

OHS Regulations Reform – Public comment submission form			
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Organisation name * (where applicable)	Australian Industry Group		
First name *	Tracey		
Last name *	Browne		
Email address *	Tracey.browne@aigroup.com.au		
Postal address	PO Box 7622		
Postcode *	Melbourne		
State *	VIC		
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I am providing feedback on:	<input checked="" type="checkbox"/> Proposed OHS Regulations 2017 <input checked="" type="checkbox"/> Proposed OHS Regulations 2017 <input checked="" type="checkbox"/> Regulatory Impact Statement for proposed Occupational Health and Safety Regulations 2017 and Equipment (Public Safety) Regulations 2017		

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Proposed OHS Regulations

Please provide your comments on the proposed OHS Regulations. Where possible, please indicate the part, division and regulation reference in which you are commenting on. General comments are also welcome.

General comments on the proposed OHS Regulations

Note: This submission must be read in conjunction with the the Regulatory Impact Statement for proposed Health and Safety Regulations 2017 and Equipment (Public Safety) Regulations 2017, Deloitte Access Economics, June 2016.

Introduction:

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

Ai Group is a member of Safe Work Australia (SWA) and its sub-group Strategic Issues Group – Work Health and Safety (SIG-WHS), which had oversight of the development of the Model Work Health and Safety Laws. We are also actively involved in consultative forums with state and territory regulators in relation to the application of safety and workers' compensation legislation. Ai Group has participated in many of the Stakeholder Reference Groups convened to consider the remaking of the 2007 Regulations and the development of the Regulatory Impact Statement.

We have ongoing contact and engagement with employers in all Australian jurisdictions on workplace safety issues, including informing them of regulatory changes, discussing proposed regulatory change, discussing industry practices as well as providing consulting and training services. We promote the importance of providing high standards of health and safety at work, and we hear from them about their success, issues and concerns related to workplace health and safety.

Ai Group, and many of our members, continue to be frustrated by Victoria's ongoing refusal to adopt the Model WHS Laws.

As an organisation that represents employer interests, we are pleased that the government does not want to implement changes that would create a significant administrative or financial burden on employers. However, the changing estimate of costs does nothing to assist employers to understand how the adoption of the Model WHS Regulations, or part thereof, would actually affect them.

The 2012 Supplementary Impact Assessment (SIA) developed by Price Waterhouse Coopers costed the Top 20 areas of concern at \$3.44 billion dollars over five years (net present value); this equated to \$0.688 billion per year. This RIS has costed the implementation of 9 areas of harmonisation considered during the review at a little over \$1 billion per year (net present value) – outlined in Table 4.6 on page 59.

Of these 9 items, 7 were considered in the SIA. The estimated costs attributed to these items is shown below, comparing the annual costs in the SIA with the annual costs in this 2016 RIS.

ISSUE CONSIDERED	2012 SIA ANNUAL ESTIMATE (INCL TRANSITIONAL COST)	2016 RIS ANNUAL ESTIMATE
Adopt model WHS definition of a fall	\$65.6m	\$329.1m
Communication for remote and isolated work	\$12.6m	\$218.2m
Duty to have and test emergency plans	\$56.0m	\$201.8m
Control the risk of falling objects	\$15.2m	\$176.8m
Provide adequate level of first aid training	\$47.6m	\$ 53.0m
Electrical safety (RCDs)	\$ 8.8m	\$ 37.2m
Asbestos Management Plan	\$12.6m	\$ 7.3m

Whilst the methodologies may be different, and it is now 4 years later, it is difficult to see how there could be such discrepancies in some of these estimates – particularly the first four items above.

We also note that there is a risk that the RIS (and the previous SIA) could send a message to duty holders that the absence of a regulation means the employer does not need to consider the risks outlined above. Examples of confusing and misleading information in can be found in a number of locations within Chapter 19 of the RIS. One such example is reproduced below:

The proposed change relating to falling objects is expected to impact employers across a range of industries including warehousing and storage services, wholesaling, mining and construction. As many employers in these industries likely already control for such risks as required by general duties under the OHS Act, the overall impact may be somewhat moderated. Those not currently complying with the general duties under the OHS Act would need to undertake compliance activities such as hazard identification and risk control. As such, this change would impose additional compliance costs on employers.

