

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

**Individual/Organisational name: Australasian Meat Industry Employees Union**

**Section A: Model Work Health and Safety Regulations Exposure Draft**

General Comments (e.g. regulatory impact, level of prescription, notification, record-keeping requirements)

Slaughtering and processing beef, lamb, pork, and poultry for our food supply are inherently dangerous jobs. Turning a 1,250 steer or a five pound chicken into cuts sold in the marketplace is physically demanding work undertaken in a difficult and hazardous work environment. Workers use sharp hooks and knives while standing on floors made slippery from blood, fat, faecal matter, and other bodily fluids. Unpredictable and violent reactions from animals before slaughter pose constant physical threats to workers. Heavy suspended carcasses of beef travelling along a fast moving automated line can slam a worker to the floor. Down the line, processing workers stand for long periods of time working closely together while making thousands of repetitive cuts each shift. The noise is deafening and temperatures in the plants range from hot and humid on the killing floors to near freezing in the processing rooms. Pathogens can infect workers, and chemicals from decomposing animal waste, disinfectants, or gases such as ammonia used for refrigeration can prove deadly.<sup>1</sup>

Adequate regulation and enforcement is essential to address this situation. For this reason the Australasian Meat Industry Employees Union (AMIEU) welcomes the opportunity to make comment on the proposals drafted by Safe Work Australia for the harmonisation of Work Health and Safety Regulations in January 2012.

The AMIEU represents approximately 18,000 workers in the Meat Industry (red and white meat, poultry and related products). The AMIEU represents a broad range of occupations including Butchers, Labourers, Drovers (at abattoirs), Slaughterers, Boners, Slicers, Knife Hands, Packers, Meat Lumpers, Casings Workers, Smallgoods Workers, Rendering Workers, Meat Wrappers, Meat Cabinet Attendants, Cold Store Workers, Milk Product Workers.

Generally solutions for the deficiencies in the Regulations are provided with comment. Where this comment also addresses questions asked in the Issues Paper this will be flagged by a footnote. For simplicity the submission will refer to the Model Work Health and Safety Exposure Draft as WHS Regulations.

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<sup>1</sup> Lessons Learned Safe food from safe workplaces: protecting meat and poultry processing workers University of Massachusetts Lowell 2010

In our comments the AMIEU has focussed on the Regulations that specifically affect the workers in the Meat Industry so we have not covered Regulations that are specific to other industries such as Lead; Diving; Construction; Mines and Major Hazard Facilities etc. On these issues we refer you to the ACTU and State Peak Bodies' comments.

### **Abbreviations**

ACTU: Australian Council of Trade Unions

AMIEU: Australasian Meat Industry Employees' Union

HI: Hazard Identification

HSR: Health and Safety Representative

PCBU: Person Conducting a Business or Undertaking

RA: Risk Assessment

RC: Risk Control

SFARP: so far as reasonably practicable

WRMC: Workplace Relations Ministers Council

### **Overarching Issues**

- A. Introduction
- B. So far as reasonably practicable (SFARP)
- C. Hazard identification, Risk Assessment and Preferred Order of Control
- D. Democratic rights of workers
- E. Information Instruction and Training

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- <sup>2</sup> ACT: Objects of Act refer to elimination at source and Section 14.1.& 14.2
  - Queensland: Section 27A of Act and Code of practice
  - South Australia: Regulations 20 and 21
  - New South Wales: Regulations 5, 9, 10, 11 and 12
  - Tasmania: Regulations 17, 18 and 19
  - Northern Territory: Regulations 38 and 39
  - Victoria: Sections 2.1.B (eliminate at source) 12 and Section 149 etc (compliance Codes)
  - Western Australia: Regulation 3.1

<sup>3</sup>M. Tooma and A. Titterton; 2011; *The Missing Peaces*; National Safety Mar 2011; p14

<sup>4</sup> 11.c Terms of Reference National Review into Model OHS laws. Second Report to WRMC, Jan 2009, page iii

<sup>5</sup> Employment Conditions and Health Inequalities Final Report to the WHO Commission on Social Determinants of Health (CSDH) Employment Conditions Knowledge Network (EMCONET) Joan Benach, Carles Muntaner, Vilma Santana (Chairs) Employment Conditions Knowledge Network (EMCONET). Final Report, 20 September 2007

- F. Person and Person conducting business or undertaking (PCBU)
- G. Record keeping
- H. Penalty Regime for
- I. Specific provisions supported by the
  - a. Power to request review of risk control measures
  - b. Particular Codes of Practice

### **GENERAL COMMENT**

The drafting of Model Regulations and Code of Practice to replace those in all Australian jurisdictions is an enormous task, impossible in the circumstances that have applied. In South Australia the consolidation of Regulation process took nearly 5 years, in Victoria a similar process took 2 years. In both these cases there was a close engagement between technical experts, legal teams and the industry parties i.e. employers and unions. The process for the development of Model WHS Regulations has been deficient in many of these areas.

As a result the quality of the Model WHS Regulations is very variable, with many inconsistencies between and within chapters. There has been no time for the SWA structures to reflect, redraft or consider the operation of Regulations at the level of the users.

Unfortunately the Draft Model WHS Regulations need significant redrafting. The AMIEU cannot support proposals that, in our opinion, will lead to a diminution in the legal standards which dictate the level of protection jurisdictions will be able to enforce against.

It would be a gross disservice to employers and their workers to lower standards as proposed in these Model WHS Regulations.

### **A So Far as Reasonably Practicable (SFARP)**

The Model WHS Act qualifies the duty of all duty holders, except workers and other persons at the workplace, by the phrase *so far as reasonably practicable* (SFARP). SFARP is defined in Section 18 and applies throughout the Act. The AMIEU believes that on many occasions this phrase has been used inappropriately in the Regulations.

The basis for our comment comes from an understanding that the role of Regulation is to inform the duty holder and the Regulators inspectorate of what is SFARP i.e. a Regulation is used because either

- There is recognition of the high risk nature of the work: via data on deaths, injury or illness rates
- There are known and effective risk control measures which met the requirements of the SFARP test i.e. likelihood and degree of harm are known, there exist suitable and available risk control measures and the cost is not disproportionate to the risk

Given the above, there should be no impediments to a duty holder being able to meet the requirements of the regulation, therefore the qualifier SFARP must be deleted.

Where there is variety of known and effective risk control measures the usage of the qualifier, SFARP, may be appropriate. A clear example is the duty to provide basic health requirements such as potable drinking water. The duty to provide drinking water, sanitation, changing rooms *i.e. the what* must not be subject to the qualifier, however *how that is provided* such as via connection to water mains or a portable water cooler/toilets in a building or portable toilet - can be qualified.

The circumstances where the usage of SFARP requires change can be grouped as

1. Inappropriate usage for the duty to identify
2. Inappropriate usage for fundamental requirements
3. Inappropriate usage for known risk control provisions
4. Inappropriate usage as the duty has already been qualified by SFARP.

### **Inappropriate Usage of SFARP for the duty to Identify**

Some examples of the reference to SFARP must be removed from these duties - it is the control of risks which is subject to 'reasonably practicable' - not whether you identify them!

#### **4.2.3 Identification of hazardous manual tasks**

A person conducting a business or undertaking must, so far as is reasonably practicable, identify all manual tasks performed or to be performed by a worker that involve a hazardous manual task

#### **4.3.7 Hazard identification and risk assessment (confined spaces)**

- (1) A person conducting a business or undertaking must, so far as is reasonably practicable:
- (a) identify all hazards associated with work in a confined space; and
  - (b) assess all risks to health and safety associated with hazards identified under paragraph (a).

#### **4.4.2 Hazard identification (falls)**

A person conducting a business or undertaking must, so far as is reasonably practicable, identify all fall hazards associated with the business or undertaking.

#### **4.7.6 Hazard identification (electrical equipment)**

A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that all electrical hazards at the workplace are identified.

#### **4.8.12 Hazard identification and risk assessment (Diving)**

- (1) A person conducting a business or undertaking must, so far as is reasonably practicable, ensure that all hazards associated with diving work are identified by a dive supervisor
- (2) A person conducting a business or undertaking must, so far as is reasonably practicable, ensure that all risks to health and safety associated with hazards identified under subregulation (1) are assessed by a dive supervisor.

#### **5.1.16 Supply of second-hand plant—duties of importer**

- (1) An importer of second-hand plant must ensure that, so far as is reasonably practicable, any faults in the plant are identified.

#### **5.1.17 Supply of second-hand plant—duties of supplier**

(1) A supplier of second-hand plant must ensure that, so far as is reasonably practicable, any faults in the plant are identified.

**7.1.31 Identifying hazards (Haz Chems)**

(1) A person conducting a business or undertaking at a workplace must ensure so far as is reasonably practicable that a hazard in relation to using, handling or storing a hazardous chemical at the workplace is identified.

**Recommendation**

Remove the term SFARP from duty to identify hazards.

**Inappropriate usage of SFARP for general workplace and facilities provisions**

These are fundamental requirements; the provision of these facilities cannot be subject to SFARP. It is not possible to mandate how the facility eg drinking water, is provided but what has to be provided must be mandatory i.e. drinking water must be provided.

