

Individual/Organisational name: Australian Industry Group (Ai Group)
What state/ territory are you from?: National coverage

Model Work Health and Safety Codes of Practice - Public Comment Response Form

General

There are some strong similarities between the types of hazards/risks and types of controls involved in: spray painting and powder coating; abrasive blasting; and welding and allied processes. However, the way in which the Codes are presented are lacking in consistency, with varying levels of focus on things such as housekeeping and hygiene for example. This has the potential to indicate that an issue is more important in relation to one of the hazards, than it is to another; this may not be the actual situation.

When reviewing the public comment and making appropriate modifications to these codes it would be beneficial to modify the content and layout to increase consistency where appropriate.

1) Safe Design Of Building and Structures

Comments due by Friday, 16 December 2011

Comments: (Please include section/page numbers).

General – layout of code.

This code does not have many of the legislative boxes that appear in the other Codes. This should be considered for the purposes of consistency.

General – use of the term “client”.

We understand that the terminology of “client” is a common usage in the industry. However, as a decision was made to not use this terminology in the regulations, it does not seem appropriate to use the term extensively in the Code.

Introduction – page 5

A structural change to the first set of dot points would be helpful. The introductory sentence should be changed to read: “In addition to achieving legislative compliance, safe design can result in many benefits”. The dot point that mentions legislative compliance could then be removed.

1.1 What is safe design – page 5

It is implied that risk assessment is a required part of the safe design process. The focus of the paragraph should be on the incorporation of controls, with the identification and assessment processes described as something that helps you to get there.

1.2 Who has health and safety duties ... – page 5 & 6

In the second paragraph, it would be helpful to include a reference to the construction phase [21(2)(d)] or undertaking work on the structure [21(2)(e)].

The last dot point on page 5 is not consistent with how the legal requirements are generally expressed, i.e. “arranging for people under their control” sounds like an “individual” responsibility rather than a PCBU responsibility.

Similarly, whilst the set of dot points on page 6 are introduced as PCBU obligations, the use of words like “anyone”, “architects”, and “temporary works engineers” all imply individual responsibilities rather than PCBU responsibilities. These dot points should be reviewed and modified as required to ensure the legal obligation of PCBUs is adequately reflected in the list.

1.3 Other persons with key roles in design and construction – page 6

There is reference in the last paragraph to the “health and safety of persons who will undertake the work”. Persons should be workers.

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1.4 What is involved in the safe design of buildings and structures

The dot points imply that risk assessment must occur for every hazard; this is not consistent with the approach to risk management in the regulations and Code which clearly demonstrate that risk assessments are something you do if there is not a known control.

Knowledge and capability – page 7

The information under this heading implies that the designer is an individual; yet the definition of designer under the Act is a PCBU who designs... It may be more appropriate to refer to the individuals engaged by the designer to undertake the design work. It is not clear why the skills and knowledge are listed as “demonstrated or acquired”.

Consultation, cooperation and coordination – page 8

There is reference to “different people” making decisions over a design. This should be referring to the PCBUs that make these decisions. This section refers to consultation and cooperation, but there is no mention of coordination.

Reference is made to the obligations of the “person who commissions the construction work”; this is an abbreviation of the duty holder “person conducting the business or undertaking who commissions the construction work”. This abbreviation has not previously been used in the code. It needs to be clear that this is a PCBU obligation, not an individual’s obligation. Further, it should outline the full obligation established in Reg 294 which includes providing information about the hazards and risks at the workplace where the construction work is to be carried out.

Information transfer – page 8 & 9

It is stated that the designer **should** record and transfer information. The Act is very clear at 21(4) that there is an obligation to pass on information. The word **must** needs to be used in this section, rather than should.

The last paragraph in this section refers to communicating information with other duty holders. This may be a good point at which to emphasise again the obligation to consult, cooperate and coordinate.

1.4 What is the extent of the designer’s duty? – page 9 & 10

The manner in which this information is presented does not give enough emphasis to the manner in which reasonably practicable might be assessed in relation to design, particularly considering cost and how “grossly disproportionate” might be considered. If it is not appropriate to do so here, there should at least be a cross reference.

2.1 Systematic risk management – page 11

The last sentence refers to collaboration between a designer, constructor and client. Once again it may be appropriate to use the consult, cooperate, coordinate words, rather than collaboration; also the reference to a PCBU should be included in this section, rather than the descriptors currently utilised.

Figure 1 – page 12

The flow chart indicates a box part way through the chart entitled (b) conduct a risk management process. This is an incorrect approach/terminology and it appears the “risk management process” may have replaced a previous description of “risk assessment”. The entire flowchart is about the risk management process. This box may actually be a point where it is appropriate to use the words risk assessment.

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2.2 Research and consultation – page 13

The paragraph that commences “Building good relationships ...” may be better worded as “establishing good processes to consult, cooperate and coordinate ...” The dot points in this section are more about activities to consult, cooperate and coordinate to achieve the desired outcome, not about building relationships.

Table 1 – page 13

The first dot point in the second row, could be better worded: “personnel from similar structures” would be clearer if it said “personnel undertaking work in or on similar structures”.

Last row – “to be considered important, hazards must be affected, introduced or increased by the design of the structure”. It is not clear what is meant by this, and may be leading a designer to think they don’t need to think about eliminating or minimising the risks associated with all hazards.

