which the data is presented in the issues paper implies that the only system which will be applicable once the Model WHS regulations are adopted is the GHS.

However, the transitional provisions that are currently in the WHS regulations allow for a five year transition. A recent decision of SIG-OHS/WHS has recommended that this should be amended to a cutoff date of 31 December 2016. This date is five years after the adoption of the laws by five jurisdictions and will ensure a consistent implementation date across Australia.

Import

Ai Group understands the concerns about the different definition of "importer" and the possible restrictions this may place on the local regulator to require changes to labels and SDSs. However, given that the laws provide for greater sharing of information between the various regulators it is our view that cooperation should be able to be achieved. Further, if an employer "imports" a product from New South Wales for use in their workplace in WA, it is unlikely that the local user of the product would have the necessary expertise to modify the label/SDS without input from that supplier.

Crystalline silica silicon dioxide

The current version of the WHS regulations establish 0.1% restriction of crystalline silica for the purposes of abrasive blasting was a drafting error. Safe Work Australia have identified that this is a drafting error. A correction to 1.0% is expected to be included in a consolidated list of amendments that should be available by the end of October.

As the current restriction in the WA OSH regulations is set at 2.0% it is important that an analysis is undertaken to determine whether the introduction of a 1.0% restriction will have a real impact on industry within WA. This can only be achieved by identifying the percentage of crystalline silica that is present in current materials used for abrasive blasting.

Risk assessment and record keeping

As indicated earlier in this submission, Ai Group is strongly supportive of the move away from prescribing risk assessments and associated record keeping. The focus of all regulations should be on applying appropriate risk controls, in line with the hierarchy of controls. The provision of safety data sheets (SDS) with hazardous chemicals means that employers will have access to information about how best to control the risk associated with the hazardous chemicals they utilise. Model Codes of Practice provide good guidance on when risk assessments can assist in the process of determining appropriate controls.

It should be noted that where there are large quantities of schedule 11 chemicals (dangerous goods) a manifest will still be required.

Therapeutic goods and agricultural veterinary (agvet) chemicals

During development of the WHS laws, there was significant consultation undertaken to determine how best to deal with agvet chemicals that are used in workplaces. Whilst the ultimate decision was not agreed to by all parties, in a country the size of Australia, it is essential that the labelling of chemicals is consistent.

Therefore, we accept the adoption by WA of the agvet labelling requirements. If they are ultimately found to be unworkable, there may be a need to consider an amendment at the national level.

Health monitoring: reports to the regulator

The WHS regulations only require that reports are provided to the regulator when problems are identified. This could be a significant reduction in the reporting requirements for some employers who are currently required to provide the regulator with all health monitoring reports. This can be achieved without any reduction to the health and safety of workers, or to the usefulness of information being provided to the regulator. In fact, it could be argued, that this will also ensure a higher visibility of problems, as the regulator will know that a report being received is indication of a problem, rather than a routine reporting process.

High risk work licences

Dogging and "slinging" techniques

Ai Group strongly supports the modification to the definition of slinging techniques within the definition of dogging work; a reference to "exercising judgment" is crucial. Where there is no judgement being made, a worker is merely performing a straight-forward task, possibly defined by a safe work procedure or job safety analysis. In these circumstances it is not necessary for the worker to hold a high risk licence. We believe that this change, supported by appropriate guidance in the Code (which is yet to be finalised) about what it means to exercise judgement, will help to reduce the confusion currently being experienced regarding the need for dogging licenses in some workplaces.

Exemptions

The key change outlined in relation to exemptions is that there is the ability for the regulator to exempt a "class" of persons, rather than limiting exemptions to when a person applies for an exemption. It is Ai Group's view that there should not be a need for many exemptions, but the capacity to exempt a class of persons may need to be used from time to time to address anomalies that may arise.

It is our understanding that the regulators have agreed that they will communicate with each other regarding the need for exemptions and would propose amendments to the regulations if it was identified that a particular class of persons was inadvertently captured by the regulations. Hence, we expect that "class of person" exemptions would be temporary in nature.

New or modified categories for licences

Boilers (pressure equipment); concrete placing booms; reach stackers

The issues paper identifies that the WHS regulations will require some individuals to either upgrade current licences or get new ones. It will be necessary to have an appropriate transitional period in place to enable the additional licences to be obtained. It will also be essential that "bridging" courses are available and/or recognition of current skills can be applied to workers who have been operating this type of plant under previous licensing (or non-licensed arrangements).

It would be helpful if the regulation impact statement could identify how many people will be impacted by these changes, and what resources are available to deliver the necessary training and assessment services.

Incident notification: prescribed serious illnesses

It is expected that the proposed provisions will capture all the diseases currently required to be reported under the WA OSH laws; it may also encompass other diseases as the descriptors are quite broad, rather than focusing on specific diseases. The work relatedness is worded differently: "contracted in the course of work" are the current words, whilst "infection that is reliably attributable" are the words used in the WHS laws. It is not clear what the practical implication of these different words will mean.