The risks of not providing requirements for human health are well known and are a component of infrastructure necessary to preserve human health ie prevent dehydration, infections disease control etc.

**Examples of inappropriate usage of SFARP:**

3.1.1 Duty in relation to general workplace facilities

A person conducting a business or undertaking must, so far as is reasonably practicable, ensure that:....

3.1.2 Duty to provide and maintain adequate and accessible facilities

(1) A person conducting a business or undertaking must, so far as is reasonably practicable, ensure the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities.

3.1.2 Duty to provide and maintain adequate and accessible facilities

A person conducting a business or undertaking must, so far as is reasonably practicable, ensure that the facilities provided under subregulation

(1) are maintained so as to be:

(a) in good working order; and

(b) clean, safe and accessible

**Recommendation**

The requirements for First Aid and Emergency plans are correctly drafted. The inclusion of an 'assessment' provision similar to First Aid 3.3.1 and 3.4.1 Emergency Plans and removal of SFARP from the Regulation would rectify the problem.

i.e. the matters to be taken into account

(3) In considering how to comply with subregulations (1) and (2), a person conducting a business or undertaking must consider all relevant matters including:

(a) the nature of the work being carried out at the workplace; and

(b) the nature of the hazards at the workplace; and

- (c) the size and location of the workplace; and
- (d) the number and composition of the workers and other persons at the workplace.

### **Known risk control provisions**

The following provisions should have SFARP removed - they are well known risk controls for hazardous work and easily meet the requirements of SFARP and as such need no further qualification. The usage of SFARP in the Regulations, as drafted, would lead to a potential lowering of health and safety protections which is contrary to WRMC decisions.

#### **3.2.4 Signage**

The person conducting a business or undertaking must, *so far as is reasonably practicable*, ensure that areas at the workplace where persons are required to use personal protective equipment are clearly identified by signs or other means

#### **4.3.6 Only confined spaces that comply with this Division are to be entered**

A person conducting a business or undertaking must, *so far as is reasonably practicable*, ensure that a worker does not enter a confined space before this Division has been complied with in relation to that confined space.

#### **4.3.9 Confined space entry permit**

(4) The person conducting the business or undertaking must ensure, *so far as is reasonably practicable*, that a worker who is to enter a confined space to carry out work understands the entry permit that has been issued for the work and is able to comply or ensure compliance with it

#### **4.3.13 Specific control—atmosphere**

(1) A person conducting a business or undertaking must ensure, in relation to work in a confined space, that: (a) purging or ventilation of any contaminant in the atmosphere of the confined space is carried out, *so far as is reasonably practicable*;

#### **4.4.5 Suitability and maintenance of risk control measures (falls)**

A person conducting a business or undertaking must, *so far as is reasonably practicable*, ensure that all measures implemented to control the risk of a fall are:

- (a) fit for purpose; and
- (b) suitable for the nature of the work; and
- (c) suitable for the duration of the work; and
- (d) installed and set up correctly; and
- (e) used correctly; and
- (f) maintained in good working order

#### **4.7.10 Untested electrical equipment not to be used**

A person conducting a business or undertaking must ensure, *so far as is reasonably practicable*, that electrical equipment is not used if the equipment:

- (a) is required to be tested under Regulation 4.7.9; and
- (b) has not been tested.

#### **4.7.16 Unauthorised access to (electrical) equipment being worked on**

A person conducting a business or undertaking must ensure, *so far as is reasonably practicable*, that only persons authorised by the person conducting the business or undertaking may enter the immediate area in which electrical work on energised electrical equipment is being carried out

(a) by a competent person who has tools, testing equipment and personal protective equipment that:

(i) are appropriate to the work; and

(ii) have been properly maintained; and

(b) in accordance with a safe work method statement prepared for the work; and

(c) subject to subregulation (5), with a safety observer present who has the competence and qualifications specified in subregulation (4).

#### **5.1.7 Guarding (plant)**

(2) The designer must, *so far as is reasonably practicable*, ensure that the guarding designed for that purpose will prevent access to the danger point or danger area of the plant

#### **5.1.22 Control of risks arising from installation or commissioning (plant)**

(1) A person with management or control of plant at a workplace must ensure that the plant is not commissioned unless the person has established, *so far as is reasonably practicable*, that it is safe to commission the plant.

(2) A person with management or control of plant at a workplace must ensure that the plant is not decommissioned or dismantled unless the person has established, *so far as is reasonably practicable*, that it is safe to decommission or dismantle the plant.

(4) A person with management or control of plant at a workplace must ensure, *so far as is reasonably practicable*, that a person who installs, assembles, constructs, commissions or decommissions or dismantles the plant is provided with all information necessary to eliminate or minimise risks to health or safety

#### **5.1.30 Guarding and insulation from heat and cold**

A person with management or control of plant at a workplace must ensure, *so far as is reasonably practicable*, that any pipe or other part of the plant associated with heat or cold is guarded or insulated so that the plant is without risks to the health and safety of any person

#### **5.1.35 Powered mobile plant—specific controls**

(1) Without limiting Regulation 5.1.34(2), a person with management or control of powered mobile plant at a workplace must ensure, *so far as is reasonably practicable*, that an appropriate combination of operator protective devices is provided, maintained and used.

(2) Without limiting Regulation 5.1.34(2), a person with management or control of powered mobile plant at a workplace must ensure, *so far as is reasonably practicable*, that no person other than the operator rides on powered mobile plant unless the person is provided with a level of protection that is equivalent to that provided to the operator

#### **5.1.40.2, 3, 5 and 6. Plant that lifts or suspends loads**

(2) A person with management or control of plant at a workplace must ensure, *so far as is reasonably practicable*, that plant is specifically designed to lift or suspend the loads for which it is to be used.

(3) *If it is not reasonably practicable to use* plant that is specifically designed to lift or suspend the loads for which it is to be used, the person with management or control of plant at a workplace must ensure that:

(a) the plant used to lift or suspend load does not cause a greater risk than if specifically designed plant were used; and

(b) if the plant is lifting or suspending persons:

(i) the persons are lifted or suspended in a work box that is securely attached to the plant; and.....

(5) A person with management or control of plant (other than an amusement device) at a workplace must ensure, *so far as is reasonably practicable*, that no loads are suspended or travel over a person.

(6) A person with management or control of plant at a workplace must ensure *so far as is reasonably practicable* that loads are lifted or suspended in a way that ensures that the load remains under control during the activity.

#### **6.2.1 Person who commissions work must consult with designer**

(1) A person conducting a business or undertaking that commissions construction work on a structure must, *so far as is reasonably practicable*, consult with the designer of the whole or any part of the structure about how to ensure that risks to health and safety arising from the design during the construction work..

#### **6.4.4 WHS management plan—duty to inform**

The principal contractor for a construction project must ensure, *so far as is reasonably practicable*, that each person who is to carry out construction work in connection with the project is, before commencing work, made aware of:

(a) the content of the WHS management plan for the workplace, to the extent that it relates to the work to be carried out by the person; and

(b) the person's right to inspect the WHS management plan under Regulation 6.4.7.

#### **6.4.5 WHS management plan—review**

(2) The principal contractor for a construction project must ensure, *so far as is reasonably practicable* that each person carrying out construction work in connection with the project is made aware of any revision to the WHS management plan that is relevant to the construction work being carried out by the person.

#### **7.1.35 Isolation of hazardous chemicals**

(3) A person conducting a business or undertaking at a workplace must ensure *so far as is reasonably practicable* that a hazardous chemical is used, handled or stored so as not to contaminate food, food packaging or personal use products

#### **7.1.48 Controlling risks from storage or handling systems**

(1) A person conducting a business or undertaking at a workplace must ensure that *so far as is reasonably practicable* a system used at the workplace for the use, handling or storage of hazardous chemicals:

(a) is used only for a purpose for which it was designed, manufactured, modified, supplied or installed; and

(b) is operated, tested, maintained, installed, repaired and decommissioned having regard to the health and safety of workers and other persons at the workplace.

#### **7.1.68 Pipeline operator's duties**

(4) The operator of a pipeline used to transfer a hazardous chemical must ensure *so far as is reasonably practicable* that the chemical transferred is identified by a label, sign or another way on or near the pipeline.

#### **7.2.18 Containment of lead contamination**

A person conducting a business or undertaking at a workplace must ensure *so far as is reasonably practicable* that contamination by lead is confined to a lead process area at the workplace.

#### **7.2.19 Cleaning methods**

(1) A person conducting a business or undertaking at a workplace must ensure *so far as is reasonably practicable* that a lead process area at the workplace is kept clean

#### **7.2.20 Prohibition on eating, drinking and smoking**

(2) A person conducting a business or undertaking at a workplace must provide workers with an eating and drinking area that *so far as is reasonably practicable* cannot be contaminated with lead from a lead process.