Example – page 15

It would be helpful to refer the reader to Appendix C which explains the source of CHAIR

Table 2 – page 16

It is not clear why “temperature” has been included in the high consequence hazards.

3 Design Development Phase – page 17

This information seems to be repetitive of that presented in the diagram on page 12, but there is no reference to that diagram.

The information included in the dot points under b) need some reworking, as outlined below:

- The intent of “including humans’ ability to change behaviour to compensate for design changes” is not clear and may lead the reader to believe that it is okay to rely on human behaviour, rather than designing the structure to minimise the need to rely on that behaviour.
- As the hierarchy of controls is mentioned for the first time in this section, a reference to the subsequent explanation would be helpful.
- When referring to “balancing the direct and indirect costs of implementing the design against the benefits derived” there needs to be a reference back to the words in the explanation of reasonably practicable that considering cost includes whether the cost is grossly disproportionate to the risk.

The final paragraph before the table states that the designer should “prepare risk control plans for the lifecycle of the product”. This appears to be going well beyond the requirements of s. 21(4) and related regulations.

Table 3: Design process – page 17

Identifying solutions should refer to the WHS Regulations and Codes of Practice as well as standards.

The information in the second row implies that the risk assessment must be undertaken. This needs to be modified.

Potential changes in construction stage: this would be better worded as “ensure, so far as is reasonably practicable, that consideration of any design changes that may impact on the risk, are undertaken utilising the concepts of consultation, cooperation and coordination as required by the Act. The “by whom” section of this introduces another “player” of construction team – should this be PCBU who is undertaking the construction work?

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3.1 Implement solutions from recognised standards – page 18

Last sentence refers to WHS Regulations as being “in addition to those in existing legislative and regulatory provisions...” which could imply that the WHS Regulations are not legislative or regulatory. We believe this can be fixed by removing the word “existing” from the sentence, and moving the “such as NCCA” to the end of the sentence. This would result in “WHS Regulations require work health and safety issues to be addressed in addition to the legislative and regulatory provisions which regulate the general design of buildings and structures.

Structure of section 3

In this section the Code appears to be telling the reader, three times, how to do the risk control process: firstly in the a) to c) on page 17; then in the table of page 17; then in the descriptive words on page 18. Yet each of this approaches uses different words and follows a slightly different structure. It needs to be reworked to aid clarity.

4.3 Construction process – page 21

As “confined spaces” have a specific definition, they should not be expressed as confined/enclosed workplaces, as they are in the first dot point.

5.1 Design considerations for modification, demolition and dismantling

It should be made clearer in this information – and maybe earlier in the document – that the initial designer of the building must take this into account and provide information about demolition and dismantling when the building is first designed.

The current format of this section may be misinterpreted as only placing the obligation on the person who is designing the modification.

Appendix A – page 25

It is stated that the PCBU who commissions work must pass on to the constructor the information provided by the designer. The actual words in the regulations only require the PCBU to pass on information to a principal contractor.

It is also stated that an entity bound by design and build ... will be considered to be a principal contractor; this needs to be reworded to reflect that the regulations can only “presume” who the principal contractor is if one has not specifically been appointed/nominated.

In figure 2c it is stated that “the client may not necessarily be the end user”. This raises the question as to who would have the responsibility (or is it more than one duty holder) if there is another PCBU “commissioning” the work. This also highlights the difficulties with adopting the use of the word “client” earlier in the document to describe the PCBU who commissions the work.

Figure 2d – should the reference to communicating and consulting really be consult, cooperate and coordinate?

Appendix D

There should be an introductory statement which clarifies the legislative status of the standards that are listed in this appendix, i.e. whether or not they form part of the code or are listed only for reference.

Impacts: Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so what are they?

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2) Excavation Work

Comments due by Friday, 16 December 2011

Comments: (Please include section/page numbers).

Training, information, instruction and supervision – page 8

The legislation box should include information about the specific obligation in regulation 39, which requires that the information is suitable, adequate and readily understandable.

Other excavation work risks and controls

This section covers both excavation-specific risks (excavated material and loads near excavations) and those that are more general. As recommended in our feedback on the construction regulations, these more general issues may be better dealt with through reference to the specific Codes, rather than attempting to provide a “short hand” solution.

Impacts: Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so what are they?

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3) Demolition Work

Comments due by Friday, 16 December 2011

Comments: (Please include section/page numbers).

General

In various locations in the Code there is reference to “practicable”, e.g. under frameworks on page 18. Where this occurs, it should be modified to “reasonably practicable”.

Structure of the Code: Section 2 is entitled “managing risks with demolition work”. Section 3 is planning. Section 4 outlines demolition methods. Section 5 deals with special structures. And then section 6 is entitled “controlling risk in demolition work”; the content of this section seems to relate to “associated hazards/risks” rather than the demolition work itself. Maybe the heading should be changed to better reflect the content of this section. Alternatively, as recommended in our feedback on the construction regulations, these issues may be better dealt with through reference to the specific Codes, rather than attempting to provide a “short hand” solution.

1.2 Introduction – page 5

When outlining the specific duties related to demolition work, there should be reference to the requirement at regulation 452(3) regarding the removal of asbestos before demolition.

