

NEWSLETTER

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Cover image: Cranbrook Junior School (Recently completed project, managed by EPM). Photo by Simon Wood Photography.



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THE NEW “NATIONAL” WORK HEALTH AND SAFETY LAWS

Readers, there's good news and there's bad news. The good news is that it is intended that the myriad of OH&S laws across the states and territories are intended to be replaced with one, national, harmonised approach to Work Health and Safety. The bad news is that it hasn't really happened as intended and the laws are still pretty overwhelming.

Kennedys

Legal advice in black and white

The idea of one, national WHS framework was introduced in 2008. A long time in the making, the Work Health and Safety Act has since been passed in the Commonwealth, New South Wales, Queensland, the Australian Capital Territory and the Northern Territory. The purpose of the Act is to “provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces” by protecting workers, minimising risks and promoting compliance and improvement of WHS systems throughout Australian workplaces. The Act's purpose refers to the “principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work as is reasonably practicable.”

The Act introduces new terms that those familiar with the old OH&S regime may not be familiar with. A “person conducting a business or undertaking” is, as the definition suggests, used to describe a person (or company) conducting a business or undertaking. Partnerships, the activities of unincorporated associations and joint ventures are captured in this definition but it does not include voluntary associations, elected members of government and workers that work in businesses or undertakings. Parts 2 and 3 of the Act are concerned with the statutory duties that are imposed on people “conducting a business or undertaking”. The primary duties are listed in section 19 of the Act and they include obligations to:

1. ensure the health and safety of workers so far as is reasonably practicable;
2. ensure, so far as is reasonably practicable, that the health and safety of others is not put at risk;
3. provide and maintain safe systems of work, work environments, work plant and work structures;
4. provide for the safe handling and storage of work structures, plant and substances;
5. provide adequate facilities for the welfare or workers at work;
6. provide information, supervision, training and instruction necessary to protect people from risks to their health;
7. monitor the health of workers and the conditions at the workplace; and
8. maintain certain premises so that workers are not exposed to health and safety risks if workers are housed in company accommodation.

The primary duty of care in the Act is a duty owed by “a person conducting a business or undertaking” to its workers but the Act imposes obligations on all stakeholders to take care. Company officers must exercise due diligence to ensure that their companies are complying with the Act while workers and other people such as visitors must take reasonable care for their own safety and comply with all work health and safety instructions.

Codes of Practice

The Act is vast. With over 250 sections and 5 schedules it is a complicated piece of legislation. To make compliance easier, the Act is gradually being supplemented by Codes of Practice. The Codes are practical reference tools for people seeking guidance on particular risks and in particular industries.

The Codes are being released over time as each receives approval from Safe Work Australia and Government. To date eleven Codes of Practice have been approved and all of them have application to the Construction industry. Twelve new codes await approval from Government. One of them is a Construction industry specific Code covering some topics that you are probably familiar with (e.g. high risk construction work and principal contractors) and some that you may not be aware of (i.e. new obligations for design professionals such as architects and engineers).

National Legislation

The new law has not been adopted in every State. Tasmania has delayed introduction of the Act until 1 January 2013 while South Australia, Victoria and Western Australia have not indicated when the law will be adopted. Until then, the law concerning workplace health and safety in these jurisdictions remains unchanged.

Conclusion

The new national WHS Legislation is long but the Codes of Practice provide sensible guidance for the industry. If your organisation has not done so already it should take steps to ensure that the new law is being complied with. You can assist your organisation by:

1. reading the Codes that apply to your organisation. The Codes are available at <http://safeworkaustralia.gov.au/Legislation/model-COP/Pages/Model-COP.aspx>;
2. taking steps to ensure that your organisation's insurance coverage adequately covers your workplace risks;
3. establishing and enforcing clear, practical and effective safe systems of work to ensure that workers are, as far as possible, kept safe at work; and
4. consulting regularly with workers so that risks are identified early, before accidents happen.

*Helena Golovanoff Partner
and Tamara Helm*



GAINING THE COMPETITIVE EDGE

Will the lowest bid always gain best value for money?



The debate of whether or not the lowest bid is the best bid is not a new one! Mindful that business markets tend to be somewhat cyclical, there is a certain level of appropriateness to applying risk on the Contractor market when the prevailing conditions permit. In essence, this translates to the Contractor taking on more risk than they may normally choose to accept as there is a scarcity of work available.