#### **7.2.21 Provision of changing and washing facilities**

(1) A person conducting a business or undertaking at a workplace must *so far as is reasonably practicable* provide and maintain in good working order changing rooms and washing, showering and toilet facilities at the workplace to:

- (a) minimise secondary lead exposure from contaminated clothing; and
- (b) minimise ingestion of lead; and
- (c) avoid the spread of lead contamination

#### **7.3.10 Transfer of asbestos Register by person relinquishing management or control**

If a person with management or control of a workplace plans to relinquish management or control of the workplace, the person must ensure *so far as is reasonably practicable* that a copy of the asbestos Register is given to the person, if any, assuming management or control of the workplace.

### **Recommendation**

Removal of SFARP where there is known and effective risk controls.

### **Duty already qualified by SFARP and therefore the usage is redundant and needs to be removed.**

#### **Regulation 7.3.44 Limiting access to asbestos removal area**

(2) The person must ensure *so far as is reasonably practicable* that no-one other than the following has access to an asbestos removal area:

- (a) workers engaged in the asbestos removal work;
- (b) other persons associated with the asbestos removal work;
- (c) anyone allowed under these Regulations or another law to be in the asbestos removal area.

#### **Regulation 7.3.28 Emergency procedure**

(2) A person with management or control of the workplace must ensure *so far as is reasonably practicable* that:

- (a) before the demolition is started, a procedure is developed that will *so far as is reasonably practicable* reduce the risk of exposure of workers and persons in the vicinity of the demolition site to asbestos to below the exposure standard; and
- (b) the asbestos Register for the workplace is considered in the development of the procedure.

Delete SFARP from 7.3.28 (2) but leave in (a)

**Regulation 7.3.15 Duty to inform about asbestos exposure at workplace**

(3) The person must *so far as is reasonably practicable*:

- (a) determine the persons who were in the area of the workplace where the asbestos fibres were released at the time and after the fibres were released; and
- (b) warn the persons about possible exposure to asbestos fibres.

Regulation 7.3.15 SFARP should be replaced with 'as soon as practicable'

**7.3.50 Removing friable asbestos**

(1) A licensed removalist removing friable asbestos must ensure *so far as is reasonably practicable* that:

- (a) the asbestos removal area is enclosed to prevent the release of respirable asbestos fibres; and
- (b) if negative pressure is used—the enclosure used is tested for leaks; and
- (c) the wet method of asbestos removal is used; and
- (d) the asbestos removal work does not start until the air monitoring is started by a licensed assessor; and
- (e) air monitoring is undertaken during the asbestos removal work, at times decided by the independent licensed assessor undertaking the monitoring; and
- (f) any glove bag used to enclose the asbestos removal area is dismantled and disposed of safely.

The last example is a confusing provision – one of these duties could remain qualified ie part (a), the others cannot. Therefore this provision should be broken down into 2 separate Regulations.

**Hazard identification, Risk Assessment & Preferred Order of Control**

The Model WHS Act fails to include a comprehensive risk management duty or mention of the preferred order of control (sometimes called the hierarchy of control) or provide for compliance codes. Most regrettably these omissions are replicated in the Model WHS Regulations. As a result, the assurances given through the harmonisation process, that there will be no reduction in health and safety standards, will not be honoured.

The National Panel Review recommended the inclusion of the process of hazard identification, risk assessment and hierarchy of control in the Regulations, with further guidance in the code of practice (recommendation 136). This recommendation was agreed by the WRMC but has it not been implemented.

It is the view of the AMIEU that as currently drafted the WHS Regulations fall short of ILO Convention 187 Promotional Framework for Occupational Safety and Health Convention, 2006.

3. (3) *In formulating its national policy, each Member, in light of national conditions and practice and in consultation with the most*

*representative organizations of employers and workers, **shall promote basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at source**; and developing a national preventative safety and health culture that includes information, consultation and training. (emphasis added)*

The framework adopted in the Model WHS Act and Regulations makes

1. no reference to control of risk at source (contrary to some current Acts e.g. Victoria)
2. no reference to risk management processes (contrary to Qld Act & Regulations in other jurisdictions, except Victoria)
3. no provision for Section 12 Guidelines (Victoria) or Compliance Codes (Victoria).<sup>2</sup>

The Model WHS Regulations have homogenised the Regulatory requirements. The hybrid which is proposed has none of the strengths of the original approaches and creates weaknesses that do not exist in current Regulations. It also removes the previously accepted international approach applied via the use of the hierarchy of control and risk management processes.

As Tooma and Titterton (2011) point out:

*This sends a dangerous message to duty-holders: that all controls are considered equal. As safety practitioners, we know that this is not the case, and that such a suggestion can have deleterious effects on safety performance.*<sup>3</sup>

### **Recommendation**

A generic process applicable across all Regulations of Hazard Identification, Risk Assessment, Risk control using the preferred order of controls and review and revision of risk controls

The current options which are preferred should be modelled on SA (Regulations 20/21) or NSW Regulations 5, 9-12. e.g.

A generic risk management Regulation based on those currently existing in those jurisdictions must be added to the Model Regulations:

*(1) To properly manage exposure to risks, a PCBU must—*

- (a) identify hazards; and*
- (b) assess risks that may result because of the hazards; and*
- (c) decide on appropriate control measures to eliminate, or minimise the risks; and*
- (d) implement control measures; and*
- (e) monitor, review and revise the effectiveness of the measures.*

*In considering the appropriateness of control measures to minimise the risk to the lowest level reasonably practicable in the following order*

- 
- (a) eliminating the hazard or risk;*

*(b) if eliminating the hazard or the risk is not reasonably practicable, minimising the risk by measures that must be considered in the following order –*

- (i) firstly substituting the hazard giving rise to the risk with a hazard that gives rise to a lesser risk;*
- (ii) secondly, isolating the hazard giving rise to the risk from the person who may be put at risk;*
- (iii) thirdly, minimising the risk by engineering means;*
- (iv) fourthly, minimising the risk by administrative measures (for example, by adopting safe working practices); and*
- (v) fifthly, by using personal protective equipment;*

*A combination of the above measures is required to be taken to minimise the risk to the lowest level reasonably practicable if no single measure is sufficient for that purpose.*

*This Regulation is in addition to mandated specific hierarchy of controls for high risk hazards and industries in individual Regulations.*

*The definition of 'control measure' should have added 'to the lowest level reasonably practicable in accordance with the preferred order of controls.' (from SA).*

### **Recommendation**

The control duties must be re-written to include the duty to eliminate so that the Regulations and their context is understood at the workplace. Contrary to the practice with most laws, these Regulations are used by non lawyers, in workplaces, at work, by duty holders or those wishing to be protected from hazards. Therefore there is no disadvantage with restating the PCBU obligation to eliminate risks as this links clearly with the Act and in the determination of penalties.

*For example 4.2.4 should read: the PCBU must ensure that risk of musculoskeletal disorder from the hazardous manual task is eliminated and if it is not reasonably practicable to eliminate the risk, must minimise the risk....*

### **Risk Control Measures: suitability and maintenance**

A generic Regulation is required, that applies to all risk controls. Regulation 4.4.5 must apply to all Regulations, with SFARP removed.

### **Democratic Rights of Workers**

As currently drafted numbers of these provisions do not meet the policy intention of the Model WHS Act, particularly clause 61. The proposed Regulations will remove current entitlements. In particular the provisions relating to HSR elections and issue resolution require amendment

### **Regulation 2.1.4 Person conducting election must display notice of the election**

The proposed requirements of Regulation 2.1.4 (display of notices, two week notice, and display of closing dates) are overly prescriptive. The

Model also requires that the arrangements must be made in consultation with the employer (PCBU). Combined with the requirements of the Model WHS Act these Regulations, especially in non permanent workplaces or for non permanent workers, will serve to delay the election of HSR.

One of the terms of reference for the harmonisation of OHS laws was *to take into account the changing nature of work and employment arrangements*<sup>4</sup>. The AMIEU strongly supported this term of reference and assumed that the final package of Model WHS Act and Regulations would not reinforce the health and safety disadvantage already experienced by these workers by virtue of their employment status i.e. precarious employment.<sup>5</sup>

The ability for PCBU/Employer to interfere in the election processes is not challenged or curtailed by the proposed Regulation 2.1.5. This Regulation says that if an employer (PCBU) is delaying an election of a HSR, they will only be in breach of the Regulation if it can be shown that the delay was *intentional*. How will inspectors determine intentional?

It must be clear that the PCBU/employer is not able to conduct or control the election.

#### **Recommendation**

Delete Regulation 2.1.4 and replace with a provision based on current NSW Regulation 25

“The procedures with respect to the election of HS representatives must comply with the following requirements:

- (a) the HS representative must be elected by and from the employees in the relevant workgroup the person represents,
- (b) the election must be conducted in a manner that is consistent with recognised democratic principles”.

#### **Recommendation**

Delete the word intentionally from Regulation 2.1.5 and use Qld Act section 67.2 to ensure PCBU cannot elect the HSR.

#### **2.1.7 Training of Health and Safety Representatives**

The note under Regulation 2.1.7 means that only those HSRs who are good at negotiating with their employer or who have an employer committed to H&S training will be able to avail themselves of anything but the basic training. Entitlements to training for HSR cannot be subject to the negotiating ability of HSRs - some will have access to training that others will not. The AMIEU does not support the Model WHS Act provisions for HSR access to training. These provisions undermine existing state laws e.g. Victoria and South Australia.