The last paragraph on this page refers to a PCBU that has management and control of the demolition work, as the “demolition contractor”. The concept of having management **and** control of the demolition work is not addressed in the Act or regulations; duties are placed on persons who have management **or** control of workplaces (s.20), or fixtures, fittings or plant at workplaces (s.21). This raises two issues – there is no direct link to the Act or regulations in relation to creating a “specific” duty and the use of “and”, rather than “or”, is misleading.

The approach taken at the top of page 5 in the excavation code is a better approach.

Training, information, instruction and supervision – page 9

The legislation box should include information about the specific obligation in regulation 39, which requires that information, instruction and training is suitable, adequate and readily understandable.

3.4 Preparing safe work method statements – page 12

As most demolition work that leads to someone reading this Code will be, in itself high risk construction work, it may be worthwhile including the definition of demolition high risk construction work to clearly indicate the specific inclusion, with a statement that other high risk construction work might also be involved.

It is noted that the Code of excavation work includes the full list of high risk construction work. This may be an appropriate approach for this code as well.

Roof access – page 17

In this section there is reference to the person who has management or control of a workplace where persons are employed to work on roofs.... This reference should clearly be to the PCBU who has management or control. Further, in line with the comment above about the PCBU with management or control of the demolition work, it is not clear whether, in the case of demolition this would be the demolition contractor, or some other PCBU.

Impacts: Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so what are they?

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4) Spray Painting and Powder Coating

Comments due by Friday, 16 December 2011

Comments: (Please include section/page numbers).

General

In various locations in the Code there is reference to “practicable”, e.g. in relation to spray booths on page 16. Where this occurs, it should be modified to “reasonably practicable”.

The structure of the document makes it difficult to determine what is the same, and what is different, for spray painting and powder coating. As outlined below, the level of detail provided in the spray painting section is much greater than in the powder coating; there are also some controls in powder coating that are not included in spray painting, but would appear to have equal relevance.

The Code may benefit from a restructure which deals with the control measures that are the same for both spray painting and powder coating in one chapter and additional information in smaller sections on each of spray painting and powder coating

2.1 Identifying hazardous chemicals – page 7

The second last paragraph states “as it is useful to identify hazards before you potentially introduce them into your workplace...” We question whether this is an accurate description of the law – given the requirements regulations part 3.1 it would seem that this may actually be a mandated requirement to obtain the safety data sheet before deciding to purchase a new chemical.

Isocyanates – page 8

The way that this information is written, it implies that isocyanates are only a problem when sanding or heating. It should be highlighted that these risks are in addition to the risks associated with using the 2-pack paint in the spray painting process.

4 How to control the risks of spray painting

At some point early in this section there should be reference to the use of safety data sheets as a source of information regarding controls.

4.3 Ventilation systems – page 15

It would be useful to mention that the design of ventilation systems is a specialist engineering skill; the PCBU should ensure that they access the appropriate skills for this work.

4.6 Personal protective equipment – page 17

It would be helpful if the legislation box included reference to the requirement for the PCBU directing the work to provide the PPE unless this has been done by another PCBU.

Training, information, instruction and supervision – page 19

The legislation box should include information about the specific obligation in regulation 39, which requires that the information, instruction and training is suitable, adequate and readily understandable.

How to control the risks of powder coating – page 21

General – there appears to be much more detail in the spray painting section of the document than in this section. Of particular note are:

- no reference to PPE in this section
- reference to doing the work in a booth, but an absence of the sort of detail about booth design that is included in section 4.2
- no information about maintenance of booths, as covered in 4.5

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Further, the detailed information on administrative controls in this section (including cleaning, housekeeping and good hygiene) are not covered in the spray painting section.

In the second paragraph there are two references to workers being “more likely...” It would be more appropriate to just state that they are “likely”.

6 Monitoring and reviewing control measures – page 24

It is not clear why there is reference only to air monitoring where spray booths are not being used. Is this because there is a better way to check the effectiveness of a spray booth?

6.2 Health monitoring – page 25

It would be helpful in this section to advise the reader that information about health monitoring can be found in the safety data sheet. A reference to schedule 14 may also be useful, if appropriate to the chemicals used in spray painting or powder coating.

7.6 Noise – page 30

If the codes is going to address the issue of noise, it is important that the Laeq,8h of 85dBA is explained. As currently presented it will not mean anything to the uninformed reader.

7.7 Injection injury – page 31

It would be helpful to explain how an injection injury can occur and how the risk can be eliminated or minimised.

Impacts: Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so what are they?

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5) Abrasive Blasting

Comments due by Friday, 16 December 2011

Comments: (Please include section/page numbers).

2 Prohibited substances – page 6

It is not clear why the Code lists the prohibited hazardous chemicals and then only makes a passing reference to prohibited and restricted carcinogens. There are 3 possible ways this could be improved:

- List all the prohibited and restricted substances
- List all the prohibited and restricted substances that are likely to be utilised in abrasive blasting
- Refer the reader to the appropriate schedule to access the full list.

3 Dusts – page 8

If the word “toxic” is to be used, it needs to be defined.

