

3 December 2019

Deputy Director General
Safety Regulation
Department of Mines, Industry Regulation and Safety
1/303 Sevenoaks Street
CANNINGTON WA 6107

To Whom it may concern

WORK HEALTH & SAFETY REGULATIONS

The Master Builders Association of Western Australia provides the enclosed submission on the draft model Work Health and Safety Regulations.

Master Builders is more than happy to provide any additional information to WorkSafe WA if it should be required.

Yours sincerely



John Gelavis

EXECUTIVE DIRECTOR

Att: Submission Templates - Work Health & Safety Regulations



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

Master Builders of WA Submission - Work Health and Safety Regulations for Western Australia



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WHS Regulations submission coversheet

Section 1: Submission details

Full name

Michelle Degault-Rohlf

Organisation and position (if applicable)

Master Builders Association of Western Australia

Email

[REDACTED]

Telephone

[REDACTED]

Employment status (if applicable)

- Worker
 Employer
 Self-employed

- Principal contractor
 Contractor
 OSH professional

Other (enter details) **Member Organisation**

Size of workplace

- Small (0-9) **Medium (20-199)** Large (200+)

Please indicate in what capacity you are making this submission (select one of the following categories)

- Individual
 Business
 Community organisation
 Employer organisation

- Industry representative
 Academic
 Government representative
 Professional

Other (enter details)

Which industry sector do you operate in?

Housing and Construction

Your type of job or business (if applicable)

Member Organisation

Section 1: Permission details

Internet publication

Public submissions may be published in full on the website, including any personal information of authors and/or other third parties **contained in the submission**.

Please tick this box if you wish for your input to remain confidential (that is, you **do not consent** to having your input published on the internet)

Anonymity

Please tick this box if you wish for your input to be treated as anonymous (that is, you **do not consent** to having your name, or the name of your organisation, published on the internet with your input)

Third party personal information

Please tick this box **if your input contains personal information of third party individuals**, and strike out the statement that is not applicable in the following sentence:

The third party **consents** / **does not consent** to the publication of their information.

WHS Regulations submission comments

Enter your comments on specific regulations in the table below. You may add new rows at the end of the table if you wish to include comments on other aspects of the national model WHS regulations.

When making your submission, please consider providing specific responses to the following issue:

1. What is the benefit to workplace participants of a proposal?
2. What is the likely cost for you, your business and the Regulator to implement a specific proposal?
3. Is a specific recommendation likely to be effective in achieving healthier and safer workplaces?
4. Are there any unintended consequences of adopting individual regulations in the model WHS regulations?
5. If a new requirement is proposed by the model WHS regulations, what are the costs and benefits?

This template can be used for providing your views concerning:

- National Model Work Health and Safety Regulations
- Demolition licensing under the OSH regulations
- Commercial driver fatigue under the OSH regulations
- Protection from tobacco smoke under the OSH regulations
- Proposed deletions in Western Australia to remove overlap with the *Dangerous Goods Safety Act 2004*

Section 2: Feedback

Track-changed document submission

Which consultation document(s) are you providing feedback on?	<input checked="" type="checkbox"/> Differences between the national model WHS regulations and the OSH regulations 1996
	<input type="checkbox"/> Consultation document WHS (Mines) Regulations for WA
	<input type="checkbox"/> Consultation document WHS (Petroleum and Geothermal Energy Operations) Regulations for WA
	<input type="checkbox"/> <i>Proposed deletions in WA to remove overlap with the Dangerous Goods Safety Act 2004</i>
	<input type="checkbox"/> Commercial vehicle drivers: Hours of work – Work Health and Safety Regulations for WA
	<input type="checkbox"/> Protection from tobacco smoke – Work Health and Safety Regulations for WA
	<input type="checkbox"/> Demolition work: Licence – Work Health and Safety Regulations for WA

Number of pages in
your submission

Does this submission contain a **track-changed version** of the
draft proposal?

Yes

No

If yes, submit as a Microsoft Word compatible document (.docx)*

General comments

Detailed comments

If commenting on specific content, you may wish to use the table below.