It is important to for employers to understand that they have obligations to eliminate or reduce risk so far as is reasonably practicable, in relation to all risks not just those for which there are regulations.

Throughout this process Ai Group has continued to argue that, with the imminent sunseting of the OHS Regulations, it would have been timely to consider adopting the harmonised regulations (recognising that some provisions would not be relevant under the OHS Act). This could have been done in a manner similar to that currently being proposed by Western Australia, which includes adopting the regulations with amendments where it is believed the administrative burden is too great.

Clearly, with the work that has been undertaken to get to this point, this is not an option that could logically be pursued. Hence our comments in the remainder of this submission focus on the proposals as they stand, or as they have been considered during the development of the Draft OHS Regulations that have been provided for public comment.

Chapter 18 of the RIS discusses “Cost recovery and fee analysis”. It is Ai Group’s view that those who apply for licences, and other permissions should bare the cost of these activities. If this does not occur the costs are distributed across all employers that pay a Workers’ Compensation premium. However, it is crucial that “cost recovery” is based on an efficient operation of the processes that are involved with licensing and permissioning. As “clients” of the system have no option but to engage these services, there must be strong oversight to ensure processes are efficient, and that fees are appropriate.

Specific comments on the proposed OHS Regulations	
<i>Chapter 1 – Preliminary</i>	Where the preliminary chapter is relevant in specific regulations these issues are addressed when considering that chapter, e.g. in relation to definitions.
<i>Chapter 2 – General duties and issue resolution</i>	Not applicable.
<i>Chapter 3 – Physical hazards</i>	<p>Part 3.1 – Hazardous Manual Handling</p> <p>Ai Group is comfortable with the changes that are being proposed. However, we have received some feedback that changing the definition of hazardous manual handling will result in employers having to do a total review of the hazardous manual handling risks. We do not believe this is the case, but any confusion will cause difficulties within individual workplaces.</p> <p>***** If the changes are made to the definition it will be important to clarify why the change has been made and what employers are expected to do if they have previously misinterpreted the regulations. Information sheets with examples would be also helpful.</p> <p>Part 3.2 - Noise</p> <p>Ai Group supports most of the changes that are being introduced into the noise regulations.</p> <p>However, we do wish to make comment about the trigger for audiometric testing that has not be altered; WorkSafe’s consideration of this issue is outlined in section 7.4.2.3 of the RIS. It is Ai Group’s view that the current provisions in the Victorian OHS Regulations establish a requirement for audiometric testing, even if a worker is only required to wear hearing protection on a single occasion. The terminology in the WHS regulations “frequently required to use hearing protection” enables a small level of flexibility for these situations. Ai Group believes that what is meant by “frequently” could be addressed through guidance and examples.</p> <p>***** We request that this issue be reconsidered.</p>

	<p>Part 3.3 - Falls</p> <p>We welcome the addition of the information that will clarify that employers have an obligation to eliminate or minimise the risk of falls below 2 metres, as part of the general duties under the Act.</p> <p>Part 3.4 – Confined Spaces</p> <p>Ai Group supports the removal of a 30 day timeframe for the retention of a confined space entry permit. However, we do not support the proposed requirement to keep the permit for two years in the event of a notifiable incident.</p> <p>We support the removal of the duty currently placed on suppliers to eliminate risks, recognising that this is unlikely to be something over which they have control.</p> <p>Part 3.5 - Plant</p> <p>Ai Group supports the proposed changes in this part.</p> <p>Part 3.6 – High Risk Work</p> <p>Ai Group supports the proposed changes. We are particularly pleased to see that it appears that the ongoing anomalies associated with dogging work are being addressed by these proposals, in relation to bridge and gantry cranes and vehicle loading cranes</p>
<p><i>Chapter 4 – Hazardous substances and materials</i></p>	<p>Part 4.1 – Hazardous substances</p> <p>Ai Group is comfortable with the proposal to adopt GHS as the reference point for labelling and safety data sheets. This is consistent with approaches in other jurisdictions, and recognises that the current “Approved Criteria” will not be maintained by Safe Work Australia in the future.</p>