5 particulate matter – page 17

It is not clear why particulate matter has been identified as a separate issue from dusts. It would appear that a more comprehensive approach to controlling particulate matter could be applied if particulate matter was combined with dusts.

6 Abrasive blasting equipment – page 19

It would helpful if there was reference in the introductory sections about the upstream duty holders obligations to ensure plant is designed (etc) to, so far as is reasonably practicable, eliminate or minimise risks.

6.10 Personal protective equipment – page 22

For consistency, and to aid understanding, the general parts of the section on PPE should be modified to match that included in the spray painting (including the additional issues we have identified in our comment on that section).

Impacts: Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so what are they?

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6) Welding and Allied Processes

Comments due by Friday, 16 December 2011

Comments: (Please include section/page numbers).

General

Many of the comments we have made in relation to format, focus, detail etc in relation to the codes for spray painting / powder coating and abrasive blasting have equal relevance to this Code.

Impacts: Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so what are they?

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7) Safe Access in Tree Trimming and Arboriculture

Comments due by Friday, 16 December 2011

Comments: (Please include section/page numbers).

Ai Group's involvement as a member of Safe Work Australia, with representation on the Strategic Issues Group – OHS (SIG-OHS) allows us to clearly understand the impetus for the development of this Code of Practice.

Regulation 220 establishes the manner in which a piece of plant that is not specifically designed to lift or suspend a person can be utilised for that purpose. Regulation 221 then creates an exclusion from the requirements in 220(1)(a) and (b) if the work is related to tree lopping. In effect this enables a person to be lifted or suspended in a harness by a crane for the purpose of lowering them into a tree. SIG-OHS agreed to this exclusion on the proviso that a Code of Practice was developed to ensure that this activity was undertaken in an appropriate manner.

The scope outlined on page 3 of the Code includes a statement that "this code is designed to provide guidance on the specific circumstances in the WHS Regulations that allow the use of certain methods to place persons in trees for tree trimming or tree lopping work"

However, the Code that has been released for public comment has a much broader focus, including information on a broad range of ways in which a tree can be accessed, and common hazards associated with tree trimming and arboricultural work.

We have received feedback from some representatives of the industry that, whilst they welcome a Code of Practice for the amenity tree industry, the current Code does not meet the needs of the industry and may limit the ability of the industry to continue to innovate in this area, and improve health and safety as part of that innovation process.

We encourage Safe Work Australia to modify this Code to reflect its initial intent – i.e. to specify the work practices that are required when using a crane to lower a person into a tree. This would clearly need to be well-explained to ensure that it was recognised that this was the least preferred method of access, but necessary in some limited circumstances.

Broader industry consultation could then occur on the development of a code which best suits the health and safety needs of the amenity tree industry.

Impacts: Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so what are they?

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8) Preventing and Managing Fatigue in the Workplace

Comments due by Friday, 16 December 2011

Comments: (Please include section/page numbers).

General

In providing feedback on this Code of Practice, Ai Group would like to acknowledge that this is a particularly difficult topic to define and describe, and to provide clear and definitive guidance. This Code will always be controversial – amongst a range of participants in the workplace. It is an area that creates a clear overlap between the responsibilities of the PCBU to minimise the cause of fatigue in the workplace, whilst also requiring workers to minimise risks of fatigue by managing their personal life. It needs to be recognised that fatigue can occur, due to personal reasons, even in circumstances where work is not creating a specific fatigue risk.

Acceptance of the Code may be assisted by some introductory words that reflect the complexity of the issues. The themes of these words might include:

- Fatigue can increase the risk of accidents in the workplace and when undertaking other daily activities
- Fatigue can also have some long term health effects
- Fatigue can be caused by work factors or personal/lifestyle factors, or a combination of both
- If work arrangements contribute to fatigue, the PCBU has an obligation to eliminate or minimise the risks associated with fatigue
- Workers have an obligation to cooperate with these control measures, and take reasonable care in relation to their own health and safety
- If personal/lifestyle factors, leading to fatigue, can create their own risks in the workplace, workers have an obligation to manage their personal life to eliminate or minimise the fatigue that is created in their personal life.

Title and focus:

In line with the overall focus of the regulations and other codes, we think it would be more appropriate to call the Code “How to manage the risks of fatigue in the workplace”. This would then lead to a change of words in the Code: wherever there was mention of the need to “prevent and manage fatigue”, the reference would become “manage the risks” or “eliminate or minimise the risks”

Terminology

Throughout the Code various references are made to “circadian rhythms”, “body clock” and “biologically programmed”. Use of these terms should be reviewed to ensure they are used appropriately and clearly defined. We believe that the use of “body clock” would be the simplest term to utilise

Scope and Application – page 3:

It is not clear why there is specific reference in this part of the code to “workplaces that are mobile, temporary or remote”. We do support the specific reference to the other obligations under the heavy vehicle driver fatigue laws.

Definition of fatigue – page 4:

We believe the definition of fatigue needs some work. Whilst “acute” may be an appropriate description in some situations of fatigue: acute has a specific meaning in relation to medical states and may be misinterpreted as having the medical meaning. Acute also appears to be at odds with “ongoing” in the definition. The definition also states that fatigue is more than being tired and is a “physical condition that can occur when a person’s physical or mental limits are reached”. This implies that fatigue will always be at the extreme. Yet other parts of the Code refer more to tiredness, e.g. on page 5 in relation to shift workers

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How can you tell someone is fatigued? – page 4:

The list of “signs” includes a range of symptoms which can be felt by the person who is fatigued, but they may not always be the things that others can see as signs, e.g. reduced immune system function, blurred vision etc. The last dot point does not seem to fit into the preceding list.