Reference to specific model WHS / OSH reg no.	Comment
Regulation 16 Negotiations for and determination of work groups	Endorse
Regulation 17 Matters to be taken into account in negotiations	Endorse
Regulation 18 Procedures for election of health and safety representatives	Endorse
Regulation 19 Person conducting business or undertaking must not delay election	Endorse
Regulation 20 Removal of health and safety representatives	Endorse
Regulation 20a Notice of entry for person assisting health and safety representative	Endorse
Regulation 21 Training for health and safety representatives	Endorse
Regulation 22 Issue Resolution - Agreed procedure	Endorse
Regulation 23 Default procedure	Endorse
Regulation 24 Continuity of engagement of worker	No comment
Regulation 35 Managing risks to health and safety	Endorse
Regulation 36 Hierarchy of control measures	Endorse

Regulation 37 Maintenance of control measures	No comment
Regulation 38 Review of control measures	No comment
Regulation 39 Provision of information, training and instruction	Endorse
Regulation 40 Duty in relation to general workplace facilities	Endorse
Regulation 41 Duty to provide and maintain adequate and accessible facilities	Endorse
Regulation 42 Duty to provide first aid	Endorse
Regulation 43 Duty to prepare, maintain and implement emergency plan	<p>Endorse, but consider adding that appropriate protective clothing and equipment is provided.</p> <ul style="list-style-type: none"> • Benefit to workplace? Trained personal are appropriately protected when fighting a fire. • Likely cost? Already in current OSH Regulations so no additional costs expected. • Effective? Last on the Hierarchy of Control but required in these circumstances, however only as effective as can be when the PPE is appropriate for type of fire, maintained, stored etc. • Unintended consequences? None. • Costs and benefits of new requirement? Same as what is currently in place.

<p>Regulation 44 Provision to workers and use of personal protective equipment</p>	<p>Endorse, but with additional information to be added. Personal Protective Equipment must comply with Australian Standards.</p> <ul style="list-style-type: none"> • Benefit to workplace? Acts as a barrier to use of sub-standard PPE on construction sites. • Likely cost? Minimal given already a requirement • Effective? Yes. • Unintended consequences? Nil. • Costs and benefits of new requirement? No new costs expected as current practice. Correct PPE will prevent injury risk to workers.
<p>Regulation 45 Personal protective equipment used by other persons</p>	<p>Endorse</p>
<p>Regulation 46 Duties of worker</p>	<p>Endorse</p>
<p>Regulation 47 Duty of person other than worker</p>	<p>Endorse</p>
<p>Regulation 48 Remote or isolated work</p>	<p>Endorse</p>
<p>Regulation 49 Ensuring exposure standards for substances and mixtures not exceeded</p>	<p>Oppose The Regulation is deficient in explanation and requires a guidance note or further explanation to be clear to industry stakeholders on what is required/expected.</p>
<p>Regulation 50 (1) Monitoring airborne contaminant levels</p>	<p>Oppose The Regulation is deficient in explanation and requires a guidance note or further explanation providing a definition of what monitoring means, and what stakeholders are required to do.</p>
<p>Regulation 50 (2) Monitoring airborne contaminant levels</p>	<p>Endorse</p>

Regulation 50 (3) Monitoring airborne contaminant levels	Endorse
Regulation 51 Hazardous atmospheres Managing risks to health and safety	Endorse
Regulation 52 Ignition sources	Endorse
Regulation 53 Flammable and combustible material not to be accumulated	Endorse
Regulation 54 Management of risk of falling objects	Endorse
Regulation 55 Minimising risk associated with falling objects	Endorse
Regulation 56 Meaning of exposure standard for noise	Endorse
Regulation 57 Managing risk of hearing loss from noise	Endorse
Regulation 58 Audiometric testing	Endorse, subject to the creation of a central repository to store testing results, and guidelines be developed on what is required, to be completed by whom and retention period. For example, no on-line hearing tests.
Regulation 78 Management of risk of fall	Endorse, with consideration for inclusion of the following: Current OSH Regulations provide comprehensive detail on anchorage points, holes, brittle, and fragile roofing, etc and should be included within the Model Regulations. Consideration should also be given to including the provisions of OSHA 1926.1423(j), 1926.1423(j)(1), 1926.1423(j)(2) and 1926.1423(j)(3) to enable options in