In relation to AgVet chemicals it is unclear how this recommendation should be interpreted. It is stated that “Agvet labelling requirements [will be aligned with] the WHS approach. Currently this would involve continuing to allow APVMA approved labels but requiring GHS hazard and precautionary statements”. We are aware that this issue is currently be reconsidered by Safe Work Australia. There needs to be clarity about whether the Victorian OHS regulations will be amended if Safe Work Australia amend the Model WHS Regulations on this issue.

***** Further information is required about how AgVet will be treated in Victoria if the Model WHS Regulations are amended.

The regulations do not appear to have transitional arrangements for the introduction of the GHS. This is not appropriate; employers must be given time to ensure compliance with labelling and SDS requirements.

***** Transitional arrangements should be established for the full adoption of GHS labelling and safety data sheet requirements.

Part 4.2 - Carcinogens

Ai Group supports the clarifying changes.

Part 4.3 - Asbestos

Asbestos Registers

The additional requirement to include in the asbestos register, asbestos “that has been identified elsewhere” may create some costs for employers. However the RIS does not appear to consider the costs or benefits of this proposed change.

***** We believe this is an oversight that should be addressed in the Decision RIS.

The RIS states that “The proposal will ensure that all asbestos in the workplace is identified and associated risks are appropriately managed. It is not intended that an employer would need to ‘search’ for asbestos.” It is not clear what is meant by this.

**** If the scope of the requirements for the asbestos register are expanded as proposed, WorkSafe will need to provide clear information to employers about what is expected in relation to identifying asbestos that is not fixed or installed.

There does not appear to be any transitional arrangements in the regulations to deal with the potential increased obligation in relation to asbestos registers.

**** If changes are made to the requirements for asbestos registers, transitional arrangements should be included in the regulations.

A similar provision in the Model WHS Regulations excludes “naturally occurring asbestos” from this requirement.

**** It is Ai Group’s view that this exclusion should be applied in the Victorian OHS Regulations, if the requirement for identifying asbestos is extended to asbestos that is “identified elsewhere”.

Notification of Removal Work

In relation to notification of asbestos removal work, it does seem appropriate that the notification requirements for removal should be consistent – whether the removal work is licensed or unlicensed. For this reason, we support the proposed amendments.

Other proposed amendments

Ai Group supports the remaining amendments in this Part.

	<p>Part 4.4 - Lead</p> <p>The proposed amendments are minor and do not raise concerns for Ai Group. We note that the RIS refers to work being undertaken at the national level to amend the blood lead removal levels and workplace exposure standards. We have expressed our view about those changes through a separate RIS process managed through Safe Work Australia.</p> <p>***** WorkSafe Victoria should consult with stakeholders before making any future amendments to the lead regulations.</p>
<p><i>Chapter 5 – Hazardous industries</i></p>	<p>Part 5.1 - Construction</p> <p>Section 15.4.2.3 of the RIS considers issues raised about the complexity of Safe Work Method Statements (SWMS), in particular confusion which leads to the SWMS including information that relates to activities that are not high risk. It is stated that guidance has been updated to make it clear what is required.</p> <p>During development of the Model WHS Regulations, a specific clause was inserted to emphasise the importance of SWMS being clear and addressing the issues they are supposed to address. The words utilised in R.299(3)(b) should be considered for inclusion in the Victorian OHS Regulations for Construction: A Safe Work Method Statement must “be set out and expressed in a way that is readily accessible and understandable to the person that uses it.</p> <p>*****Consideration should be given to including words similar to those above in the Regulations to emphasise why SWMS are developed.</p>