Whenever a Regulator approves or conducts a course the HSR must have a right to attend. That right cannot be interfered with by a PCBU. The Victorian OHS Act requirement that a HSR must give 2 weeks notice of intention to attend a course needs to be inserted into the Model WHS Act

i.e. replace Clause 72.2.a with Section 67.2 of Victorian OHS Act 2004.

The proposed addition is based on the Victorian Act and is essential to ensure harmonised entitlements for all HSRs (which are not dependant on employment arrangements), to provide certainty to HSRs, their PCBU (employer) and inspectors. The AMIEU objects strongly to any provisions that allow one group of workers to be treated less equally than others.

#### **Recommendation**

The Note at Regulation 2.1.7 must be converted into a provision that a HSR is entitled to attend:

(c) any other course approved or conducted by the Regulator provided the HSR gives 14 days notice.

#### **Regulation 2.2.2 Terms of Agreed Procedure**

The AMIEU strongly supports this provision. It ensures that an 'agreed procedure' cannot override or undermine the rights of workers and their representatives. However, the wording does not link 'agreed procedures' from the Act to this provision ie Cl 81(2) if there is an agreed procedure the default does not apply. This Regulation would achieve it's intent if it was added to S 81 of the Act as a note.

#### **Recommendation**

Add Regulation 2.2.2. as a note to Model WHS Act Clauses 81.2.

### **PART 2.3.**

#### **Regulation 2.3.1 Cessation of Unsafe Work**

As currently written, workers who are covered by an Enterprise Agreement will have their entitlements cut; the list refers only to entitlements under National Employment Standards (NES) of the Fair Work Act 2009.

#### **Recommendation**

Add to Regulation 2.3.1. (d) or any industrial agreement

#### **Information Instruction & Training**

There is a need for a generic provision to ensure that all workers are provided with sufficient information and training about all the hazards of their work and the methods their employer (PCBU) has taken to control them. There is no provision in the Model WHS Act that requires the PCBU to provide information to workers in language/form that is understandable. This is of particular importance in the Meat Industry where many workers' primary language is not English. Looking only at our industry the AMIEU currently see the necessity to provide information in Arabic, Chinese, Dari, Dinka, Portuguese, Somali, Spanish, Tagalog and Vietnamese for our industry.

The adoption of a Regulation based on the SA Regulation 22—Information, instruction and training is strongly supported.

Regulations 7.1.56.2 & 3 are good templates that should be used across all of the chapters in the Regulations (Regulation. 7.1.56.2. (b) is supported).

### **Recommendation**

Insert a generic provision to apply to all Regulations such as

- (1) A PCBU must, ensure that a worker receives suitable and adequate information, instruction and on-going training for any task that he or she may be required to perform at work.*
- (2) The amount of information, instruction and training required, and the time at which it must be provided, will be assessed according to the nature of the hazards and risks associated with the particular task; and*
- (b) the information, instruction and training must be reviewed and revised at reasonable intervals; and*
- (c) the information, instruction and training must be provided in a language or a form and manner that is readily accessible and comprehensible to the workers; and*
- (d) records must be kept in relation to the provision of information, and training.*

Insert in each Chapter a Regulation based upon Regulations 7.1.56.2 & 3

### **Person & Person Conducting Business or Undertaking (PCBU)**

The model regulations lack clarity as to who the duty holder is in many circumstances. This is especially the case when the single word person is used. It is often unclear if the duty holder is a PCBU or a natural person, or a manufacturer etc. This requires re-drafting across the regulations.

The difficulties in understanding just who a PCBU is could not be better highlighted by the answers given to the Senate estimates Committee (Feb 23rd 2011) by Ms Justine Ross, Branch Manager, SWA. Ms Ross, one of the senior persons responsible for drafting the Model WHS Act, had difficulty explaining to the Senators just who was the PCBU.

That suggests for the rest of the community this may be a hard ask indeed with the potential that rather than focussing on protecting workers and doing what is reasonably practicable unnecessary debates will occur - am I the duty holder or is it you? This is also a problem with the Draft Codes where the wording refers to 'you' and is confused about who exactly is being addressed as the audience.

### **Record Keeping**

There are numerous requirements on the regulations regarding record keeping - records of training provided, records of risk assessment, records of health surveillance, Safe Work Method Statements, permits and licences etc. The requirement to keep records is also implied in some regulations.

In addition the various Codes and the Code on How to Manage Work Health and Safety Risks include the need for records of risk assessments to be kept etc. There are different time frames applying to record keeping requirements - some necessarily appropriate e.g. 30 years for hazardous chemicals and some where the requirements are different across the regulations.

In our view there is a need for principles to be established that any documentation regarding risk assessment, registers, safe work methods etc must be provided to workers and their representatives and be readily accessible at the workplace. There are various provisions across current jurisdictions relating to individual regulations, as follows:

**Commonwealth 8.37 Availability of risk assessment records**

- (a) to any employee who is likely to be exposed to the risk associated with the dangerous goods; and
- (b) to each health and safety representative at the workplace.

**SA 208 Duties of building owners and other persons in possession of asbestos**

(6) A person who is required to maintain an asbestos Register must present the Register (or a copy of the Register) for inspection when requested to do so by—

- (a) an inspector; or
- (b) a person authorised by the Director; or
- (c) a person who, in the course of work, could come into contact with any material, or fibres from any material, required to be included in the Register;
- or (d) a health and safety representative, or a health and safety committee, that has any responsibility in relation to the performance of any work in the area of the asbestos.

**TAS 44 Register of qualifications** Before allowing or directing a person to undertake a specified task, an accountable person must... recorded in a Register at the relevant workplace and that the Register is available for inspection by an employees' safety representative or an inspector; or

**WA 4.34 Certain records to be kept in relation to plant**

(3) A person who, at a workplace, is an employer, a main contractor, a self-employed person, a person having control of the workplace or a person having control of access to the workplace must ensure that —

- (a) any record kept by the person under subregulation (1); and
- (b) any information that has been provided under Regulation 4.33 about plant at the workplace,

is accessible at all reasonable times to any person working at the workplace and to any safety and health representative at the workplace..

**NT 38 (5)** An employer shall keep a record of all assessments made under this regulation:

(a) for a period of 30 years after the last review, where the assessment relates to exposure of a worker to a hazardous substance and the assessment indicates a requirement for health surveillance or for monitoring of a worker's exposure to the substance; and

(b) for a period of 5 years after the last review, for all other assessments.

(6) An employer shall make a record kept under subregulation (5) available, on request, to a worker who is or may be exposed to a risk to which the record relates.

In our view there must be a generic provision based on current regulatory requirements added to the risk management and information training and supervision Regulations we have argued for in our submission to ensure all records are accessible at reasonable times to any person working at the workplace and to any safety and health representative at the workplace. In addition we believe that a provision which requires that these records are available for inspection by an inspector is required.

### **Regulation Penalty Regime**

The criteria for what is Act compliance is detailed in the Issues Paper. There are inconsistencies in the approach outlined in the proposed penalties and infringement notice table. All risk control duties - general and specific must be subject to Act compliance. The methodology as proposed will undermine the stated policy position of increasing fines for breaches of the Act.

If the methodology of the Issues paper is adopted this would mean that failing to provide a fall arrest system for workers working above 2 metres could only ever receive a penalty of maximum \$60,000. This is unacceptable.

Failure to provide a well known and regulated risk control measure must be able to be prosecuted under the WHS Act or the Regulations. It is possible to foresee that WHS Act prosecutions would be limited to cases where **injury occurred** and not where **serious risk of injury** occurred. This is an extremely important distinction and goes to the heart of a regulatory regime which, the AMIEU had understood was based on a preventative model i.e. compliance for control of risk not compliance for an outcome of injury/death.

The criteria for Level 1:

- very serious consequences i.e. risk of death or serious injury to the person if the risk control fails;
  - risk control offences for high risk industries and
  - other specific risk control
- must be included as offences linked to the Model Act.

### **Application of Section 16.3.b of WHS Act**

Although there has been considerable legal debate on whether or not the provision of Model WHS Act Clause 16(3)(b) delivers a 'control' test (which WRMC agreed was not to be in the Model Act), our concerns are about the inclusion of workers as duty holders and the potential for PCBUs and their lawyers to allege that the PCBU met their duty by relying *on a worker and/or competent persons duties* (someone else to meet their duty of care).

Our concerns are highlighted by both the wording of the EM which at 66 states that 'where a duty holder has a very limited capacity, that factor will assist in determining what is 'reasonably practicable' for them in complying with their duty of care' and by the lack of clarity in the Model Regulations about who the duty holder is or where the PCBUs duty has actually been transferred onto another person. This is most evident in the Diving Regulations where the duty of care of the PCBU has been transferred to the dive supervisor.