At the time a tender is issued for pricing on a competitive basis, there will be elements of the project that carry some uncertainty around scope. This may be due to the following:

- The level of information available in the form of tender documents
- Queries arising out of the tender period

Coupled with the above, there may be contract conditions that transfer responsibility of risk on to the Contractor. These factors will combine to provide a contract premised to include the optimum level of

scope with the least amount of risk for the Client. It is at this juncture that caution must be employed to place a measure of balance on the amount of risk that rests with the Contractor. A combination of risks having a negative outcome for the Contractor will, despite having a contract in place, invariably lead to challenges for the project stakeholders around the very principle of value for money.

On the “flip side” of this equation is the resistance of the tendering Contractors to taking, in their view, unreasonable risk. Accordingly, allowances will be made that may well not be necessary as the project unfolds. In these instances, the Client may well benefit from expending costs prior to contract execution to remove the risk from both parties to the contract.

Mark Blizzard
Director



EXTERNAL WALL PANEL CONSTRUCTION

Despite requirements of the BCA relating to design of external wall panels against outward collapse in the event of a fire, the potential for outward collapse remains a significant risk to fire fighters in modern day construction



BCA Performance Requirement CP5 states:

“A concrete external wall that could collapse as a complete panel (e.g. tilt-up and pre-cast concrete) must be designed so that in the event of fire within the building the likelihood of outward collapse is avoided”.

External concrete wall panels, such as pre-cast and tilt-up panels, present a significant hazard in low rise buildings in the event of a fire, as these panels can have a tendency to collapse outwards which becomes a safety issue for unsuspecting fire fighters that are likely to be in close proximity to the building when combating a fire. This has become such a common concern with fire fighters in contemporary building design, to the extent that fire fighters are sometimes electing not to have personnel within a zone of the building equivalent to the height of the external wall panels. This can then create difficulties for effective Brigade intervention which can subsequently be to the detriment of the building.

Concrete wall panels are generally affixed back to a portal steel frame. The tendency for the panels to collapse outward is a function, to a lesser extent, of the behavior of the wall panel and unprotected steel frame; and to a larger extent, of the connections between the frame and the panel.

In a fire there is a common tendency for the columns of the portal frame to deform inward or outward, depending on the extent of downward deflection of the roof steel. In addition, the large concrete wall panels tend to bow inward toward a fire in the building. This differential movement of the portal frame columns and the external wall panels will impose significant strain on the fixing system of the panels to the frame.

It is therefore necessary, in satisfying BCA, to ensure the engineering strategy for the design of the wall panels implements the appropriate connections between the panels and the frame.

With external wall panels being common in the design of today's retail, commercial and industrial buildings, it is critical that design teams understand the importance of achieving compliance with the BCA in relation to the prevention of outward collapse of external wall panels in the event of a fire.



*David Blackett
Company Director*

FROM HAND TO 'MOUSE'

The Quantity Surveying profession has changed and is continually changing due to technology and computerisation.



How times have changed in a typical quantity surveying office in one generation! To walk into a quantity surveying practice 30 years ago, would be a totally different experience to doing so in 2012. Gone are large benches and desks covered in rolls of full scale hand-drawn drawings, the tie-wearing quantity surveyor surrounded by coloured pencils, rulers and erasers, the constant clatter of a comptometrist calculating quantities, the tea lady and her trolley laden with cakes and biscuits performing her morning and afternoon ritual in between hand delivering faxes and telexes and the waft of cigarette smoke through the un-airconditioned office mixed with the smell of kerosene used to make drawings transparent so they could be copied.

Today, the scene is totally different. Air conditioned, open plan paperless offices with hardly a pencil or eraser in sight, quantity surveyors sitting on ergonomic chairs with a bottle of spring water close by, all correspondence

and documentation issued electronically and a keyboard and mouse remotely connected to a flat screen monitor and computer that is not only able to undertake every task required by a quantity surveyor but are essential tools for everyday communication and information.

Due to advancements in technology, the quantity surveyor of today is able to deliver a far more varied service than 30 years ago (computerised spreadsheets, data bases, benchmarking analysis, programming systems, etc) so it will be interesting to see what advancements will be developed in the future.

In MDA's next feature article in the epm Newsletter, we will provide an overview of how Quantity Surveying will change further as design teams move towards BIM modelling.

David Noble
Partner



SEPP 65 AND THE RESIDENTIAL FLAT DESIGN CODE – PART 1

Now that SEPP 65 is under review, it may be appropriate to consider how the Residential Flat Design Code, a guideline document with good intentions, got hijacked by Councils and the Land and Environment Court to be used as a rule book to thwart design innovation and obstruct residential flat development.



The design of residential apartment buildings constitutes a proportion of the work of many architectural practices, a significant slice of Jones Sontar work remains in residential apartment projects. Consequently, over time we have become very familiar with SEPP 65 and more specifically its accompanying handbook, the Residential Flat Design Code (RFDC).