	<p>It is proposed to insert a specific requirement to develop emergency procedures if there is a risk of a person becoming engulfed by soil or other material when construction work is being performed. It is Ai Group's view that this provision is unnecessary as it will be picked up by other requirements in the construction regulations</p> <p>*****Consideration should be given to removing this new provision from the regulations.</p> <p>Ai Group does not have any other comments to make on this Part.</p> <p>Part 5.2 - Major Hazard Facilities</p> <p>Ai Group notes that there is a proposal to amend clause 8 of Schedule 12 to require that a MHF keeps a summary of any notifiable incident, in addition to the current requirement to keep a summary of major incidents. It is also noted that this provision is not addressed in the RIS. It is Ai Group's view that this is an unnecessary regulatory burden which has no positive impact on the safety of MHFs.</p> <p>*****Consideration should be given to removing this additional requirement. If this is not done, the Decision RIS should include a costing for this requirement, and outline the expected benefits.</p> <p>Ai Group has no further comments to make on this Part.</p> <p>Part 5.3 - Mines Ai Group does not have any specific comments to make in relation to this Part.</p>
<p><i>Chapter 6 – Licensing and Registration</i></p>	<p>Ai Group supports the proposed amendments.</p>
<p><i>Chapter 7 – Administrative Matters and Exemptions</i></p>	<p>Ai Group supports the proposed amendment.</p>

<p><i>Chapter 8 – Saving and Transitional Provisions</i></p>	<p>In relation to earlier chapters we have raised concern about the lack of transitional processes for the introduction of GHS and changes to asbestos registers.</p> <p>***** Transitional arrangements should be included for these regulation changes.</p>
<p><i>Chapter 9 – Consequential amendments</i></p>	<p>Ai Group has no comment to make on the consequential amendments.</p>
<p><i>Schedules 1 -19</i></p>	<p>Ai Group has not comment to make on the schedules</p>

Proposed EPS Regulations

Please provide your comments on the proposed EPS Regulations. Where possible, please indicate the part, and regulation reference in which you are commenting on. General comments are also welcome.

General comments on the proposed EPS Regulations	
The EPS Regulations are mostly aligned to changes in the OHS Regulations, Ai Group has no further comments to make.	
Specific comments on the proposed EPS Regulations	
<i>Part 1 – Preliminary</i>	Click here to enter text.
<i>Part 2 – Hazard identification</i>	Click here to enter text.
<i>Part 3 – Duties of designers of prescribed equipment</i>	Click here to enter text.
<i>Part 4 – Duties of manufacturers of prescribed equipment</i>	Click here to enter text.
<i>Part 5 – Duties of importers of prescribed equipment</i>	Click here to enter text.
<i>Part 6 – Duties of suppliers and agents of suppliers of prescribed equipment</i>	Click here to enter text.
<i>Part 7 – Duty of person in charge of prescribed equipment</i>	Click here to enter text.
<i>Part 8 – Notice of prescribed equipment design</i>	Click here to enter text.
<i>Part 9 – Incident Notices</i>	Click here to enter text.
<i>Part 10 – Saving and transitional provisions</i>	Click here to enter text.
<i>Schedule – Prescribed equipment designs to be notified</i>	Click here to enter text.

Regulatory Impact Statement for proposed Occupational Health and Safety Regulations 2017 and Equipment (Public Safety) Regulations 2017 (RIS)

Please provide your comments on the Regulatory Impact Statement. Where possible, please indicate the section in which you are commenting on. General comments are also welcome.

General comments on the Regulatory Impact Statement	
Click here to enter text.	
Specific comments on the Regulatory Impact Statement	
<i>Part One – Introduction and general analysis</i>	Click here to enter text.
<i>Part Two – Analysis by hazard area</i>	Click here to enter text.
<i>Part Three – Implementation, evaluation and consultation</i>	Click here to enter text.
<i>Appendixes A to E</i>	Click here to enter text.
<i>Technical Appendix</i>	Click here to enter text.