



Review of the model Work Health and Safety Regulations for Diving Work

Consultation Regulation Impact Statement

SUBMISSION

INSTRUCTIONS

To complete this online submission:

- Download and save the submission template to your computer.
- Use the saved version to enter your responses to each question.
- Once your submission is completed in the saved template, fill in the online [Cover Sheet](#) and upload your submission when prompted.

Up to three additional documents can also be uploaded when you submit your response. Relevant documents to upload could include cover letters or reports with data and evidence supporting your views.

If you require assistance with making your submission online, please contact Safe Work Australia by emailing diving@swa.gov.au.

Submissions will be accepted until 5.30 pm AEDT, Friday, 30 September 2016.

Submissions that stakeholders indicate may be published will be posted on the website at Safe Work Australia's discretion. Please note the following are unlikely to be published:

- Similar/duplicate submissions or submissions completed using/copying a template response
- submissions containing defamatory material, and
- submissions containing views or information identifying parties involved in hearings or inquests which are currently on foot.

Thank you

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 been aware that the Model WHS Regulations for Diving have caused concerns within the industry since they were first proposed as part of the full suite of regulations. Various attempts to resolve this prior to finalising the Model WHS Regulations were unsuccessful. Accordingly, we support the work undertaken by Safe Work Australia (the Agency) to further consult with industry and to consider options that may address these concerns and result in a healthy, safe, efficient and practical solution in an industry with diverse needs and issues.

Ai Group was fortunate to participate in two industry workshops organised by the Agency in late 2015; this provided us with detailed insight into the views of the broad range of industry participants and the commitment that stakeholders have to achieving safe outcomes when undertaking diving activities.

We are aware that the various specialist industry bodies will be making detailed submissions in response to the Consultation RIS, considering their various issues and concerns.

As a member of Safe Work Australia, we will take all these issues into consideration when forming our final view about the best option to progress.

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Data and the problem statement

- Can you provide any additional data to improve the information in the Consultation RIS about the size of the diving industry and the number of illnesses, injuries and deaths resulting from diving work?
 - Do you agree with the description of problems with the model WHS Regulations for diving work?
 - What is the extent and impact of the current problems with the model WHS Regulations for diving work?
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Enter response here:

Ai Group agrees with the description of problems with the Model WHS Regulations for diving work.

We do not have any additional data or feedback to provide.

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Impact assessment

- Do you agree with the description of the impacts that are anticipated for each option?
 - Can you provide any comments or data that would help measure the costs and benefits of each option?
 - How would the proposed changes to supervision requirements for general diving impact compliance costs and safety outcomes?
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Enter response here:

Ai Group agrees with the description of the impacts that are anticipated for each options.

We do not have any additional data or feedback to provide.

We are keen to see the further feedback from industry about the proposed supervisions requirements.

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Evidence of competency

- What other measures should be considered to establish a diver's competency for diving work?
 - What are the anticipated costs and benefits of your suggested alternative?
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Enter response here:

Ai Group has no comments to make on this issue.

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Recreational diving work

- What would be the impact of amending the model WHS regulation to reference ISO 24801-3 instead of AS/NZS 4005.2:2000?
 - What other measures should be considered to address withdrawal of AS/NZS 4005.2:2000?
 - What are the anticipated costs and benefits of your suggested alternative?
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Enter response here:

Ai Group has not comments to make on this issue.

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Guidance material

- Who do you prefer author, issue and update the guidance material, for example Safe Work Australia, industry or another party? And why?
 - What should be covered in guidance material to assist duty holders understand their obligations under the model WHS Regulations for diving work?
 - What format of guidance material would best support industry to comply with the model WHS Regulations, for example, fact sheets, codes of practice, videos or another mode of communication?
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Enter response here:

The authorship of guidance material is a difficult question, and may be determined by the format that the guidance takes; if it is determined that a Code of Practice was required, then it would clearly need to be developed by Safe Work Australia. There are pros and cons of any option considered.

- If guidance material is written by Safe Work Australia it will be subject to the tripartite consultation mechanisms that are a key part of the Safe Work Australia process. The outcome of such engagement generally means that regulators will recognise the guidance as they are confident that it has been through the relevant checks and balances to ensure that it meets the legislative requirements to satisfy the general duty of care. However, this approach would require significant input from industry and may result in more resources being required than would be the case if the document was developed by industry.
- Guidance material written by industry will be in the language and style that is relevant to each of the industries. However, if it is to be accepted as the “state of knowledge”, it would also need to be scrutinised by a body such as Safe Work Australia to ensure that it met the requirements of the legislation.
- It is not clear what other party could take the lead on developing guidance material.

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Options and implementation

- Which of the three proposed options do you support, and why?
 - Are there any alternative options that should be considered?
 - What considerations should be taken into account during the implementation process if amendment of the model WHS Regulations is supported?
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Enter response here:

Ai Group does not support Option 1; if status quo was a viable option the Agency and Safe Work Australia members would not still be considering this issue after so many years.

Option 3 has a lot of attractions, especially for an industry that is so diverse. During the Agency's workshops it was clear that two *identical* dive scenarios could pose significantly different risks due to the environmental factors that need to be considered. For the sophisticated dive operators this could be an appropriate option. However, as indicated in the Consultation RIS, less experienced operators could utilise this approach to reduce the level of controls that are implemented.

On balance, it would appear that Option 2 will provide the best solutions for the industry (operators and their employees) by removing the confusion, maintaining certainty, and providing some flexibility where appropriate.