The AMIEU considers that the drafters have erred in the formulation of this provision by not restricting this clause to PCBUs. We believe the intent was to ensure that where there were multiple PCBUs that each PCBU duty holder is required to meet their obligations, irrespective of another having the same or similar obligations. This is well established in OHS case law and is codified in some jurisdiction e.g. Qld and Vic. The EM re-states the established practice of multiple PCBUs duties by referring to the 'reasonably practicable' test.

The inclusion of workers in 16(3)(b) [as under Clause 28 workers are duty holders] is opposed as the alleged protection of the reasonably practicable test do not apply to workers. Their duty is qualified by 'reasonable concern'.

Equally the transfer of PCBU duties onto others in the Model Regulations is not supported.

Additionally, despite assurances from SWA, the AMIEU is extremely concerned that although some regulators have insisted that workers would never be prosecuted under this provision, this does not meet with union experience.

[For example](#), in 2006 the AMWU launched a prosecution against James Hardie for failure to ensure a safe system of work. NSW WorkCover refused to prosecute the employer as they claimed the injured worker, as a tradesperson, should have been trained during his apprenticeship on safe work practices. The dangerous practice was custom and practice at the company and the health and safety issues had been reported to management. The AMWU prosecuted James Hardie and were successful in bringing that prosecution. This highlights two important facts:

- there are precedents where employers and regulators were prepared to put the responsibility onto the worker
- the importance of right of third parties to prosecute (a right that has not been included in the Model WHS Act and the replacement provision for this loss, Clause 231, will be null and void in most jurisdictions (other than Victoria) due to the legislation covering the role of Director of Public Prosecutions).

### Part 4.5.5 High Risk Work licences

The model Regulations do not contain a provision which allows for mutual recognition of HRW licences. Furthermore, Regulation 4.5.5(2)(f) requires HRW licence applicants to include a declaration that the applicant does not hold an equivalent licence in another jurisdiction.

The harmonisation of OHS laws has an aim of contributing to create a seamless national economy and cut red tape for business. The lack of mutual recognition of licences is not consistent with such an aim.

The Victorian Regulations (r6.6.4) contain a provision which states that a reference to a HRW licence includes a reference to an equivalent licence or certificate issued by a corresponding Authority and is being used under the terms and conditions under which it was granted. This is not covered under State or Commonwealth mutual recognition legislation.

### Chapter 1: Preliminary (e.g. definitions)

#### Definitions

In general we believe that the definitions section should be revised to only include those definitions applicable to the WHS Regulations as a whole or where the reader is being directed to a specific chapter, with definitions which only apply to a specific Chapters being defined at the commencement of that Chapter or the relevant Part. Specific comments on definitions are detailed in the respective chapters.

#### General comments:

- *control measure, in relation to risk to health and safety, means a measure implemented to eliminate or minimise the risk.* This definition should have added 'to the lowest level reasonably practicable in accordance with the preferred order of controls.' This is fundamental to the management of OHS.
- GHS and hazardous chemical - see later comment in the Hazardous Chemicals Chapter. The web address of where the GHS can be found must be added.
- Health surveillance is limited to exposure to a hazardous chemical. As Noise also has an exposure standard and established methods of testing - audiometric and audiological testing - the definition of health surveillance should include audiometric testing, medical examinations (including audiological examinations) and biological monitoring.

#### Exclusions:

- Atmospheric Monitoring is not defined. Vic Reg 7.1.47 defines *atmospheric monitoring as: a means a procedure whereby air is sampled within the breathing zone of a person to evaluate the person's exposure to airborne contaminants.* This definition should be added.
- First aid is not defined. The definition used in the First Aid Code should be added to this provision. *First aid is the immediate treatment or*

*care given to person suffering from an injury or illness until more advanced care is provided or the person recovers.*

## **Chapter 2: Representation and participation** (e.g. power to request review of risk control measures in certain circumstances)

The difficulties in this Chapter are of such concern to the AMIEU that most of them have been included in our overarching comment in Part 1. In particular the issues of elections of HSRs and training of HSRs in the WHS Regulations are totally insufficient

### **Part 2.2 Issue Resolution**

In surveys conducted by the Victorian Trades Hall Council (e.g. 'The view from the front line'), many workers and HSRs report having been intimidated or bullied by their employer as a result of raising OHS issues. In some circumstances the OHS Key Performance Indicators for supervisors'/managers' are structured so that supervisors and workers are pressured not to report health and safety issues. These behaviours are prevalent in the Meat Industry. The AMIEU has had to run unfair/unlawful dismissal cases when HSRs have been sacked after raising health and safety issues and the regulator has taken no action.

The proposed regulations provide less protection than the Victorian Issue Resolution Regulations (Part 2.2) – these must be retained in their entirety in order to ensure that the anonymity of workers is maintained via an obligation to report issues for resolution to HSR. In addition, the right of a worker to leave their area of work to report an issue must be included i.e. as per Victorian Regulation 2.2.3. (1).

### **Recommendation**

Insert Victorian Regulation 2.2.3 into Model WHS regulations 2.2.1. As the Act links with this provision reference to s81 and 82 of the Act should be added. Additional guidance is expected in the Representation guidance not yet received.

### **Regulation 2.2.2 Terms of Agreed Procedure**

We strongly support this provision. It ensures that an 'agreed procedure' cannot override or undermine the rights of workers and their representatives. However the wording does not link 'agreed procedures' from the Act to this provision i.e. clause 81(2) if there is an agreed procedure the default does not apply. This Regulation would achieve its intent if it were added to S 81 of the Act as a note.

### **Recommendation**

Add Regulation 2.2.2 as a note to Model WHS Act Clauses 81.2.

### **Regulation 2.2.3 Person conducting business or undertaking must set out (agreed) procedure in writing**

The Draft Consultation Code at 4.4 (page 14) states that procedures should be in writing to provide clarity and certainty at the workplace and assist in demonstrating compliance **As 2.2.3 is a mandatory provision the Code in relation to agreed issue resolution procedures should refer to 2.2.3 and 'should' be replaced with 'must'**.

A number of regulations use the following words 'to be set out and expressed in a way that is readily accessible and comprehensible to persons who use it' this wording should replace 'communicated to all workers'.

### **Part 2.3. Cessation of Unsafe Work**

As currently written, workers who are covered by an Enterprise Agreement will have their entitlements cut; the list only refers to entitlements under National Employment Standards (NES) of the Fair Work Act 2009.

### **Recommendation**

Add to Regulation 2.3.1. (d) or any industrial agreement

### **Part 2.4 Workplace Entry by WHS Entry Permit Holders**

The notes at 2.4.4, 2.4.5 and 2.4.6 refer to section 130 of the Act incorrectly. Section 130 Model WHS Act requires that a permit holder cannot disclose the name of any worker, without their consent. Delete "*who is a member of the relevant trade union*".  
*who is a member of the relevant trade union*".

## **Chapter 3: General workplace management**

### **Part 3.1 General working environment**

The chapter makes no reference to fire precautions. A general provision patterned on Regulation 3.3.1. (1) is supported.

**Regulation 3.1.1(f)** is internally contradictory. Extremes of heat and cold do pose a risk. In order to make sense this should be "Workers exposed to heat and cold at the workplace are able to carry out work without risk to health and safety" - delete 'extremes'. This is extremely important to workers in the Meat Industry as temperatures in the abattoirs range from hot and humid on the killing floors to near freezing in the processing rooms

### **Regulation 3.1.2**

This Chapter refers to the fundamental requirements of access to drinking water, toilets, washing and dining facilities. The hygienic provision of

these is a fundamental human health requirement and therefore cannot be qualified by *so far as reasonably practicable*.

This is an issue that cannot be overstated in the Meat Industry when it is recognised that slaughterers are constantly exposed to blood, fat, urine and faecal matter.

*How the facility e.g. drinking water/toilet, is provided cannot be mandated however it must be mandatory to provide access to clean, safe and potable drinking water/access to clean hygienic toilet, either portable or otherwise.* (Regulation 3.1.2)

**Regulation 3.1.2** inadequately covers the types of amenities currently provided and needs expansion e.g. seating, storage for personal belongings etc. The NSW Regulation 18 is a good template to replicate:

1. *Employer to provide amenities*
2. *An employer must ensure that appropriate amenities are available for all of the employer's employees while they are at work.*
3. *The appropriateness of amenities is to be determined having regard to all of the circumstances of the case, including the following:*
  - a. *the nature of the work undertaken at the place of work,*
  - b. *the size and location of the place of work,*
  - c. *the number of men and of women at the place of work.*
4. *In this clause, **amenities** means facilities provided for the welfare or personal hygiene needs of persons and includes toilets, rest rooms, shelter sheds, **seating**, dining rooms, change rooms, provision of drinking water, lockers and washing facilities.*

### **Regulation 3.1.2**

The requirements for First Aid and Emergency plans are correctly drafted. The inclusion of an 'assessment' provision similar to First Aid 3.3.1 and 3.4.1 Emergency Plans and removal of SFARP from Regulation 3.1.2 would rectify the problem.

