



SUBMISSION BY THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION, CONSUTRCTION AND GENERAL DIVISION (NSW BRANCH) REGARDING THE REVISED DRAFT CODE OF PRACTISE FOR SAFE WORK ON ROOFS

5 JUNE 2008

Introduction

The Construction Forestry Mining and Energy Union, Construction and General Division (NSW Branch) considers this Code as one of the most important Code of Practise. Building and Construction workers continue to suffer death and injury from falls from heights, particularly whilst working on roofs. Since August 2007, there have been four fatalities involving fall from heights in NSW, two of them involving falls from a roof. Further deaths of young workers such as Joel Exner and Dean McGoldrick saw changes to the *Occupational Health and Safety Act 2000* and the insertion of the fatalities provisions of the Act.

In the case of Joel Exner's fatality the NSW Industrial Relations Commission in the decision of *WorkCover Authority of NSW (Inspector Dubois) v James Nicholson Denson & Ors* [2007] NSWIR Comm 119, the Court found in summary that:

- the risks attached to improperly installed safety mesh had been emphasised to the defendants prior to the commencement of the job;
- the builder had required amendments to the SWMS and JSA for the job specifically in requiring identification of the risk of falling from height when installing mesh;
- ignoring the risk of mesh not appropriately fastened;
- non-compliance with Australian Standards and WorkCover Code of Practice for mesh installation;
- the lack of any formal system to inspect or ensure that mesh was properly installed;
- the absence of knowledge and experience of the employer sufficient to discharge the obligations in relation to work safety;
- the failure to ensure instruction and training in the installation of safety mesh as well as working safely while laying metal roof panels.

The Court concluded that "*the collective failings of all defendants made it entirely foreseeable that the workers on site would be placed at considerable risk to their*

safety. Further, the defendants' failures directly contributed to the death of Joel Exner" (at para 67),

In terms of the principal contractor, in the related proceedings of *WorkCover Authority v New South Wales v Australand Holdings* [2007] NSWIRComm 156, whilst the Court found there was a robust workplace safety system in place, the principal contractor was found to have failed to “ensure that the risks to safety identified in the Job Safety Analysis (JSA) in relation to the installation of the safety mesh...were addressed in a safe and acceptable manner” (at para 32). Further the JSA was found to be “inadequate in a number of respects, particularly the actions taken to address the identified risk of falling when working from a height, including the need to ensure that safety mesh was appropriately fastened, side lapped and joined” (para 35). Further the Court held that the principal contractor had failed to have in place a system that ensured that it checked the safety mesh had actually been installed correctly, rather it had relied on the subcontractor (at para 40).

Similar failings were identified in such cases as: *Inspector Dubois v Masters Civil Pty Ltd and Anor* [2006] NSWIRComm 180 (failure by manager as to knowledge of obligations, no safety instruction training and supervision, failure to provide adequate fall protection, failure to provide adequate first aid) and *Inspector Jones v Walker Group Constructions Pty Ltd* [2006] NSWComm 11 (failure to ensure safe system of work and failure to provide adequate fall protection to person not in employ of the defendant).

In Inspector Connolly v Vujinovic trading as Drina Carpentry [2005] NSWIR Comm 76, His Honour Justice Boland (now President of the Industrial Relation Court) stated (at para 11):

“This case is yet another example of the all too familiar failure, particularly by contractors in the construction industry, to take proper steps to ensure person for whom they are responsible are not placed at risk of injury from roof falls. The defendant’s particular failures in this case were a failure to provide a safe system of work and a failure to undertake a risk assessment”.

This finding in these cases and many others, the fatalities which continue to occur serve as a stark reminder of the need for all aspects of work on roofs to be attended to vigilantly. No chances can be taken or corners cut. Further it is clear that had some basic steps been taken on the site in the fatality of Joel Exner such an occurrence was likely preventable.

Our officials continue to find unsafe practices, particularly in the area of working from heights on sites. It is important that the Code is an appropriately worded and useable document. However, to ensure compliance with the Act, Regulations and Code of Practice WorkCover needs maintain pro-active enforcement activity, including site visits, audits, the imposition of notices and fines and prosecution.

The Draft Code of Practice 2007

In terms of the Draft Code itself, the CFMEU supports the bulk of the Code and its contents. However, there are some amendments that should be made as follows:

Section 2 What is the Code of Practice About?,

The draft should be amended to include a reference to clients to the industry. The CFMEU believes it is essential that those who want building and construction work done be made aware of the safety requirements in the industry. Developers and Clients drive the price which can detrimentally impact on safety outcomes on site. Thus we would suggest that the first line should read (suggested addition in bold):

“This industry code of practice has been produced by WorkCover NSW to provide **clients to the industry**, employers, self employer persons...”

Section 3 Consultation and Risk Management

A very large proportion of the workers in the roofing industry are engaged on with Australian Business Numbers (ABNs). These workers are under the control of the “employer” engaging them despite not being employed in a traditional employment arrangement and mostly provide labour only. The “employer” in those circumstances has effective control of these workers and their work on sites. Such workers cannot be considered independent subcontractors or genuinely “self employed”. Such workers are reliant on the entity engaging them to ensure that there is a safe system of work.

