

Submission: The Draft Code of Practice for Safe Design of Building and Structures



Driving Business Success for Consulting Firms in the Built and Natural Environment

This submission sets out Consult Australia's detailed comments on the Draft Code of Practice for Safe Design of Building and Structures across eight broad issue areas set out below. Consult Australia was pleased to help inform the development of the Draft Code of Practice for Safe Design of Building and Structures through our development of a Framework for a National Code for Safety in Design. Our comments refer back to this Framework which we have attached with our submission for further reference.

We would be pleased to discuss Consult Australia's particular concerns with the Draft Code in more detail where that would assist. To this effect please contact: Jonathan Cartledge, Director of Policy on: 02 9922 4711; or: jonathan@consultaustalia.com.au

1. UNNECESSARY SEPARATION BETWEEN BUILDING & STRUCTURES AND PLANT

We do not see the need for separate codes of practice for safe design for building and structures and plant. We believe the Code of Practice for Safe Design of Building and Structures could be expanded to include those issues specifically relevant to Plant through the inclusion of additional information where necessary, and specific case examples. There are sufficient commonalities between the approach required for buildings and structures and plant to warrant a single code.

The separation of these codes creates confusion, inefficiencies and additional burdens for business, particularly smaller to medium businesses. These firms will need to analyse, understand and apply both codes and any relevant differences between them. In the context of the significant burden imposed on these businesses by the volume and speed of harmonisation, any opportunities to alleviate this must be seized.

While it is difficult to conceive of differences between the approach for plant and building and structures that warrant a separate Code of Practice for Safe Design of Plant, it is impossible to comment in more detail on the justification for this separation while the Code for plant remains unreleased.

2. CROSS-REFERENCING AND PARALLEL CONSULTATION FOR BOTH CODES OF PRACTICE FOR SAFE DESIGN

In the event Safe Work Australia persists with separate Codes of Practice (which based on our review of the Code of Practice for Safe Design of Building and Structures we do not recommend) it is essential that both codes reflect those amendments suggested in this submission, and provide appropriate cross-referencing. Both codes should explain the rationale for the separate codes of practice noting complementarities and differences. As such in the event Safe Work Australia persists with two codes, **we request that the Code of Practice for Safe Design of Buildings and Structures be re-released for consultation in parallel with the later consultation being planned for the Code of Practice for Safe Design of Plant.**

3. LENGTH OF THE CODE OF PRACTICE

Related to our support for a single Code of Practice for Safe Design, we similarly believe that there is merit in the Code being as concise as possible. We suggest some areas for improvement in this regard below. Overall however **we urge you to reconsider in detail the information provided as part of the Consult Australia Framework as an opportunity to express more concisely many of those key aspects of the Code as currently drafted.** Given the wide range of stakeholders with influence of safety and design it is important that the Code is drafted for maximum readability and clarity for all involved.

4. PEOPLE/PERSONS WITH CONTROL OR INFLUENCE OVER DESIGN

As noted in the Consult Australia Framework, what makes a Code for Safe Design particularly important is the fact that multiple parties influence safety outcomes in the building and construction process. 'Designers' may be one (but not the only) party involved in design delivery. **If the value of safe design is to be realised it is critical that all stakeholders in the design process have guidance on how to fulfil their duties under the legislation.** This principle is partly recognised in the Draft Code, but there is still significant risk of confusion or misinterpretation of roles and responsibilities by those parties who do not self-identify as 'designers'.

The principle is clearly stated in the 'Scope and Application' of the Draft Code (page 3), i.e. *'This includes people who make decisions that influence the design outcome, such as clients, developers and builders in addition to those who are directly involved in the design activity, such as architects, building designers and engineers.'*

However, this principle is obscured in Section 1, particularly in the categorisation of this section across:

- 1.2 Who has health and safety duties in relation to the design of structures?; and
- 1.3 Other persons with key roles in design and construction.

Subsequent references throughout the Draft Code to the role and responsibilities of 'the designer' and/or 'designers' create further ambiguity about who actually has health and safety duties in relation to design.

The Code unnecessarily complicates the definition and description of a designer, as more simply set out in the 'Scope and Application' of the Draft Code.

Section '1.2 Who has health and safety duties in relation to the design of structures?' needs to more simply and directly answer this very question. The breadth of those with responsibility needs to be noted alongside the challenges in clearly delineating who has responsibility. In this context existing statements provide useful guidance on explaining who has roles and responsibilities for safe design. As noted in the Consult Australia Framework, examples include:

'Responsibility for achieving safe design rests with parties or individuals who control or manage design functions. This includes people who are directly involved in the design activity (such as architects and engineers), as well as those who make decisions that influence the design outcome (such as clients, developers, manufacturers, directors and managers).'⁴

¹ Australian Government Guidance on the Principles of Safe Design at Work, May 2006

*'WorkSafe also recognises the sometimes limited capacity of some duty holders to exert control over the matters or activities giving rise to safety risks, for example, architects or building designers working under the client's directions and contractual arrangements.'*²

*'It will not always be possible to clearly delineate who has responsibility, in which circumstances, in relation to the elimination or reduction of hazards associated with a building or structure. However, the law imposes an obligation on those who not only control the activity but also those who have a capacity to control or influence.'*³

The definition of a designer is split across paragraphs 4 and 5 of Section 1.2. The initial definition in paragraph 4 of this section focuses more on a 'professional designer' before then being augmented in paragraph 5 by those who also have roles and responsibilities for design more broadly. **There is no qualification of this list, for example as 'including but not limited to'. The level of detail provided through the specification of professions (e.g. interior designers and shopfitters) suggests an exhaustive list while also marginalising the potentially substantive role of some parties, such as clients who are only mentioned by way of a minor example. Clients have unique responsibilities as set out in the Consult Australia Framework (page 20) that should be reflected in the Code:**