*i.e. the matters to be taken into account*

*(3) In considering how to comply with sub Regulations (1) and (2), a person conducting a business or undertaking must consider all relevant matters including:*

- (a) the nature of the work being carried out at the workplace; and*
- (b) the nature of the hazards at the workplace; and*
- (c) the size and location of the workplace; and*
- (d) the number and composition of the workers and other persons at the workplace.*

Part 3.2 Personal protective equipment

Worker duties, in regard to personal protective equipment, are not qualified by the phrase so far as is reasonably practicable. This is in stark contrast to other duty holders in the Regulations.

PPE must not create other risks for the wearer; and if risks are created then the work must be designed to mitigate these risks e.g. the wearing of PPE can increase exposure to heat; wearing gloves can increase the force needed to grip a knife,

A worker should have the right (with good cause) to refuse to use PPE if he/she has reason to believe the PPE provided is damaged, unclean, or incorrect for the work to be carried out, or if using the PPE would put his/her OH&S at risk for other reasons.

Regulation 3.2.2 Use of personal protective equipment. 'PPE must not create other risks for the wearer' should be added.

Regulation 3.2.2(2) (c) refers to information, instruction and training. This regulation highlights the usefulness of this provision and it should be used throughout all chapters in the regulations.

Regulation 3.2.5. (4)

It is pointless for a worker and will not protect the workers health and safety if the PCBU does not act on the report of damage etc.

*Add in an obligation for the PCBU must act on report from the worker.*

### Part 3.3 First aid

A definition of First Aid is required; the definition in the Code of Practice is supported.

South Australian Regulation 35, *arrangement for sickness*, needs to be added. Again is a basic requirement of any place where people work and spend considerable parts of their waking time.

The general format to Part 3.3 is supported

Regulation 3.3.1. (b)

*Add in immediate before access to 3.3.1.b.*

Delete Regulation 3.3.1.2.b because the provisions in Regulation 3.3.1.3 deal with *the how* of the provision of first aid facilities.

### Part 3.4 Emergency plans

The general format to Part 3.4 is supported (see comment for Part 3.1)

The provisions regarding emergency exits are qualified by *so far as reasonably practicable*. How an emergency exit is to be provided will change from work site to work site, but the ability to quickly and safely exit in an emergency cannot be qualified by the phrase so far as reasonably practicable.

Regulation 3.4.1 needs to include any accommodation provided to employees in connection with the workplace.

Part 3.5 Review of general workplace management measures

## **Chapter 4: Hazardous work**

Part 4.1 Noise

It is disturbing that proposed 21<sup>st</sup> century regulations for a 19 century hazard such as noise, will lower current protections. The proposal reduces the Noise Regulations to an exposure standard, which has not been changed for at least two decades! This is unacceptable. SafeWork Australia's own survey: National Hazard Worker Surveillance reported that

- around 30% of workers are likely to work in environments with noise levels above 85dBA
- there appears to be a reliance on the provision of protective equipment and
- the hierarchy of control is probably not being followed appropriately in many Australian workplaces.

OHS Alert<sup>6</sup> recently reported that WorkSafe Western Australia *found that excessive noise is prevalent in nearly one in three workplaces, despite being recognised as a hazard for "many years". The noisiest industries were construction and manufacturing. WorkSafe acting commissioner Lex McCulloch said many employers had not had the risk assessed by a competent person and "had no basis for formulating an effective noise control and management program". "In other workplaces, although the noise hazards had been identified, the only action taken was the provision of personal hearing protectors," he said, adding that a "higher order" of controls needed to be in place.*

The continued reliance in 2011 on exposure standards as high as 85 dBA and 140 dBC is strongly opposed. There is an urgent need for this standard to be reviewed in light of current scientific/medical evidence and a recent NSW prosecution. These exposure standards need to be reduced to 80 and 115 respectively.

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<sup>6</sup> OHS Alert Monday 14<sup>th</sup> March 2011 *Workplace noise hazards still rife*

There is no Hazard Identification duty for the purposes of determining noise exposure. In addition to the generic risk management provision (as argued for above) there needs to be a specific provision to determine noise exposure i.e. how can a PCBU ensure that workers aren't exposed to noise exposure standard if they don't know the level of noise workers are exposed to. This is well expressed in the Vic Regulations 3.2.7.

There is no requirement for an approved testing regime to be followed to determine exposure levels. The values for the exposure standard must be determined without taking into account any protection that may be provided by personal hearing protectors (This provision complies with the requirements of AS/NZS 1269.1 and ISO 1999 and ISO 9612).

The Regulations are silent regarding the designing out of noise risk e.g. designer of plant, manufacturers of plant obligations to take into account noise levels during the design and manufacture phase (Vic Noise Regulation 3.2.1 - 3.2.3, 3.3.10). There is no link to the Plant Regulations or designers/manufacturers duties under the Model WHS Act.

The note below Regulation 4.1.2(5) is supported and this type of approach is required elsewhere in the Regulations. The Note should also refer to 3.2.4 (signage).

The Regulation is silent on the appropriate form of the information/instruction etc. The provision in Hazardous Chemicals Regulations (Regulation 7.1.56) is a good template to use.

It is extremely concerning that there is no reference to health surveillance for noise exposures i.e. audiometric testing. The regulations must include reference to audiometric testing (Victorian OHS Regulation 3.2.11 to 3.2.14). Most jurisdictions have applied the Australian Standard, i.e. applied the standard as if it was a Regulations, hence testing etc is included in that control of noise in those jurisdictions.

**Regulation 4.1.3** The review of noise control measures omits one of the necessary triggers necessary for the review of control measures i.e. report of change in hearing which may require a change in PPE or other control measures to protect that persons hearing. Suggested wording '*...following health surveillance of a person that reports that the person has suffered hearing loss, or reports any other health effect associated with noise exposure. ...*'

The Noise Regulation is based on an exposure standard but there is no obligation for recording keeping. To be consistent with current laws and the Hazardous Chemicals (Regulations 7.1.47) the Noise Chapter needs a similar record keeping Regulation.

## **Recommendations**

Insert requirement for designing out of sources of harmful noise exposure during the design phase (Vic Noise Regulation 3.2.1 - 3.2.3, 3.3.10).  
Insert Hazard Identification provision as per Victorian Regulations  
Insert requirement to review risk controls following adverse health surveillance results  
Insert requirements for audiometric measurement, information and training and record keeping as per Hazardous Chemicals (Regulations 7.1.47)  
Lower exposure standards to 80 dBA and 115 dBA respectively

#### Part 4.2 Hazardous manual tasks

The recently released NHEWS Report: Biomechanical demands, pain and fatigue symptoms and control provision in Australian workplaces highlights the prevalence of self reported health outcomes and exposures to risk factors of a significant proportion of the working population. The NHEWS summary noted (emphasis added)<sup>7</sup>:

- Workers with high composite biomechanical demand exposure were more likely to report experiencing pain and fatigue *all the time* or *often* than workers with lower biomechanical demand exposure.
- Workers in large workplaces and those with high biomechanical demand exposure were most likely to be provided with controls. Policy development needs to address the problems faced by smaller workplaces in the provision of biomechanical demand controls. Policy interventions should also seek to improve the provision of controls to workers exposed to intermediate levels of biomechanical demand.
- Although male workers typically were exposed to higher levels of biomechanical demands, female workers were more likely to report pain and fatigue symptoms and less likely to be provided with biomechanical demand controls than male workers. This potential link between reduced likelihood of control provision and increased reporting of pain and fatigue symptoms by female workers requires further, urgent investigation and attention by policy makers.
- More research on biomechanical demand control provision, use and efficacy is required in order to determine the size and characteristics of the Australian working population at risk of developing WMSDs as a result of biomechanical demand exposure.

Given these findings it is disturbing that the proposed Regulations ignore design as a control mechanism and limit the number of factors to be taken into account when defining hazardous manual tasks. Using the definitions provided in the draft Regulation, some of those most exposed e.g. women in Health and Community Services would be neglected.

The subset of Manual tasks, hazardous manual task definition does not adequately cover the risks associated with manual handling.

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<sup>7</sup> National Hazard Exposure Worker Surveillance: Biomechanical demands, pain and fatigue symptoms and control provision in Australian workplaces, SafeWork Australia, March 2011.

This highlights the need for a hazardous manual task to include the performing of the types of tasks, in Regulation 4.2.1(1), in

- circumstances that increase the risk of injury i.e. exposure to environmental conditions of heat and cold [use words from Regulation 4.2.4.2 (c)];<sup>8</sup>
- when shape of the object contributes to the hazardous nature of the task,
- when the instability of the load contributes to the hazardous nature of the task and
- importantly a *person or animal* must also be included in the definition of Hazardous Manual Task.

Handling animals and people is hazardous by nature, not by analysis. The reference to animal/person must be included in **both 4.2.1.1 and 4.2.1.2.**

*The Victorian Regulations 1.15 definition is an example of how the proposed Regulation 4.2.1. should be amended: hazardous manual handling means—manual handling of live persons or animals; and manual handling of unstable or unbalanced loads or loads that are difficult to grasp or hold;*

The inclusion of Regulation 4.2.3 is supported.