	relation to fall arrest anchorage for workers in unusual or difficult situations.
Regulation 79 Specific requirements to minimise risk of fall	Endorse
Regulation 80 Emergency and rescue procedures	Endorse
Regulation 81 Licence required to carry out high risk work	Endorse
Regulation 82 Exceptions	No comment
Regulation 83 Recognition of high-risk work licences in other jurisdictions	Endorse
Regulation 84 Duty of person conducting business or undertaking to ensure direct supervision	Endorse
Regulation 85 Evidence of licence—duty of person conducting business or undertaking	Endorse
Regulation 142 Notice of demolition work	Endorse
Regulation 143 Demolition work required to be licensed	Endorse

Regulation 144 Meaning of electrical equipment	<p>Recommend the amalgamation of the motor car and motor cycle into motor vehicle, consistent with the Road traffic (Administration) Act 2008 section 4</p> <ul style="list-style-type: none"> • Benefit to workplace? Consistency. • Likely cost? Negligible. • Effective? Already in use. • Unintended consequences? None foreseeable. • Costs and benefits of new requirement? Negligible and provides consistency.
Regulation 145 Meaning of electrical installation	<p>Endorse</p>
Regulation 146 Meaning of electrical work	<p>Endorse subject to recasting wording. Replace “the item being de-energised (disconnected from the supply or isolated)” with - not exposed to an electrical risk. Typically, an electrical risk presents when covers/guards/parts removed/ opened exposing live parts, for example. Further, similar conditions could expose moving parts that may present a hazard if the equipment was to unexpectedly operate.</p>
Regulation 147 Electrical Risk management	<p>Endorse</p>
Regulation 148 Electrical equipment and electrical installations to which this Division applies	<p>Endorse</p>
Regulation 149 Unsafe electrical equipment	<p>Endorse, subject to inclusion of ‘as far as reasonably practicable’. An issue surrounds remote work sites and accessibility to conduct checks.</p>
Regulation 150 (1) Inspection and testing of electrical equipment	<p>Endorse</p>

<p>Regulation 150 (2) Inspection and testing of electrical equipment</p>	<p>Oppose.</p> <p>The Regulation requires clarification, or be withdrawn, or in the alternate, retain the status quo of all equipment, including new equipment, required to be tested and tagged.</p> <ul style="list-style-type: none"> • No benefit as it is ambiguous. • Likely cost? Cost of usual inspection as is current practice. • Effective? None as it will be confusing • Unintended consequences? Equipment not tagged. • Costs and benefits of new requirement? Currently already tagging new equipment so should be negligible.
<p>Regulation 151 Untested electrical equipment not to be used</p>	<p>Endorse</p>
<p>Regulation 153 Persons conducting a business or undertaking to which this Division applies</p>	<p>Endorse</p>
<p>Regulation 154 Electrical work on energised electrical equipment—prohibited</p>	<p>Endorse subject to inclusion of current r3.59a (2). Draft regulation 154 does not apply to electrical work carried out under electrical (licencing) regulations 1991 regulation 55(2) meaning inconsistency within jurisdictional legislation.</p>
<p>Regulation 155 Duty to determine whether equipment is energised</p>	<p>Endorse</p>
<p>Regulation 156 De-energised equipment must not be inadvertently re-energise</p>	<p>Endorse</p>