With such a broad description of the types of diseases that may need to be reported, it is possible that the administrative burden, for both employers and WorkSafe WA, may not match the benefits expected from receiving these reports.

Reporting levels, and in particular the occurrence of unnecessary reporting, should be monitored. If the requirements are not clearly understood by employers, it may be appropriate to provided clearer guidance and/or propose an amendment to the reporting requirements as part of the five year review of the laws.

Lead risk work

The issues paper identifies that the WHS regulations provide for a notification to the regulator within seven days of determining that work is "lead risk work". What is not identified in the paper is that the definition of lead risk work will change when the WHS laws are implemented.

Both sets of laws determine lead risk work by the blood lead level that is likely to occur due to the work. The levels for males are the same in both sets of laws 30µg/dL. For females, the WA OSH laws specify 20µg/dL, whilst the WHS laws specify 10µg/dL. Hence, it is possible that some work undertaken in lead processes which are not currently lead risk work, may be lead risk work under the WHS laws.

This reduction applies to all jurisdictions other than Victoria. During the public comment period for the Model WHS Regulations, we sought specific feedback from employers who had lead processes to determine whether this change would cause them difficulties. We found that most employers who used lead had much higher controls and action levels than those provided for by the regulations.

However, organisations that have lead processes which are likely to result in a female having a blood lead level in the range of 10 µg/dL to 20µg/dL, will need to have transitional arrangements to enable them to implement the requirements of the lead regulations that apply to lead risk work.

There will need to be transitional arrangements put in place to allow employers who have lead processes which are not currently lead risk work, to determine whether they will have lead risk work under the WHS laws and, if they are, to comply with the requirements associated with lead risk work. Transitional arrangements will also be required to allow time for lead risk work to be notified to WorkSafe WA.

Noise

Audiometric testing

In addition to addressing preventive control measures, the current WA Code of Practice for Managing Noise at Workplaces provides guidance about the use of audiometric testing as part of a comprehensive noise management program. The Code recommends that audiometric testing should be made available to any person who is likely to regularly be exposed to excessive noise within 12 months of commencing employment and every 12 months after that.

Whilst this might lead to a view that 12 monthly audiometric testing would be the norm; it is our understanding that the specific reference to "voluntary audiometric testing" at one point in the Code means that audiometric testing has not been applied as a broad expectation.

It is difficult to identify the additional costs that may be associated with the implementation of a two-yearly audiometric testing requirement in the regulations. We expect that many organisations will already be undertaking audiometric testing, and they may be doing it more often than two-yearly.

It would be helpful if the cost could be quantified during this process. It would also be helpful to identify if there are sufficient qualified audiometric testing facilities available to meet any increased demand created by the regulations.

It is essential that appropriate transitional arrangements are implemented, taking into account the costs and availability of testing facilities. Any transitional arrangements need to also allow for testing to be staggered over a two year period to enable retesting to be managed efficiently and effectively.

Managing risks

The issues paper identifies that the requirement to ensure that a person is not exposed to noise above the exposure standard is qualified in the WA OSH regulations by "as far as practicable", whilst the WHS laws do not have this qualification.

It is important to note that the WHS laws do allow for this control to be achieved by applying the hierarchy of controls, which includes PPE as the final control measure. It is not intended that noise levels must be below the exposure standard.

It is our view that the practical application of the WHS laws should be the same as the WA OSH laws as the appropriate selection and enforcement of PPE, combined with job rotation if necessary, should always be able to reduce the exposure of an individual to below the exposure standard.

Personal protective clothing and equipment (PPE)

It is highlighted in the issues paper that the WHS regulations do not specifically require that PPE must be in compliance with Australian Standards, whilst the WA OSH regulations do require this.

The non-referencing of Australian Standards in the regulations was a carefully considered decision that applies across most of the regulations. However, AS/NZ 1269.3 is referenced in the Code of Practice for *managing noise and preventing hearing loss,* creating an expectation that hearing protectors will be selected in line with the Code.

Ai Group does not believe that the relocation of this reference to the Australian Standard (from Regulations to the Code) would in any way reduce the level of protection required.

Plant

Amusement devices

The focus of WA OHS and WHS regulations is quite different. The current WA OSH regulation covers the full range of activities (operation, maintenance and inspection), whilst the WHS regulation quoted only focuses on an annual inspection. Therefore, it is quite difficult to identify the specific variations that will occur when the WHS laws are implemented; this should be a focus for this RIS.

In relation to competent person the WHS regulations specify a "registration" requirement within the competent person definition at paragraph (a). However, paragraph (b) does allow for some flexibility for the regulator to determine who might be competent; it is presumed that this could be done for a class of persons.

It is important to note that SIG-WHS recently agreed to a proposal to amend the definition of competent person for amusement devices. The RIS should consider the application of the new definition, which should be available as a legislative amendment by the end of October 2012.

Design registration: concrete placement units with delivery booms

It is essential that appropriate transitional arrangements are put in place to ensure that these requirements only apply to designs that commence after implementation of the WHS laws.