**Regulation 4.2.4** The reference to SFARP needs to be deleted, as the Regulation only applies to musculo-skeletal disorders from hazardous manual tasks. i.e. the SFARP qualifier has already been applied.

**Regulation 4.2.1 & 4.2.2** The restriction of the Regulations to hazardous manual tasks, as defined, does not deal with the risks associated with manual tasks and leads to the Regulations dealing only with an outcome i.e. musculoskeletal disorders. If the definition of Hazardous Manual Tasks was defined as proposed above the difficult would be removed.

**Regulation 4.2.2.4 control of risks of hazardous manual tasks**

**Regulation 4.2.1(2)** as currently worded lacks clarity. Replace the word *task* with *activity*

There is no overarching requirement for any duty holder to design to remove the risk of manual handling task e.g. South Australia

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<sup>8</sup> For example, exposure to vibration in Darwin is extremely unlikely to lead to vibration induced white finger, but exposure to similar vibration in Hobart can lead to white finger: the added risk factor is the temperature at which the exposure to vibration occurs. This also applies to for example, to cold storage workers and the increased incidence of musculo-skeletal disorders.

## **65—Design**

*An employer must ensure, so far as is reasonably practicable—*

*(a) that the plant and containers used in the workplace are designed, constructed and maintained so as to be, so far as is reasonably practicable, safe and without risk to health and safety when handled manually; and*

*(b) that work practices that involve manual handling are so designed, implemented and maintained as to be, so far as is reasonably practicable, safe and without risk to health and safety; and*

*(c) that the working environment is so designed, constructed and maintained as to be, so far as is reasonably practicable, consistent with safe manual handling practices.*

**Regulation 4.2.4(2) (c)** *The lack of an obligation to redesign the hazardous manual task is disturbing and significantly reduces current requirements: for example the South Australian Regulations 67: (the employer must—(i) redesign the manual handling task to eliminate or control the risk factors).*

Additionally, the words from South Australian Regulation 66.2 need to be inserted: “*other relevant factors as identified by the employer and/or Health and Safety Representative*”.

**Regulation 4.2.4(3)** The word *provision* needs to be replaced by *ensure* as the proposed wording diminishes the responsibilities of a PCBU.

**Regulation 4.2.5.2** is supported and this general format of Review of risk control measures is one which should be adopted in other Chapters i.e. inclusion of new or additional information, and occurrence of injury.

## **Recommendation**

*Use Victorian Regulations 1.15 definition to amend proposed Regulation 4.2.1: hazardous manual handling means—manual handling of live persons or animals; and manual handling of unstable or unbalanced loads or loads that are difficult to grasp or hold;*

Remove SFARP from draft Regulation 4.2.4

Insert South Australian requirements to design to remove hazardous manual handling tasks and to redesign existing hazardous tasks: SA Regulation 67 and 66.2.

## Part 4.3 Confined spaces

This chapter highlights the difficulty of the processes used to draft this Chapter. The Australian Standard for Confined Spaces was recently reviewed. The AS definition of a Confined Space differs from the proposed regulation.

*AS 2865: an enclosed or partially enclosed space that is not intended or designed primarily for human occupancy, within which there is a risk of one or more of the following:*

- *An oxygen concentration outside of safe oxygen range*
- *A concentration of airborne contamination that may cause impairment, loss of consciousness or asphyxiation*
- *A concentration of flammable airborne contaminant that may cause injury from fire or explosion*
- *Engulfment in a stored free flowing solid or raising level of liquid that may cause suffocation or drowning.*

Given the widespread use of the AS on Confined Spaces, how will Regulators deal with the differences? A Regulator's response to that question is likely to be *that duty holders will have to meet the Regulatory requirements*. But what are the practical applications and consequences of the differences?

### **Regulation 4.3.2 - Meaning of a confined space:**

The Australian Standards definition is preferred. The proposed definition is too narrow and does not address the issue of modification of a Confined Space.

### **Recommendation**

(d) "presents a risk to health or safety ..." should be changed to "*Has, or is likely to have, a risk to health or safety .....*"

Add South Australian Regulation 42.2: a person who modifies a confined space must ensure that the modification does not detrimentally affect safe means of entry and exit.

### **Regulation 4.3.7.1 (a) Hazard Identification**

It is unacceptable that the duty to identify hazards associated with confined spaces is modified by the phrase *so far as reasonably practicable (SFARP)*: the manner in which risk are controlled may be subject to SFARP but not whether you identify the hazards/risks.

### **Regulations 4.3.7 and 4.3.8 mix Hazard identification, Risk Assessment and Risk Control obligations.**

As entry into Confined Spaces is high risk work, both Hazard Identification and Risk Assessment are required. Regulations 4.3.7.1 (b) and 4.3.7.2 should go into a Risk Assessment Regulation

**New Risk assessment Regulation would include:**

Regulation 4.3.7.1. (b)

Regulation 4.3.8.2 prefaced with the words, the Risk assessment would take into account the following factors

Regulation 4.3.7.2

**New Risk Control Regulation 4.3.8**

The risk control Regulation must refer to the preferred order of control: the format needs to be based upon the wording of 4.4.8.(1) and the approach outlined in our overarching comments and/or the approach of South Australian Regulation 44 Control of risk Confined Spaces.

**Regulation 4.3.9 and 4.3.13**

These proposed Regulations are examples of the inappropriate use of SFARP. The risk controls are known and therefore must not subject to the qualifier SRARP.

**4.3.10 – Signage**

This regulation does not require the signage to comply with AS 1319 – Safety signs for the Occupational Environment. This requirement should be stated in this Regulation.

**4.3.13 – Specific control – atmosphere**

(1) (a) “purging or ventilation of any contaminant in the atmosphere of the confined space is carried out, so far as is reasonably practicable”. This sentence should make clear to the reader that the aim of purging or ventilation is to provide a safe atmosphere e.g.

“purging or ventilation of any contaminant in the atmosphere of the confined space is carried out, so far as is reasonably practicable, *in order to provide a safe atmosphere*”

(2) (a) “The atmosphere of the confined space has a safe oxygen level”. What about other atmospheric contaminants? An atmosphere can have an oxygen level within the safe range (19.5 – 23.5% oxygen) and still contain a harmful level of a contaminant - it requires the addition of approximately 7% of an additional gas to reduce the oxygen level from 20.9% to 19.5%. 7% or 70,000 ppm of any gas or vapour other than air or water vapour is potentially very harmful.

Regulation 4.3.14 requires that exposure standards are not exceeded but many contaminants do not have exposure standards. This supports the need to refer to other atmospheric hazards in (2) (a) as stated above.

#### **4.3.17 – Emergency procedures**

This Regulation should contain a clause requiring all relevant information to be provided to persons involved in a confined space rescue or making it illegal to conceal any relevant information from rescue workers.

#### **4.3.20 – Review of control measures**

This Regulation should clearly state the need for work in the confined space to cease while a review, required by this Regulation, is taking place and, where they are required, revised control measures are implemented.

#### **Code of practice – Confined spaces**

##### **Page 8 – Status of a space may change**

Stating that a brand new road tanker is not a confined space because it has never held any substances is not appropriate. The work to be undertaken may introduce an atmospheric hazard, in which case, the road tanker, even though it is 'clean', would be a confined space. It must be emphasised that when deciding whether a workplace constitutes a confined space or not, the nature of the work must be considered.

Additionally, in small confined spaces the oxygen level may fall below 19.5% due solely to the respiration of workers. The fact that the space is clean is again largely irrelevant.

##### **Page 9 – Entry and exit**

This section discusses considerations relating to entry and exit points of confined spaces. The points mentioned are all relevant, but one point it doesn't mention is the location of the entry/exit point. Many confined spaces have entry points that are of a reasonable size but the location of the entry point means removing an injured or unconscious worker would be very difficult. The location of the entry point is a consideration that should be discussed in this section.

##### **Page 16 – Atmospheric testing and monitoring**

"The top, middle and bottom of the space should all be tested". Should we be providing better advice to workers? In some cases testing at the top, middle and bottom will not be sufficient. In the USA OSHA provides the following advice:

"(4) Testing stratified atmospheres. When monitoring for entries involving a descent into atmospheres that may be stratified, the atmospheric envelope should be tested a distance of approximately 4 feet (1.22 m) in the direction of travel and to each side. If a sampling probe is used, the entrant's rate of progress should be slowed to accommodate the sampling speed and detector response." (Standard for Permit Required Confined

Spaces, 1910.146, Appendix B - procedures for atmospheric testing).

### **Page 21 - 5.4 Isolation**

1<sup>st</sup> line: "If gases, fumes or vapours could enter the confined space ..." Should say: If *liquids*, gases or vapours could enter the confined space ..."

Isolation is essential to stop liquids as well as gaseous contaminants from entering the space. Fume is usually defined as condensing vaporised material and is most commonly used to refer to metal fumes from processes such as smelting, thermal cutting and welding operations. Fumes, in the correct meaning of the word are unlikely to enter the confined space through a pipeline

### **Page 24 – Purging**

This section should reinforce the importance of atmospheric testing (gas testing) prior to entry if purging is performed with anything other than clean fresh air. Many workers have been overcome or even died after entering spaces that have been purged - typically with nitrogen or argon - and not adequately ventilated after purging. The only way to tell that ventilation has been effective is to gas test.