Sleep and fatigue – page 5:

There is reference to “the most beneficial sleep is a good night’s sleep taken in a single continuous period.” Whilst this is clearly true, reference should also be made to the value of power naps (especially as these are promoted in road safety) and how to maximise beneficial sleep if required to sleep during the day.

The paragraph referring to the affect of one sleepless night needs to be reworded to aid readability. It would be useful to provide a reference, and to provide a bit more explanation. Does it mean a full 24 hours without sleep; does it apply to a night of broken sleep; how does this relate to a person who has had a good unbroken sleep during the day?

Shift workers (including night work) and fatigue – page 5:

It is unclear whether this section relates to all shift work, or only to shift work that includes night work.

In the second paragraph, it is stated “as a result we feel fatigued”. This seems to be inconsistent with the earlier definition. Should it be reworded to “as a result we feel very tired”? If it is intended to refer to the more extreme definition of fatigue, then the risks extend beyond the “workplace or on the way home”. It would also include, at least, travelling to work.

1.2 Why is fatigue a problem? – page 5 & 6:

It is our view that this information would be better placed earlier in the Code, before “how can you tell someone is fatigued?”

In the dot points, the third dot point seems to be out of place.

“The effects” are largely repetitive of the information provided on page 4 (how can you tell that someone is fatigued), but they provide different detail. If this section is moved as recommended above, these two sets of information should be consolidated and refined.

At the top of page 6, we do not think it is necessary or appropriate to include these two paragraphs. They do not assist in the provision of practical guidance and, without context, they may create unnecessary concerns amongst workers who think they may be fatigued.

1.3 Who has health and safety duties in relation to managing fatigue? – page 6

See also our comments in the general section of our feedback on this Code.

The dot points – reference to the obligation to monitor the health of workers, needs to include the full reference from s.18(3)(g) with the sentence being finished by adding the words “of workers arising from the conduct of the business or undertaking”.

1.4 What is involved in preventing and managing fatigue? – page 6

In line with our suggestions above, we would recommend changing this heading to “what is involved in managing the risks of fatigue in the workplace?”

A step by step process – page 6

The wording implies that there is always a need to do risk assessments. This needs to be reworded to reflect the general focus of the laws that risk assessments are done where appropriate.

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Consulting workers – page 7

It is not clear why this section has been written differently to the other codes, e.g. electricity and hazardous chemicals. The words utilised in the other codes are more general and more appropriate for the code.

Consulting, cooperating and coordinating activities with other duty holders

It is not clear what relevance there is in this section to PCBU's "who share the same workplace". In relation to fatigue it is unlikely to have the same [obvious] relevance it has in the other codes. The focus of this section should be on other PCBU's involved in the same activities. It may also be necessary in these circumstances to identify whether a contractor is undertaking other work that may increase the risk of fatigue. This is not identified in this part of the code.

2.1 Identifying hazards – page 8

The dot points do not appear to be in the most logical order, and the inclusion of "observing work practices and systems of work" may not be one of the most useful processes to identify fatigue hazards.

Personnel records may not provide the necessary information about working hours, particularly in workplaces where people are on annualised salaries. It may be more appropriate to refer to examining records in the workplace that record/indicate hours worked, e.g. personnel/payroll records; billing sheets; sign-in/sign-out records; shift changeovers etc.

Reference to "information on fatigue from research" should be removed. In most circumstances, PCBUS should be able to rely on published guidance material and data, and may be misdirected by accessing emerging research considered in isolation.

Safety critical tasks – page 8

We suggest changing the words in the dot point that refers to "administration of drugs" to either specifically refer to "in a medical setting", or to limit the dot point to medical or surgical procedures.

b) work scheduling – page 8

Reference should be to "physically and mentally recover", not just "physically recover"

The sentence which refers to socialise should be reworded. We suggest something like: scheduling of work in a way that fails to allow workers to meet their personal/family needs and provide enough time for them to physically and mentally recover, can cause fatigue.

d) organisational factors – page 8 & 9

Whilst these factors may, in specific circumstances, exacerbate fatigue where it is a risk, many of them are not causes of fatigue in their own right, e.g. lack of flexibility at the workplace, lack of clear work procedures. We are concerned that this part of the code may be used inappropriately and would like to see it either removed or greatly modified.

e) individual and lifestyle factors – page

The second part of the last dot point in this section does not really relate to "individual and lifestyle factors"; it should stop after "extended travel to home residences".

2.2 Assessing the risks – page 9

This section needs to include reference to the fact that a risk assessment is not always required under the laws.

The paragraph that refers to new workers being at increased risk needs some explanation as to why this is the case.

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The second set of dot points, “risk assessment methods...” are highly repetitive of the information in “how to identify hazards”. As such, they do not assist the reader to clearly identify what the difference is between identifying a fatigue hazard and assessing the level of risk associated with that fatigue hazard.