<p>Regulation 157 Electrical work on energised electrical equipment—when permitted</p>	<p>Oppose</p> <p>See comments for R154 above. Recommend adoption of equivalent of Electricity licencing regulations 1991 regulation 55 (3) which meets the intent but specifies ‘no reasonable alternative’ and details when it is ‘necessary that the electrical equipment to be worked on is energised in order for the work to be carried out properly’</p> <p>(note definitions of equipment and installation between legislation will impact final wording) for the purposes of sub regulation (2) (b)(i), there is no reasonable alternative to carrying out the work while the part of the electrical installation is energised if one of the following applies –</p> <ol style="list-style-type: none"> I. it is necessary that the part of the installation be energised for the work to be carried out effectively; II. it is necessary that part of the installation be energised because carrying out the work by alternative means would put the health or safety of one or more persons in imminent and significant danger; III. it is necessary that the part of the installation be energised in order to test, measure the performance of, or detect or locate faults or defects in, the installation or part of the installation
<p>Regulation 158 Preliminary steps</p>	<p>Endorse</p>
<p>Regulation 158(2)(a) Preliminary steps</p>	<p>Endorse, subject to adding the section within the Electricity Regulations 1991 requiring risk assessment to be undertaken by a competent person familiar with the type of work to be carried out, and the competent person is satisfied:-</p> <ol style="list-style-type: none"> i. there is no reasonable alternative to carrying out the work while the part of the electrical installation is energised; and ii. the risks identified by the risk assessment are or can be reduced to as low as reasonably practicable; and iii. the work can be carried out safely.
<p>Regulation 159 Unauthorised access to equipment being worked on</p>	<p>Endorse</p>

Regulation 160 Contact with equipment being worked on	Endorse
Regulation 161 How the work is to be carried out	Endorse
Regulation 161(4)(b) How the work is to be carried out	Oppose This sub regulation is ambiguous in that it requires a licensed electrical worker deemed competent (for rescue and resuscitation), to provide life support. CPR training does not cover LVR as a core component. Recommend clarification about who is a competent person and what satisfies that test.
Regulation 162 Record keeping	Endorse
Regulation 163 Duty of person conducting business or undertaking	Endorse
Regulation 164 Residual current devices - Use of socket outlets in hostile operating environment	Endorse
Regulation 165 Testing of residual current devices	Endorse
Regulation 166 Overhead and underground electric lines - Duty of person conducting a business or undertaking	Endorse

Regulation 202 Duties of persons conducting businesses or undertakings that install, construct or commission structures	Endorse
Regulation 203 Management of risks to health and safety involving the management or control of plant	Endorse
Regulation 204 Control of risks arising from installation or commissioning	Endorse
Regulation 205 Preventing unauthorised alterations to or interference with plan	Endorse
Regulation 206 Proper use of plant and controls	Endorse
Regulation 207 Plant not in use	Endorse
Regulation 208 Guarding	Endorse
Regulation 209 Guarding and insulation from heat and cold	Endorse
Regulation 210 Operational controls	Endorse

Regulation 211 Emergency stops	Endorse
Regulation 212 Warning devices	Endorse
Regulation 213 Maintenance and inspection of plant	Endorse
Regulation 214 Powered mobile plant—general control of risk	Endorse
Regulation 216 Roll-over protection on tractors	Endorse
Regulation 215 Powered mobile plant—specific control measures	Endorse
Regulation 225 Scaffolds	Endorse, subject to clarification for stakeholders of what the word 'written' means. Does this mean a hand over certificate or a duty tag completed, for example?
Regulation 235 Major inspection of registered mobile cranes and tower cranes	Endorse
Regulation 236 Lifts	Endorse
Regulation 289 Meaning of construction work	Endorse
Regulation 290 Meaning of structure	Endorse

<p>Regulation 291 Meaning of high-risk construction work</p>	<p>Do not oppose but recommend clarification of the word “near” as this is a vague term open to wide interpretation. For example, is near within say 20 meters or 100meters?</p> <p>With regard to Tilt-Up Panel Construction, it is recommended the current OSH Regulations relating to:</p> <ul style="list-style-type: none"> • notification to the Commissioner; • compliance with specified elements of the Australian Standard AS3850 <ul style="list-style-type: none"> – <i>Tilt-up concrete construction</i> (the tilt-up standard); • competency and training requirements <p>be retained and included.</p>
<p>Regulation 292 Meaning of construction project</p>	<p>Endorse</p>
<p>Regulation 293 Meaning of principal contractor</p>	<p>Endorse</p>
<p>Regulation 295 Designer must give safety report to person who commissions design</p>	<p>Endorse</p>
<p>Regulation 296 Person who commissions project must give information to principal contractor</p>	<p>Endorse</p>