Clients commissioning design and/or construction work as part of a trade or business must, as far as practicable, ensure that information given to them on health and safety issues is provided to the head contractor, if the client is not the head contractor, and anyone who obtains the end product of the construction work. In particular, information that relates to:

- *identifying hazards to which a person at the construction site is likely to be exposed;*
- *assessing the risk of injury or harm to a person resulting from those hazards; and*
- *considering the means by which the risks may be reduced.*

It is also important to note here (as noted against point 7 below), in describing those with influence and control over design, some degree of proportionality: i.e. that responsibilities should be consistent with the degree of control that a person has. A minor point: but the use of bold font instead of italicised subheadings as per the subsequent sections further obscures the significance of the categories introduced in this section. For example, why is 'A designer' or 'Designers' in paragraphs 4 and 5 not bold as a person 'who has health and safety duties in relation to the design...'?

Section '1.3 Other persons with key roles in design and construction' further confuses the definition issues created in Section 1.2. The specification in this section of 'The client' and 'The principal' almost implies their exclusion from the previous section. These persons don't just have 'key roles' in design and construction, but are also possible 'duty holders' in relation to design.

The Consult Australia Framework addresses the concerns raised above by adopting a principles based approach to these definitional issues, noting that:

The responsibility for safety in design of products, facilities or processes rests with parties or persons who by virtue of their position or role have control or influence over the design.

Responsibilities should be consistent with the degree of control that a person has. There are often a number of parties or persons involved in the development of projects and it is quite common for responsibilities to overlap.

² Worksafe Victoria Designing Safer Buildings and Structures, December 2005

³ Western Australia Code of Practice Safe Design of Building and Structures, 2008

A collaborative and consultative process is recommended to be put in place between key project participants and any persons who exercise control and influence over the design and construction phases.

Examples of key project participants and people who may influence and control decisions in the design and construction phases of a building, for example, include:

- *Head contractors, developers, builders, owners, project managers, purchasers, clients, end- users and workers;*
- *Design professionals, such as architects, civil, building services, electrical, acoustic, environmental, mechanical and structural engineers, landscape architects, interior designers, drafters and industrial designers;*
- *Quantity surveyors, insurers, quality assurance staff, work safety professionals and ergonomics practitioners; and*
- *Suppliers including manufacturers, importers, those who hire plant, constructors, installers and trades and maintenance people.*

As noted above, subsequent references throughout the Draft Code to the role and responsibilities of 'the designer' and/or 'designers' create further ambiguity about who actually has health and safety duties in relation to design, and the extent to which these duties are qualified by the influence and control exerted. **While Section 1.5 considers the 'extent of the designer's duty', it is important that appropriate qualifications are also included throughout the document for absolute clarity.** For example Section 1.4:

- under 'Consider the lifecycle' may more accurately state: *'The WHS Act requires the designer those persons with influence or control over the design to ensure, so far as is reasonably practicable...'*
- under 'Knowledge and capability' may more accurately state: *'In addition to those necessary core design capabilities relevant to their role, the following skills and knowledge should be demonstrated or acquired by a designer consistent with the degree of control or influence exerted:'*

5. KNOWLEDGE AND CAPABILITY

As noted under 'Knowledge and capability': *'Various persons with specific skills and expertise may need to be included in the design team or consulted during the design process to fill any knowledge gaps, for example ergonomists, engineers and occupational hygienists.'* Further to this, it is important to note here that insofar as these persons exert control or influence over the design, they too will have duties under the Act.

The Consult Australia Framework further notes that

'It is recommended that if those persons that are involved in design do not have the appropriate or required safety in design knowledge and capability then others having the relevant knowledge and capability should be brought into the design process at an early stage, preferably at conceptual stage.'

This is an important point to **emphasise the value of early and comprehensive engagement across all stakeholders** and should be reflected in the Code of Practice.

6. INFORMATION TRANSFER

Overall the draft Code under-emphasises the importance of a collaborative approach to ensure safety in design. **The section 'Information transfer' is written with particular duties explained for 'the designer'. Again it is important that the language used more obviously includes all those with responsibilities for safety in design.** The Consult Australia framework refers to:

'...effective communication and documentation of information relating to the design and risk control measures between all persons involved in the phases of the lifecycle.'

The Consult Australia Framework appropriately references the role of end-users, designers and other 'persons of influence', rather than just 'designers' as per the draft Code. This distinction is important to the readability and accessibility of the Code for all stakeholders involved who may not instinctively identify as a 'designer' in spite of the broad definitions provided in Section 1.

7. THE EXTENT OF THE DESIGNER'S DUTY

Further clarity can be provided in Section 1.5, where in qualifying 'the extent of the designer's duty' (a better title would be 'what is reasonably practicable?') it would be appropriate to note the breadth of persons involved (as set out in Section 1.2) and the varied duties based on the extent of control or influence exerted. **Reference to the 'duty holder' rather than 'the designer' is preferable** in this context.

8. SYSTEMATIC RISK MANAGEMENT

Similar improvements in the language describing the roles and responsibilities of persons with control or influence over the design can be made in Section 2.1. For example, '*This approach also encourages collaboration between a designer, constructor and client* *all parties contributing to design and construction.* **More inclusive language will be to the benefit of all stakeholders contributing to the design process for whom this Code of Practice must become a valuable reference point.**