



**Submission to Public Administration
Committee into WorkSafe**

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 its registration remaining 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 over 1,900 members comprising:-
 - National commercial builders
 - Large state based commercial builders
 - Specialist commercial sub-contractors
 - Residential builders
 - Residential sub-contractors
 - Kindred employer groups
 - Government agencies
 - Suppliers
- 1.5. Master Builders membership carries out building and construction work throughout Western Australia in commercial construction, residential construction, resource construction and civil construction. Its members are located throughout Western Australia.
- 1.6. Master Builders maintains a continuous presence throughout the state via its regional office network in Bunbury, Albany, Geraldton, Kalgoorlie and Esperance to provide services to its regional members and to represent their interests.
- 1.7. Master Builders is also a member of the Master Builders movement which comprises autonomous Master Builder Associations in each State and Territory which comprise Master Builders Australia. Collectively, the Master Builders movement represent over 32,000 businesses nationwide.

2. Economic Importance of the Building and Construction Industry

- 2.1. As at November 2016 there were 139,930 persons employed in the Western Australian building and construction industry reducing from an all time high of 152,000 in 2015. The building and construction industry in Western Australia employs about 10% of the state's workforce and contributes about 9% 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 economic forecasting by Master Builders Australia on the Western Australian construction sector which values construction activity in the state.

	Residential construction activity	Non-residential construction activity	Engineering construction activity
2017-018	\$6.22b	\$4.59b	\$15.20b
2018-019	\$6.09b	\$4.64b	\$14.20b

3. Background

- 3.1. The Public Administration Committee announced on 27 June 2017, a commencement of an Inquiry into WorkSafe Western Australia and invited public submissions with a close date of 28 July 2017.
- 3.2. The Inquiry has eight issues which form part of the Inquiry which Master Builders interprets to mean the Committee invites submissions on those eight identified issues.
- 3.3. The eight identified issues under the Terms of Reference being:-
- WorkSafe's performance against the Objects of the Occupational Health and Safety Act 1984
 - Funding and resourcing of WorkSafe
 - Adequacy of WorkSafe's training, oversight and accountability processes
 - Adequacy of administrative processes, including complaints, investigations and prosecution processes
 - Adequacy of WorkSafe's audits of training providers delivering occupational health and safety training
 - Timely implementation and public education of coronial inquest recommendations arising from a workplace death
 - Legislative and jurisdictional issues
 - Any other relevant matter

- 3.4. Master Builders note the Inquiry Chair, the Hon Adele Farina MLC, in the Media Release of 27 June 2017, announcing the Inquiry set out the following:-

"The inquiry will review the adequacy of existing Occupational Health and Safety laws, WorkSafe's processes and resourcing and make appropriate recommendations with the aim of improving workplace safety."

Master Builders interprets the Chair's comments to imply the Inquiry will also look at the adequacy of the existing state safety laws which goes beyond just the OSH Act 1984 and widens the Inquiry to matters not limited by the above eight Terms of Reference. Master Builders will take up that offer with the Committee's indulgence.

- 3.5. Master Builders welcomes the opportunity to provide this submission to the Committee.
- 3.6. Master Builders at the outset says it enjoys a positive and constructive working relationship with WorkSafe and has for many years. Master Builders views safety in the building and construction industry as a core function of Master Builders and a function Master Builders membership expects it to take as a lead industry stakeholder. That is why Master Builders has deployed significant resources over the last three decades to improving safety standards in the building and construction industry. Master Builders continues to play that role, and in 2016, increased its focus on improving safety standards in the industry by engaging constructively with WorkSafe and the CFMEU to achieve that end.
- 3.7. An example of the positive outcomes that can be derived from lead industry stakeholders taking joint initiatives is in 2016 Master Builders and CFMEU worked collaboratively to improve scaffolding safety standards in the local construction sector. For various reasons, mostly the fault of the training sector, scaffolding skills have fallen badly over the years. This caused Master Builders and CFMEU to adopt a common approach of wanting to improve scaffold safety standards which included a joint industry forum in 2016. That forum was well received by the industry and included WorkSafe. Following the forum WorkSafe began to pay closer attention to scaffolding safety in the building sector and, as Master Builders understands, WorkSafe will place a greater focus on scaffolding in its 2017/018 management plan. This is a welcome approach.
- 3.8. Master Builders will make further submission on the deficiency of training standards by Registered Training Organisations in this submission.
- 3.9. Master Builders contends the joint industry scaffolding initiative is an example of how industry and union movement can work in a constructive and positive manner with WorkSafe to improve safety standards.