**Regulation 298
Security
workplace**

of

Endorse, in relation to residential infill sites, but oppose for new housing estates, because of the low risk that would be presented. The issue of additional costs associated with providing safety fencing on every new residential site not comprising an infill site, in Western Australia will be considerable. To put this into context, there is an estimated 12,500 new single residential home sites built in WA this year. Master Builders estimates about 25% of that number are infill residential sites. That means the very great majority, or 75% of new single dwelling home sites, will require temporary fencing as proposed which represents a cost the housing sector cannot absorb at a time when the WA economy is struggling. In 2016 the number of new single dwelling house sites constructed in WA was 25,000 or double than what is under construction in 2019. The construction sector in WA has suffered a significant downturn with the total value of construction activity in the State down by 19.7% since November 2018 alone. A further consideration is the provision of temporary fencing on new housing sites on the outer metropolitan area raises the very real, and likely prospect, of theft, or vandalism of the fencing, which will only add to the costs imposed by having to provide temporary fencing on such sites. Master Builders also refers to other Government policy considerations which will see additional costs imposed on the residential sector such as energy efficiency measures which will see additional, though its anticipated to be low cost increases in constructing more energy efficient homes. The point Master Builders make is the WA Government cannot just view this issue in isolation as just safety without being aware of the financial flow on implications of this matter, and other Government imposed policy costs to the industry and to the public at the end of the day which have to get a mortgage to pay for a new home. Adding additional costs presents a negative outcome for housing affordability at a time when the WA housing sector is struggling, wage rates are stagnate and new home building numbers are more reflective of the early 1990s.

Master Builders cannot support the Regulation as proposed, however, accepts provision of temporary fencing for infill residential sites is necessary due to the safety risk presented on those sites.

It is recommended remove the word 'secure' and retain the current section in the OSH Regulations in regarding access which is - only to a matter over which, and the extent to which, the person has control or can reasonably be expected to have control of.

Regulation 299 Safe work method statement required for high risk construction work	Endorse
Regulation 300 Compliance with safe work method statement	Endorse
Regulation 301 Safe work method statement—copy to be given to principal contractor	Endorse
Regulation 302 Review of safe work method statement	Endorse
Regulation 303 Safe work method statement must be kept	Endorse
Regulation 304 (1) Excavation work—underground essential services information	Endorse
Regulation 304 (2) Excavation work—underground essential services information	Endorse
Regulation 304 (4) Excavation work—underground essential services information	Endorse
Regulation 304 (5) Excavation work—underground essential services information	Endorse

Regulation 305 Management of risks to health and safety associated with excavation work	Endorse
Regulation 306 Additional controls—trenches	Endorse, subject to removing the word 'secure' and replacing with the current OSH Regulation which require: (a) suitable barriers are erected between the person at risk and the likely cause of the danger; and (b) suitable signs that warn of the risk are erected at the place where the excavation work is to be done.
Regulation 308 Specific control measure—signage identifying principal contractor	Endorse
Regulation 309 WHS management plan—preparation	Endorse
Regulation 309(2) WHS management plan—preparation	Endorse, subject to adding 'if practical' after the word "names" given the site supervisors in the residential sector can, and do, change numerous times through-out the build.
Regulation 310 WHS management plan—duty to inform	Endorse
Regulation 311 WHS management plan—review	Endorse
Regulation 312 High risk construction work—safe work method statements	Endorse
Regulation 313 Copy of WHS management plan must be kept	Endorse