The RFDC is intended as a guideline document primarily to demonstrate to planners, in local and state government, the way in which the design quality principles outlined in SEPP 65 would apply to a variety of scenarios through a place based planning approach. It was prepared with the assistance of a skilled team of urban designers, architects and planners, with the

intention of lifting the standard of design in residential flat buildings, an objective which has been largely achieved, albeit at a cost.

As for the outcome, SEPP 65 has certainly resulted in an improvement to the quality of residential flat buildings. However, this does not mean that its deployment has led to design excellence. On the contrary, its consequence has been a form of reductionism in the design process, so that the majority of design solutions are merely 'acceptable' in the context of SEPP 65. The use of the RFDC ensures that no building will be really bad, even in the hands of an incompetent designer, the corollary being that most buildings will be merely OK. That one cannot ensure design excellence through the

implementation of predetermined guidelines and patterns is well understood by most practising architects. Indeed, most architects understand the principles at the heart of SEPP 65 and accept the RFDC for what it is: a guideline document supplemented by exemplars.

However a real problem is encountered when local council planners, cognisant of the overriding power of a state policy, seek to use the RFDC as a rule book in an attempt to give weight to their assessment process. The consequences of this will be discussed in Part 2 of this article.

*Kim Jones
Partner*

CONTAMINATED LAND: BUYER BEWARE!

Potential purchasers of land should carefully consider the potential for the land to be contaminated.

Lawyers | **McCullough
Robertson**



A contamination liability has the potential to make the purchase of land unprofitable in the event that these costs cannot be recovered from the person responsible for contamination of the land. Also once you are the owner of land you may have a duty to report any contamination to the Environment Protection Authority.

Under the Contaminated Land Management Act 1997 ('CLM Act') the Environment Protection Authority ('EPA') may issue a management order in respect of contaminated land to the 'appropriate person' from the following list of people:

(a) a person who is responsible for significant contamination of the land (whether or not there may be other persons who are also responsible),

(b) an owner of the land (whether or not the person is responsible for contamination of the land),

(c) a notional owner of the land (whether or not the person is responsible for contamination of the land).

If the EPA cannot find out the identity or location of the person responsible for the contamination of the land or if that person is insolvent, the EPA may issue an order regarding ongoing management of the land to the current owner of the land. The management order may require amongst other matters, further investigation of the contamination, remediation of the contamination, ongoing monitoring or for the owner or occupier to vacate, or cease to carry on any activity on, the land or any part of it. Whilst the costs of complying

with a management order are recoverable from the persons responsible for contamination of land under the CLM Act, such persons may not always be able to be identified or located.

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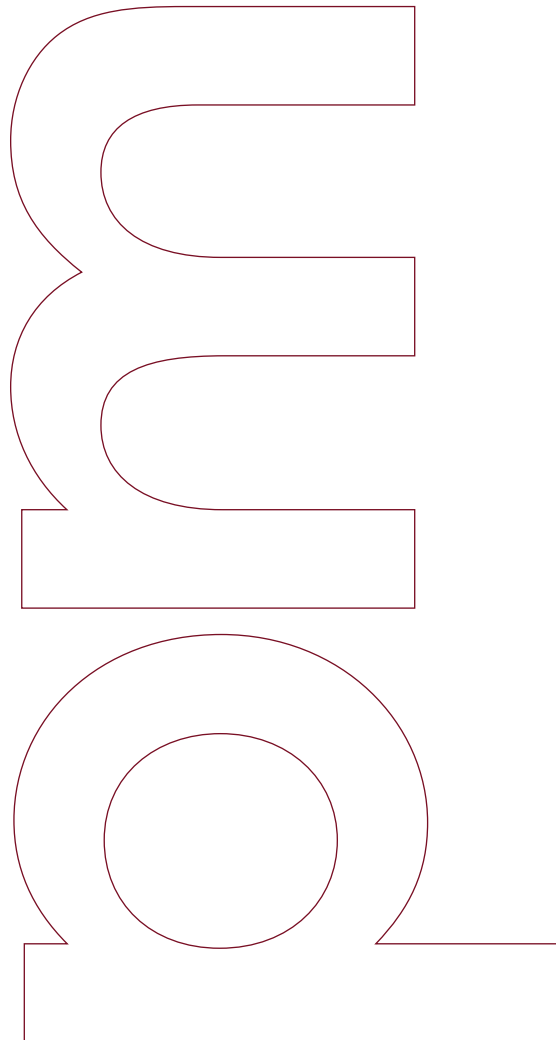
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