3.10. Master Builders notes several issues set out by the Committee in this Inquiry are best characterised as internal administrative protocols of WorkSafe. As a result, Master Builders is not in a position to provide informed comment on those protocols and will limit its submission to the issues which it can provide input on.

4 Inquiry Issues

4.1 WorkSafe's performance against the objects of the OSH Act 1984

4.1.1 The Committee Chair in the Media Release of 27 June 2017, observes the sad detail of 315 workplace related fatalities in Western Australia since 2001 with almost 20 workplace fatalities per year since 2006.

4.1.2 Master Builders notes the WorkSafe publication "State of the Work Environment work-related traumatic injury fatalities, Western Australia, 2006-2007 to 2015-2016, at page 8, identifies the multiple safety jurisdictions within Western Australia which have coverage of workplace safety. These separate jurisdictions are:-

- Occupational Safety and Health Act 1984
- Mines Safety and Inspection Act 1994
- Transport Safety Investigation Act 2003
- Australian Maritime Safety Authority Act 1990

Master Builders points out the observation of the Committee Chair in the Media Release of 27 June 2017, might be interpreted by some to imply all 315 tragic workplace fatalities fall under the jurisdiction of WorkSafe which is not the case. Any such misconception may then lead some to wrongly hold WorkSafe accountable for not fulfilling its statutory role in jurisdictions it has no authority. Master Builders advances the proposition any such misconception ought be clarified at the earliest possible opportunity.

4.1.3 Whilst the Committee Chair refers to workplace fatalities in Western Australia since 2001, the Terms of Reference first dot point does not limit any assessment of the performance of WorkSafe back to 2001, rather, the question posed is to make assessment of the performance of WorkSafe against the Objects of the OSH Act 1984. Therefore, Master Builders proposes a better path to take is to review the performance of WorkSafe on that basis.

4.1.4 On 12 August 2014, then Minister for Commerce, Michael Mischin, issued a Parliamentary Statement in which he pointed out some important features associated with the workplace safety record in Western Australia. The Minister said:-

"Western Australia's OHS regime has been and continues to be a sound one. Its effectiveness is clearly evidenced 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."

4.1.5 Master Builders endorses the Minister's comments and has itself raised this very point in previous submissions dealing with moves to introduce a form of harmonised safety laws into Western Australia. An important threshold question that has not been put in Master Builders opinion on the need for so called harmonised safety laws is; - What is the estimated improvement in workplace safety performance, as a result of introducing a harmonised model safety legislative framework, over and above those being delivered by the current Western Australian safety regime. Put another way, Master Builders poses the important question of what would the introduction of new ill-matching so called harmonised safety laws deliver in improved workplace safety performance that the current state safety framework does not, and will not continue to deliver?

4.1.6 To build upon this aspect of the submission regarding the improved safety performance in Western Australia, 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 2010-11 reveal a drop in the Frequency Rate from 13.78 in 2000-01 to 9.51 in 2010-11, or reduction of almost 31%. Since the Occupational Safety and Health Act 1984 was introduced in 1988 the Frequency Rate has dropped by 73.1%. This buttresses the then Minister's comments to Parliament on 12 August 2014, regarding the improvement in the WA safety performance since its inception.

4.1.7 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. Master Builders contends the current Western Australian safety framework is delivering continuing improvement based on this information not that more improvement ought not be pursued.

4.1.8 Master Builders says when regard is had to the data set out in paragraphs 4.1.6 and 4.1.7 WorkSafe is arguably meeting the thrust of the Objects of the OSH Act 1984 listed from 5(a) through (e). In putting this aspect of the submission Master Builders does not say there is not room for improvement as clearly there is as evidenced by the workplace fatality statistics. But again, Master Builders reinforces the position WorkSafe does not have sole jurisdiction over all workplace fatalities in Western Australia as set out in paragraph 4.1.2.