Regulation 314 Further health and safety duties—specific regulations	Endorse
Regulation 315 Further health and safety duties—specific risks	Endorse
Regulation 316 Duty to provide general construction induction training	Endorse
Regulation 317 Duty to ensure worker has been trained	Endorse
Regulation 318 Recognition of general construction induction training cards issued in other jurisdictions	Endorse
Regulation 319 Issue of card	Endorse. Recommend including a note that currently an RTO issues a statement of attainment and white card to a student recording the information which is logged into WorkSafe's white card database. Every 6 months a RTO reports to WorkSafe the number of cards issued including damaged or lost cards. This acknowledges r325.
Regulation 420 Exposure to airborne asbestos at workplace	Endorse
Regulation 421 Asbestos and Associated Risks - Application of Part 8.3	No comment

Regulation 422 Asbestos to be identified or assumed at workplace	Endorse
Regulation 423 Analysis of sample	Endorse
Regulation 424 (a) Presence and location of asbestos to be indicated	Oppose as the wording 'clearly indicated' is confusing. Recommend it be changed similar to 'as recorded in the ACM or AMR'
Regulation 424 (b) Presence and location of asbestos to be indicated	Endorse
Regulation 425 Asbestos register	Endorse
Regulation 426 Review of asbestos register	Endorse
Regulation 427 Access to asbestos register	<p>Endorse, subject to inclusion of points 2 and 5 from the COP Management and Control of Asbestos:</p> <ul style="list-style-type: none"> - any other employers within the premises; - any other person who might be exposed <ul style="list-style-type: none"> • Benefit to workplace? Yes. Awareness of hazard. • Likely cost? Negligible as administrative change and current practice. • Effective? Yes, as includes potential people who could be exposed • Unintended consequences? Nil • Costs and benefits of new requirement? Nil
Regulation 428 Transfer of asbestos register by person relinquishing management or control	Endorse

Regulation 429 Asbestos management plan	Endorse
Regulation 430 Review of asbestos management plan	Endorse
Regulation 430 (2)(e) Review of asbestos management plan	No Comment
Regulation 435 Duty to provide health monitoring	Endorse
Regulation 436 Duty to ensure that appropriate health monitoring is provided	Endorse
Regulation 437 Duty to ensure health monitoring is supervised by registered medical practitioner with relevant experience	Endorse
Regulation 438 Duty to pay costs of health monitoring	Endorse
Regulation 439 Information that must be provided to registered medical practitioner	Endorse
Regulation 440 Duty to obtain health monitoring report	Endorse
Regulation 441 Duty to give health monitoring report to worker	Endorse

Regulation 442 Duty to give health monitoring report to regulator	Endorse
Regulation 443 Duty to give health monitoring report to relevant persons conducting businesses or undertakings	Endorse
Regulation 444 Health monitoring records	Endorse
Regulation 445 Duty to train workers about asbestos	No comment
Regulation 446 Duty to limit use of equipment	Endorse
Regulation 447 Demolition and Refurbishment - application—Part 8.6	Endorse
Regulation 448 Review of asbestos register	Endorse
Regulation 449 Duty to give asbestos register to person conducting business or undertaking of demolition or refurbishment	Endorse
Regulation 450 Duty to obtain asbestos register	Endorse
Regulation 451 Determining presence of asbestos or ACM	No comment

Regulation 452 Identification and removal of asbestos before demolition	Endorse
Regulation 453 Identification and removal of asbestos before demolition of residential premise	Endorse
Regulation 454 Emergency procedure	Endorse
Regulation 455 Emergency procedure— residential premises	Endorse
Regulation 456 Identification and removal of asbestos before refurbishment	Endorse
Regulation 457 Refurbishment of residential premises	Endorse
Regulation 458 Duty to ensure asbestos removalist is licensed	Endorse
Regulation 459 Asbestos removal supervisor must be present or readily available	No comment
Regulation 460 Asbestos removal worker must be trained	No comment
Regulation 461 Licensed asbestos removalist must keep training records	No comment

Regulation 462 Duty to give information about health risks of licensed asbestos removal work	No comment
Regulation 463 Asbestos removalist must obtain register	Endorse
Regulation 464 Asbestos removal control plan	Endorse
Regulation 465 Asbestos removal control plan to be kept and available	Endorse
Regulation 466 Regulator must be notified of asbestos removal	No Comment