2.3 controlling risks - page 10 to 13

It is not clear what is meant by the sentence “the controls that you choose will also depend on the person carrying out the work, the type of the business or undertaking and the characteristics of the organisation”.

It is not clear why the proposed control measures are not grouped according to the hierarchy.

a) Mental and physical demands of work

The last dot point, which refers to contingency plans, should include some examples of what sort of contingencies might be considered

b) Work scheduling and planning

The first dot point needs a qualifier, such as “wherever possible” or “consideration should be given to”

Opportunities for napping and sleeping will only be necessary in extreme cases of fatigue issues; it is suggested that some context should be provided about what sort of circumstances would lead to this being an appropriate solution.

Working time

It seems strange to have a control measure which includes a reference to “when total hours exceed maximum limits”

Rostering

There are two repetitive dot points relating to split shifts, which are giving similar but different messages

Shift work

Reference is made to “limit shifts to 12 hours including overtime” and “avoid overtime allocation after afternoon or night shifts (particularly 10 or 12 hour night shifts)”. These two messages are contradictory. Also, overtime before a shift can also be an issue, not just overtime after a shift.

Night work

The first dot point needs to be reworded to indicate that there should be consideration of the best arrangements for night work. The current statement says that non-essential work should not be carried out at night; however, if night work is required anyway, there may be times where it is appropriate to schedule a range of tasks at night, to minimise the risks associated with long hours doing the same mentally or physically demanding work.

Dot points 3, 4, and 5 are just different ways of saying almost the same thing; they could be reworked into one dot point with a clearer intention. It may also be appropriate to change the words “normal night’s sleep” to something a bit more objective, e.g. allow opportunities for night workers to sleep at night.

It is not clear what is meant by “arrange shifts so that day sleep is not restricted”.

The second last dot point doesn’t seem to make sense. In a normal roosting process workers will have far more than 24 hours notice of night work. Hence, it would seem that the reference to emergencies is a bit redundant. It should be about when making changes to shift rosters ...; recognising that emergencies will sometimes interfere with this, in which case control measures need to be put into place to minimise the risks associated with short notice.

Individual/Organisational name: Australian Industry Group (Ai Group)
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On-call and call back work

The second last dot point will only be appropriate in a very small set of circumstances. There should be some additional information about when this control measure would be appropriate.

FIFO

The last paragraph, which references fatigue management software, is misleading. It implies that you might want to consult experts if you use software to help you plan, but you don't need to seek expert advice if you are not using the software. This needs clarification.

Leave management

Many of these issues are bordering on industrial relations issues, particularly in relation to accruals and taking of "optimal amounts of leave". If the code is going to provide advice on this, there should be some reference to considering the requirements of industrial instruments.

c)Environmental conditions

The first dot point refers to avoiding working during periods of extreme temperatures. An additional, or alternate, control measure would be to "manage the temperature"

It is not clear what relevance the last dot point has to fatigue; it is also too "absolute" with the words ensure, rather than taking reasonable steps to ensure...

d)Organisational factors

Dot point 3 refers to training managers and supervisors to monitor fatigue levels; the training should be on preventing work related fatigue and monitoring fatigue levels.

Dot point 4 should be about managing the risks so that people don't drive home tired or fatigued, rather than "consider measures to deal with risks when you know they are driving home tired or fatigued".

Dot point 7 is a bit specific with reference to meeting project completion dates and implies that it is okay to have long working hours for this reason as long as you provide "assistance"; also, what is meant by assistance is unclear.

Dot point 8 – it is unclear what is meant by this dot point – is it suggesting that contractors or labour hire staff should or should not work the same shift cycles – and why?

e)Individual lifestyle factors

It is unclear what is intended by the paragraph that includes the dot points. Is the intention to capture the general consultation obligations; if so this should be clearly stated – especially as it has not been mentioned in other sections, indicating that this is the only time you need to consult workers. Further, the ability to meet both work and personal commitments can be a very subjective and varied thing – these words should be removed and replace with "to eliminate or minimise the risk of fatigue".

It is not appropriate to include in the code an indication that health and fitness programs are required to be implemented in these circumstances. If there is going to be reference to these programs it should be along the lines of "considering implementing..."

2.4 Other hazards

Hazardous manual tasks – page 14

It is unlikely to be possible for all workers to rotate to less physically demanding jobs towards the end of their shift. The reference should be to job rotation generally.

Individual/Organisational name: Australian Industry Group (Ai Group)
What state/ territory are you from?: National coverage

Exposure levels

Exposure to noise, heat and chemicals are being addressed collectively. This makes it difficult to deal with the increasing exposure as work hours become longer; particularly as noise has clearly defined parameters around the calculations. It is not appropriate, in relation to noise, to state that a 10 hour exposure may not equate to 1.25 times the exposure of an eight shift – in relation to noise this is an absolute statement.

It is not appropriate to include paragraph 4 in this document. The reader should be referred to the Code of Practice on Hazardous Chemicals. In particular, they should not be told to “carry out air monitoring” without the qualifications that are included in the regulations and Code.

Paragraph relating to exposure to extreme temperatures – the last dot point is irrelevant, especially the provision of sunscreen, which has no relationship to fatigue.