4.2 Funding and resourcing of WorkSafe

4.2.1 Master Builders has publicly been critical of WorkSafe for not having a greater presence in the building and construction sector and has encouraged WorkSafe to adopt a higher profile in the sector to better ingrain the message about the importance of safety in the industry. In doing so, Master Builders is mindful of the cuts to the WorkSafe budget over the past two – three years, as with other state departments and agencies, and impact these cuts have had on WorkSafe being able to maintain a higher profile in the industry. That is, Master Builders has encouraged WorkSafe to work smarter in how it goes about its inspection programmes operating within its limited budget and maximising the best return from its limited resources.

4.2.2 Master Builders would not oppose increased funding for WorkSafe subject to increased funding providing increased inspection services. Master Builders believes having a greater presence of the regulator reinforces the importance of safety in the construction sector and it's a role the safety regulator must take. Master Builders does not support the devolution of any of the regulator's functions to another body. For clarity, Master Builders does not see a role for unions to undertake any inspection type role acting in a capacity as defacto WorkSafe Inspectors under the state safety legislative framework. Master Builders contend having the Regulator retain sole responsibility works well and has worked well in Western Australia since the inception of the OSH legislation in the 1980s providing co-ordination of how the legislative framework applies within its jurisdiction.

4.2.3.1 Master Builders strongly opposes the extension of the powers of WorkSafe Inspectors to unions with this opposition based on the abuse and misuse of safety by the CFMEU in the construction industry on state and national basis to drive industrial relations agendas. This abuse is on the public records via the Cole Royal Commission into the Building and Construction Industry in 2002, see page 281 of the State and Territory Overviews – Western Australia at paragraph 24. There are also multiple Federal Court cases in which the Federal Court has identified the abuse of safety by the union for reasons patently clear which are not associated with safety, rather, the union's industrial relations agenda. These cases only affirm the Findings of the Cole Royal Commission. Such a poor track record by the union on such an

important matter cannot be rewarded by the Parliament or any responsible Government.

4.2.3.2 Master Builders refers to a damning Federal Court Judgement against the CFMEU(WA)WAD 106 OF 2009. That case had the following key elements to it:-

- The CFMEU was penalised \$247,000 in fines and damages
- The CFMEU alleged the site subject to the union's unlawful conduct had a multiplicity of alleged unsafe work practises requiring the union to repeatedly attend site which resulted in work bans and stoppages
- The builder refuted all allegations of alleged unsafe work practices with the Court ordering the appointment of an independent safety consultant to assess the alleged safety issues
- The independent consultant assessed 110 alleged safety concerns and found *none* presented an imminent or serious risk to site workers
- The CFMEU *admitted there was no reasonable belief that there was an imminent risk to the health or safety at the project during the relevant period.*

4.2.3.3 Master Builders realises some members of the Committee may find these assertions about the abuse of safety by the CFMEU uncomfortable but as they are based on unassailable facts they cannot be ignored. Master Builders foreshadows the CFMEU, and other unions, will advance the proposition unions ought have some wider role to play in exercising inspection duties on work sites including construction sites using the mantra of unions protect lives. Master Builders respectfully says that notion might play out well in the media but it is far from the truth. Master Builders expands upon that point below.

4.2.4 Having put the submissions in 4.2.2, 4.2.3.1 and 4.2.3.2, Master Builders recognises the McGowan Government is reducing the number of WA Departments. This results in the Department of Mines, Industry Regulation and Safety (DMIRS) having carriage of safety under what was currently WorkSafe WA and the OSH Act 1984, and formerly the Department of Minerals and Energy and Mines Safety and Inspection (MSI) Act 1994. Subsequently, Minister for Commerce and Industry Regulation, Bill Johnston, announced sweeping reforms of the WA safety legislation to be introduced in 2019. This will likely result in the amalgamation of the two safety inspectorates into one providing greater efficiencies which has an attraction in reducing costs and red tape for business. In addition, it has potential to increase the pool of Inspectors and increasing the presence of Inspectors on worksites.

4.2.5 Master Builders takes this opportunity to also raise how WorkSafe might better apply its limited Inspection resources in the construction sector to achieve a better outcome on safety compliance in the industry at large.