The CFMEU believes that where the word “workers” is used in the Code, such as in Section 3, that it is made clear that this word captures not only employees in the traditional sense but also those who are engaged on an ABN system that are under the control of the entity engaging them. This will make clear that entities engaging gangs of workers in way must ensure that there are the appropriate consultation arrangements in place, and that such controlling entities do not avoid this obligation by designating such workers as “independent contractors”. This will also ensure that such workers are involved in the mandatory consultation arrangements on site.

Thus we suggest the following note be inserted in Section 3, or there be a reference to the definition of worker in the definitions section.

“Where the term “worker” is used it refers to any individual person who does work”.

CFMEU officials have also found in their experience that documentation such as safe work method statements (SWMS) are often generic documents. Due to the hazardous nature of this work, the CFMEU believes that there should be some notation in the Code that the principal contractor and the subcontractor should take particular care to ensure that Safe Work Method Statements are site specific and not generic in nature

and that once developed and communicated they are adhered to. As set out above, as a large percentage of work in this sector is done on ABN employment arrangements it is important that those with the actual capacity to control what happens on site ensure that safe work practices are adopted. There should be some formal sign off by the principal contractor of the SWMS by a competent person.

Section 3.1.4 Coordination of Responsibilities

In relation to section 3.1.4 there should be an additional party added to the list of parties involved in a construction project, being the client. As noted above, this party plays an important role in driving safety and should be added even where, under the legislation, they may not depending on the circumstances have a direct obligation under the Act, regulations etc.

Thus we suggest:

Insert h. the client

Section 3.2.2 Hierarchy of Control Measures

In 3.2.2 (b) (iii) in the wording the word “or” should be deleted and “and” inserted thus:

iii. introducing engineering controls – eg guardrails and scaffolding

Section 3.2.4 Planning by Designer

The first line of the first paragraph delete the word “should” and insert “must”. The sentence should read:

Architectural and engineering designs of roofs, including the supporting structure and cladding must take into account...
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Retain from the current code the following and insert in draft code:

- | |
|---|
| <ul style="list-style-type: none">• preparation of the floor below roof area, including the perimeter, to provide a firm and level support for mobile equipment before roofing operation start;• determine the position of bundles of roof material to avoid excessive point loading on the structure. |
|---|

Section 3.2.5 Planning by Principal Contractor

In the list of matters that a principal contractor must do before roof operations start amend the list items as follows:

- b. consider the type and placement of scaffolding required for access and falls prevention **and second emergency access**
- f. provide suitable and safe access to an from the construction site, including the working areas on the roof **and emergency access**
- o. obtain safe work method statements from the subcontractors **that comply with the Act, regulations and are consistent with this Code and the OHS Management Plan for the site.**

In light of the finding by the Industrial Court referred to above add additional assessment of risks, being:

- Insert:
- ensure that documentation provided by subcontractors, such as safe work method statements comply with the requirements of the OHS legislation and are at least consistent with this and any other relevant codes
 - ensure the that the risks to safety identified in documentation, such as safe work method statements, provided by a subcontractor in relation to the installation of the safety mesh are addressed in a safe and acceptable manner
 - ensure that safety mesh is installed in accordance with the applicable Australian Standard AS/NZS 4389:1996 Safety Mesh and this Code.

Section 3.2.6 Planning by contractors

In the list of things that a contractor must do there should be added:

- ensure instruction and training in the installation of safety mesh as well as working safely while laying metal roof panels
- ensure proper supervision at all times by a competent person:

Section 3.2.7 Preparing to work to commence

In the section that deals with additional inspections prior to commencing work amend the following items in these terms:

- Prior to commencing work on an existing roof, an additional inspection should be conducted **by a competent person** to determine:
- a. the presence, **correct installation in accordance with the relevant Australian Standards and this Code**, and condition of safety mesh

Section 3.3 Training and Supervision

Training should be appropriate to the tasks assigned. Amend the second paragraph, last line to read:

Only those who have received **appropriate** training and instruction may carry out work on roofs.

8. Manual Handling

Add an additional factor in relation to risk assessment for manual handling:

e. The need to balance while carrying a load.

9. Falling Objects

For further clarity the following amendments should be made:

Amend the Clause 57 risks in relation to falling objects as follows:

e. “no go” zones to isolate danger area **using physical barrier on ground and/or signs as appropriate**

Amend list of controls:

d. isolating danger areas as “no-go” zones with **appropriate physical barrier eg fencing**

Appendix B Roof Safety Mesh Handover and Roof Access Certificate

Add to item “Roof Guard rail installed” reference to the Australian Standard as follows:

- Roof guard rail installed **to AS4994.1 and AS 4994.2**

Add to item “Roof access installed” the following:

- Roof access installed including secondary emergency access

Conclusion

The CFMEU welcomes the comprehensive re-working of the Code of Practice. We also request that our suggestions and comments be included.