2.5 Information, instruction, training and supervision – page 15

Managers are a subset of workers, and should not be separately listed in the first paragraph, which currently implies that there are three groups of “persons” in the workplace, managers, workers and other persons. It is not appropriate to use the words “ultimately prevent fatigue”; the focus should be on “managing the risks” or “eliminating or minimising”.

The paragraph directly above the section on managers and supervisors is unnecessary and somewhat irrelevant – e.g. it is unclear why the working from home policy would be relevant; there is an implication that there should be a fitness for work policy and health and fitness programs, which is not appropriate.

Managers and supervisors – page 15

Again the words “prevent and manage” should be “manage” or “eliminate or minimise”

2.6 Monitor and reviewing control measures – page 15

Again the words “preventing and managing” should be “managing” or “eliminating or minimising”

Appendix C – Page 23

The heading “managing odd hours” should be “managing sleep”.

The last dot point in this section is a broad generalisation and should be qualified with words like “in many cases ...”

Managing your diet and physical fitness – page 24

The reference to joining a gym or sports club should be removed; it is sufficient to say that there should be physical activity. As it currently is written, it could be utilised to pressure PCBU's into paying for such memberships.

It is not appropriate to use the words “commonsense rules for diet ...”

After your shift – page 24

It is not appropriate to say that fatigue and sleepiness on the job are the major problems. It is often the drive home which creates the biggest risk, especially if the work itself is a relatively low risk activity. It is not appropriate to say “never drive if you’ve worked a double shift”.

Individual/Organisational name: Australian Industry Group (Ai Group)
What state/ territory are you from?: National coverage

Who can help – page 24

The inclusion of a reference to a counsellor is a bit strange and should be removed. It is also unclear what the various people may be doing. The supervisor/manager would be involved if the issue was about changing rosters etc., but it is not their role to provide health advice; this would rest with a doctor or and EAP service. The expectation of what each of these people might do to help should be articulated in this paragraph.

Appendix D

It is our view that there are too many messages included in the first case study – labour hire, contractors, maintenance issues etc.; the example also creates an unrealistic situation of using your own employees on day and afternoon shift and having the whole night shift staffed by labour hire.

We think case studies 2 and 3 are potentially sensitive and should be replaced with examples that have less potential exposure in the media.

Impacts: Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so what are they?

Individual/Organisational name: Australian Industry Group (Ai Group)
What state/ territory are you from?: National coverage

9) Preventing and Responding to Workplace Bullying

Comments due by Friday, 16 December 2011

Comments: (Please include section/page numbers).

1.2 Examples of direct bullying and indirect bullying – page 5

Section 1.2 lists examples of direct and indirectly bullying. It is accepted, by the use of the term ‘include’, that the examples of direct and indirect bullying are not exhaustive. However, in our view they are not definitive; behaviours described in the list in some circumstances will not be found to be bullying. We suggest that including the word “can” before “include” would clarify this anomaly. Therefore each line would read:

- “Examples of direct bullying can include.”; and
- “Examples of indirect bullying can include.”.

1.2 Impact of workplace bullying – page 5

Section 1.2 identifies the impact of bullying on the workplace. The first sentence under the heading ‘Impact of workplace bullying’ explains that bullying can be harmful for the workers that experience it and those who witness it. While bullying can lead to a poor workplace culture, witnesses to bullying are not themselves the target of the bullying conduct. To avoid confusion as to who in fact is being bullied and the reactions of the person being bullied, we suggest either removing the words “and those who witness it” from the first sentence or clarifying the second sentence by inserting the words “experiencing bullying” after the words “Each Individual”.

1.3 What is not considered to be workplace bullying – page 6

The second paragraph specifies that:

“A single incident of unreasonable behaviour is not bullying, although it may have the potential to escalate into bullying and therefore should not be ignored”

We suggest including the phrase “if repeated” after the words “into bullying” to emphasise that bullying is characterised by repeated behaviour and is persistent in nature.

1.3 Examples of reasonable management action – page 6

Section 1.3 lists examples of reasonable management action. Terminating a person’s employment or making a person’s position redundant, in most circumstances, is a reasonable management action. These actions do not appear on the list of examples of reasonable management actions in section 1.3. We suggest that the following sentence be included as an example and an additional dot point created:

“terminating a person’s employment or making a person’s position redundant”

We also accept, that the use of the term ‘include’ indicates that the list of examples of reasonable management action is not intended to be exhaustive. However, in our view the list should not be too definitive; the reasonableness of management actions is determined by the surrounding circumstances of each individual case.

Therefore, we suggest including the word “can” before “include” (see below) would clarify this anomaly:

“Examples of reasonable management action can include.”