Design verification

Pressure vessels; cranes

In relation to design verification of pressure vessels the lack of reference to a particular standard in the WHS laws is consistent with the decision generally not to reference Australian Standards within the regulations.

We note also the inclusion in the WHS laws of "qualifications" as an essential component of determining who is competent to be a design verifier for cranes. This is potentially a higher requirement than currently expected in WA, where qualifications is one thing that may be considered in determining who is a competent person. Without considering the current qualifications of every person who verifies the design of cranes, it is not possible to identify if there will be a practical impact on the application of the laws in this area, i.e. it may be that all design verifiers already have the appropriate qualifications. However, it would still be prudent to implement transitional arrangements.

A Code of Practice has been developed to provide additional information about the design, manufacture and supply of plant. In our public comment on that document, Ai Group highlighted that there is a need for Safe Work Australia or HWSA (Heads of Workplace Safety Authorities) to develop a consistent and transparent procedure for the design registration of imported plant that requires design registration (and therefore verification). It may be possible to address both areas, in such a procedure.

Import

Ai Group understands that there may be concerns about the different definition of "importer" and the possible restrictions this may place on the local regulator to enforce the obligations of an organisation that imports plant into a different Australian jurisdiction. The first supplier within WA will continue to have the obligations of a supplier, allowing for local accountability.

It is our understanding that the WHS laws allow for much greater sharing of information between the various regulators. This combined with the fact that jurisdictions will be administering the same laws should increase the ability for cooperation between the jurisdictions to deal with any significant issues associated with importers or manufacturers in other Australian jurisdictions.

Item of plant registration

It is Ai Group's view that, from a practical perspective, the provisions in the WA OHS regulations and the WHS regulations, as presented in the issues paper will be applied in the same way. Hence, we do not believe there will be any practical implications of this change.

Item of plant registration – renewals

During the public comment period for the Model WHS Ai Group indicated that there were no practical benefits from renewal of plant registrations. As this requirement has now been included in the regulations it is crucial that a phased implementation is applied to allow for a consistent workload within WorkSafe WA, i.e. do not do all the re-registrations at the same time. In addition, where an employer has a large number of items registered it would be appropriate to work with them to determine whether they would prefer to have all their renewals at the same time, for ease of administration, or if they would prefer to stagger them to spread the costs of re-registration.

Mobile and tower cranes

It is our understanding that the major changes indicated in relation to mobile and tower cranes are: the specific requirement for a major inspection at the end of the design life or every ten years; and a different definition for competent person.

It will be important to ascertain from the crane industry what potential costs are associated with the design life / ten year inspection requirements.

In relation to the definition of competent person, it is Ai Group's view that the regulator has the ability to determine that a person is competent even if they are not "registered". Hence, the change in definition should not create practical difficulties. However, this should be tested with the regulator to identify any areas of difficulty for implementation.

Plant [design] registration

Prefabricated formwork; boom type concrete placement units

It is essential that appropriate transitional arrangements are put in place to ensure that these new design registration requirements only apply to designs that commence after implementation of the WHS laws, and that there is sufficient time to register boom type concrete placing units that are not truck mounted.

Tilt-up construction; spray painting; welding; abrasive blasting; isocyanates and styrene

The WA OSH regulations include prescriptive detail on these topics. This is not included in the WHS regulations. Codes of Practice have been developed for spray painting, welding and abrasive blasting.

Work will commence on a Code for tilt-up construction once the current review of the relevant Australian Standard has been completed; in the meantime the current National Standard is an appropriate reference under the WHS laws.

In relation to isocyanates and styrene, it is unclear why they appear in the current WA OSH regulations, whilst other hazardous chemicals do not. It is Ai Group's view that the issues are largely dealt with through the general obligations in the regulations related to hazardous substances, with further practical guidance in the Code of Practice.

The information in Codes of Practice can be more detailed and practical than what could be included in a regulation. The status of the Codes is such that the employer will need to follow the code or be able to demonstrate that their approach provides a level of health and safety that is equal to, or better than, what would be achieved by applying the code.

If more detailed information about these two chemicals is required, it should be provided in guidance material.

Thermal comfort

The issues paper identifies that the requirement of the WA OSH regulations to ensure that heating and cooling is provided to enable employees to work in a comfortable environment, is not included in the WHS regulations.

It should be noted that this issue is addressed in the Code of Practice for *managing the work environment and facilities.* The status of the Codes is such that the employer will need to follow the code or be able to demonstrate that their approach provides a level of health and safety that is equal to, or better than, what would be achieved by applying the code.

Hence, it is Ai Group's view that the obligations have not been altered by this approach.

CONCLUSION

Ai Group commends the WA government for taking the time to understand the specific impact that the implementation of the WHS Regulations will have on employers in Western Australia. This is an important step to ensuring that: appropriate transitional arrangements are in place; exemptions can be considered where necessary and appropriate; and areas of concern can be monitored to determine whether there is a need to propose an amendment to the Model WHS laws at some later date.