Individual/Organisational name: Australian Industry Group (Ai Group)
What state/ territory are you from?: National coverage

Case study – page 6

The second case study is intended to provide an example of unreasonable management action. The facts described in the second case study, in our view, would not, on their own satisfy a claim of bullying. The factual scenario may be an example of unreasonable management action, but the facts are not so remarkable that a bullying claim would be substantiated without further evidence. Therefore, we suggest that the heading be changed to:

“Case study: Unreasonable management action that may be bullying”

1.4 Consulting workers – page 7

The last paragraph on page 7 specifies that employers must consult with workers and their health and safety representatives in the development of any policies and procedures relating to bullying. Section 49(e) of the Model WHS Act specifies that consultation is required when making decisions about the procedures for:

- “(i) consulting with workers; or*
- (ii) resolving work health or safety issues at the workplace; or*
- (iii) monitoring the health of workers; or*
- (iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or*
- (v) providing information and training for workers; or ... ”*

Section 49(e) does not specify that consultation is required when making decisions about workplace health and safety policies. Therefore we suggest removing the word “*policies*” from the second sentence of the last paragraph on page 7, so that the sentence says:

“Consultation must also be carried out in the development of any procedures, relating to bullying, including complaints procedure”

2.1 Systems of work and Risk Assessment Table – page 10 & 22

The second last dot point infers that job insecurity and change arising from restructures, downsizing, outsourcing, new rosters or change in work methods may lead to incidents of bullying. Management actions to restructure the business, outsource functions, or develop new rosters or work methods are not intended to lead to incidents in bullying. In most circumstances, a person may perceive that they are being bullied as a reaction to workplace changes occurring, when they are not in fact being bullied at all. The second last dot point may encourage persons experiencing workplace change to believe they are being bullied when they are not. To avoid this confusion, we suggest removing the second last dot point.

Section 2.1 Workforce characteristics and Risk Assessment Table – page 10 & 22

We share the view that all workers are potentially at risk of being bullied. Therefore, it is unhelpful to list groups of workers who may be at a ‘higher risk’. We recommend removing this list and instead emphasise that all workers are potentially at risk of being bullied.

4.1 Principles for handling workplace bullying incidents – page 15

‘*Support all parties*’ is the fourth principle listed in the table. The explanation to this principle stipulates that a complainant be allowed to have a support person present at interviews and meetings, such as a health and safety representative, union representative or friend. Ai Group is not opposed to an employee having a support person present at any interview or meeting, but is of the view that the example of a “*friend*” acting as a support person is too broad and can potentially include persons outside of, or without any connection to, the business. We would suggest that the term “*friend*” be replaced with “*colleague*”.

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4.3 Informal resolution – page 16

The third dot point in section 4.3 suggests that an option of informal resolution is for the employee being bullied to speak to the person engaging in the bullying behaviour directly. Ai Group is supportive of informal resolution options being made available to employees experiencing bullying. However it is important that the employer is notified, even on an informal basis, that the employee is experiencing bullying at the workplace. Without knowledge of the bullying behaviour it makes it very difficult for an employer to ensure the health and safety of an employee being bullied. Therefore, we recommend inserting a second sentence within the of the second paragraph of section 4.3:

“The procedures should also advise the worker to inform their manager that they are experiencing bullying at the workplace and they have chosen to speak to the person engaging in the bullying behaviour directly as their first step to resolving the matter.”

4.4 Formal resolution, Principles of natural justice – page 17

The first dot point uses the term “*committed*” to describe the action of engaging in bullying behaviour and the term “*innocent*” to describe the status of that person. These terms are often used in a criminal context and presuppose that a person has *committed a crime*. We suggest changing the wording of the dot point to the following effect”

‘The person who is alleged to have engaged in the bullying behaviour should be given the benefit of the doubt as to whether they actually engaged in such behaviour’

4.4 Formal resolution, Step 1 – Lodging the complaint – page 17

The second paragraph outlines the responsibilities of the person to whom the verbal notification of the bullying conduct is made. The responsibility of this person is qualified by what is reasonably practicable in the circumstances. Therefore we suggest amending the paragraph to the following effect:

“The person who receives the verbal notification should, so far as reasonably practicable:

- *protect the complainant from reprisals*
- *maintain confidentiality*
- *provide adequate support to both parties*
- *ask the human resource team (if there is one) to organise the investigation process, and*
- *provide assistance to the complainant to submit a written complaint.”*

4.4 Formal resolution, Step 2 – Initial response – page 17

Step 2 stipulates that a suitable manager should meet separately with both parties as soon as possible and explain the formal process and their rights and responsibilities. In most circumstances we recommend that a human resources representative or a management colleague also is present at the meetings as a support to the manager. Therefore, we suggest adding the following words to the first sentence after the words “*suitable manager*”:

“and if necessary a human resources representative or colleague”

4.4 Formal resolution, Step 3 – Investigation – page 17

Workplace investigations may be conducted by a representative of the organisation’s human resources department, as well as by those persons listed in the first paragraph of Step 3, being a manager for another work area or someone external to the business. We suggest adding “*a human resources representative*” after the words “*another work area*” in the second sentence of the first paragraph.

Individual/Organisational name: Australian Industry Group (Ai Group)
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4.4 Formal resolution, Step 4 – Investigation outcomes – page 19

The first dot point on page 18 lists “*the opportunity to work in a new area*” as an example of assistance that an employer may provide to a bullied worker. However the dot point explains that any relocation should only be done if there is no risk of bullying in the new area. Such risk would be difficult to ascertain, even by risk assessment. The dot point also fails to include a consideration as to whether relocating to a new work area would be practical or even operationally possible. Therefore, we suggest the following wording for the dot point:

“organising an opportunity to work in a new area (this should only be done if the victim agrees and where it is practical and operationally possible for the organisation to relocate to employee to a new work area).”

Impacts: Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so what are they?