## **Part 4.4 Falls**

The AMIEU supports comment by the unions in the construction industry that the current mandated controls for falls above two metres must continue for High Risk Construction.

Therefore the WHS Regulations need

1. Falls Regulations as per current Part 4.4. and
2. Regulations pertaining to Falls over two metres must be added to the Construction Chapter. Those Regulations must exclude Regulation 4.4.4 i.e. in construction it is current practice and state of knowledge (i.e. SFARP test has been met) that Administrative Controls are not to be used as a control measure.

The format of Regulation 4.4.8 is supported

### **Risk Control Measures: suitability and maintenance**

A generic Regulation is required, that applies to all risk controls. Regulation 4.4.5 must apply to all Regulations, with SFARP removed.

### **Regulation 4.4.8.1**

The wording of this Regulation is strongly supported and when accompanied by obligation to eliminate the risk, is a good template that should be applied throughout the Chapters.

**Regulation 4.4.7 – Review of control measures**

This Regulation should require that work on the workplace/work area under review ceases until the review is complete and any necessary changes have been implemented.

**Training**

The Regulations should include a specific requirement to ensure that workers using fall injury minimisation systems, for example, restraint or fall arrest systems, receive appropriate training (an example of this training is to be found in Confined Spaces Regulation 4.3.19.I (a and b)). Currently the training appears to be restricted to Emergency procedures 4.4.6.3.

**Ladders: insert Regulation**

As stated in the code of practice, “many falls take place when people are working from ladders” (p.34). Therefore the Regulations should contain a Regulation similar to Regulation 3.26 – Portable Ladders, of the W.A. Occupational Safety and Health Regulations 1996 (see appendix A). The Code of Practice needs to include requirement for ladders in the workplace to comply with the Australian Standards (AS/NZS 1892.1 and AS/NZS 1892.2).

Part 4.5 High risk work (e.g. Accreditation of Assessors)

Part 4.6 Abrasive blasting

Part 4.7 Electrical work

Part 4.8 Diving work

**Chapter 5: Plant and Structures**

The AMIEU supports

- The provisions relating to second hand machinery and equipment

- The definition of competent persons in the Plant chapter (in contrast to the definition of competent person for the identification of asbestos, which potentially allow someone without hygiene qualifications to make a determination about the presence or absence of asbestos)
- The right of H&S representatives to request a review of the measures being taken to minimise the risks associated with the use of machinery and equipment.
- The provisions for training of workers in Hazardous Chemicals Regulation 7.1.56 are supported and should be included in the Plant and Structures chapter.

**The following specific Regulations are supported**

- 5.1.7 (4a), 5.1.29 (3a) – Guarding
- 5.1.7 (6b), 5.1.29 (5b).
- 5.1.8 Operational controls
- 5.1.36 Roll over protection Tractors
- 5.1.41. Lifts
- 5.1.44 Industrial Robots

If the draft Plant Regulation is implemented without amendment there will be a reduction in current health and safety standards. Risks associated with Plant (machinery and equipment) are well documented, cause significant harm to workers and the risk controls are generally well known. The potential for diminution of health and safety protections is particularly disheartening to the AMIEU: we should not be regressing in the standard of protection offered to workers.

For many duty holders with regard to Plant, the process of identifying the hazards associated with machinery and equipment has been omitted. Checking out machinery and equipment for example nip-points, safety during shut downs and maintenance and cleaning are essential in our industry. This must be added as an obligation on the employer (PCBU).

We oppose the loss of risk assessment throughout the regulations. This is a reduction of accepted standards in most state OHS regulations and the National Standard for Plant Safety. The National Standard on Plant and for example the South Australian Regulations 135 & 136 are useful templates.

The duties of designers of plant is missing from the Regulation SA or NT (9) or 3.5.3 Vic. 5.1.2.and 5.1.3 has to pass information but no requirement for the designer (the provision of the Model Act need to be restated or linked to the Regulations).

The loss of risk assessment throughout the Regulations is opposed. This *dumbing* down of accepted standards and the National Standard for Plant Safety is not acceptable. The National Standard on Plant and South Australian Regulations 135 & 136 are useful templates for a risk assessment provision.

There has been an unnecessary use of *so far as reasonably practicable* in the Regulations. For many risks associated with machinery and equipment solutions are available, technically suitable and well known. There is no need to create another barrier for workers when raising the problems with an employer. For example, the risk of preventing collisions between mobile plant e.g. forklifts, must be a positive requirement on the employer/PCBU, as it is in current Regulations. It is puzzling why the approach in Regulation 5.1.39 Industrial lift Trucks are not applied for other Plant Regulations.

*SFARP must be deleted from Regulations 5.1.7: 5.1.22: 5.1.30: 5.1.35: 5.1.40.2&3: 5.1.40.5 &6.*

#### **Regulation 5.1.29 (3d)**

This Regulation needs a requirement for recording of maintenance and an additional requirement to provide documentation to HSRs.

**Regulation 5.1.38** Inspection of Registered mobile and tower cranes, every 10yrs – this requirement should be linked to being approved for registration.

**Regulation 5.1.39** Excludes the use of Warning Devices.

The AMIEU recommends including Victorian Regulation 3.5.38 **Warning devices on industrial lift trucks** *an employer must ensure that an industrial lift truck is fitted with warning devices that are appropriate to effectively warn people who may be at risk*

#### **Information, Instruction and Training**

The Model WHS Act omits any reference to the provision of information to workers in languages other than English. All of the Regulations must include a provision that requires employers (PCBUs) to provide information and training in a form and manner that is understandable by workers e.g. Regulation 7.1.56.2 & 3, particularly noting the requirements of Regulation 7.1.56.2(b).

**Chapter 6 Construction** (e.g. construction induction requirement)

#### **Chapter 7: Hazardous chemicals**

Part 7.1 Hazardous chemicals

### **The AMIEU supports**

- The amalgamation of the Dangerous Goods Regulation and Hazardous Substances Regulation
- The right of Health & Safety Representatives to request, on reasonable grounds, a review of controls (Regulation 7.1.13)
- Regulations 7.1.13 Section on Emergency disclosure. Particularly (3)
- Regulation 7.1.12 The inclusion of “waste product” in the requirement to develop SDS
- Supports the use of the GHS.

The AMIEU notes that many of the supporting documents and approaches of the Hazardous Chemicals chapter have not been revised for years – prohibited and restricted chemicals, recognised carcinogens, exposure standards, health surveillance. The AMIEU supports the VTHC call for the immediate establishment of a permanent chemicals committee, with appropriate staffing to expedite catching up to the 21<sup>st</sup> century.

### **Lack of positive duties (Regulations 7.1.3 and 7.1.4. 7.1.3 is used as an example)**

In this chapter no duty holder has an obligation classify substances as hazardous.

Regulation 7.1.10 duty holders must determine whether substance is hazardous and if it is ensure it is correctly classified.

Regulation 7.1.3.1. (a) says that the *substance is correctly classified if a determination is made about whether it can be classified*. In this sub-Regulation there is no obligation to classify just an obligation to determine if it can be classified. The subregulation must be amended to provide a positive duty to classify.

This error means that the remainder of the Regulation, for substances that would meet the requirements of the GHS (as modified), is irrelevant. There is no obligation upon which inspectors could require compliance.

The GHS is also not called up in the Regulations. How can the Regulator enforce the Regulation if GHS is not part of the Regulatory framework?

The definition of Hazardous Chemical is incorrect. The definition of a Hazardous Chemical must be amended to “satisfies the criteria for a hazard class in the GHS (as modified in Schedule 7). Given the definition of Hazardous Chemicals why is

As currently drafted this Part does not place a positive duty on duty holders. This is expressed in the **Subdivision 4.1 General**

### **9 General duty of care**

A person who has to any extent, management or control of the handling of hazardous chemicals at the workplace must, as far as is reasonably practicable, take such precautions and exercise such care, to protect the health and safety of persons, and to protect property and/or the environment, from the risks arising from the hazardous chemicals.

## 10 Duty holders

The following persons or classes of persons are subject to duties in accordance with the provisions of this National Standard:

- a) Person who manufactures; and
- b) Person who imports; and
- c) Person who supplies; and
- d) Person who designs storage or handling systems; and
- e) Person who manufactures and/or imports storage or handling systems; and
- f) Person who supplies storage or handling systems; and
- g) Person who installs, erects or commissions storage or handling systems; and
- h) Person-with-control, which includes:
  - (i) the person-with-control of work; and
  - (ii) the person-with-control of the workplace; and
- i) Operator of a pipeline; and
- j) Owner of a pipeline; and
- k) Workers; and
- l) All persons in the workplace.

## Layout

The layout is confusing and is extremely difficult to read. It should follow the same format as the Model Act. That is Duty holders – Designers, Manufacturers, Importers, and PCBUs etc. This would also make the document more user friendly for the users – namely the duty holders.

## Risk Management

There is no requirement to undertake a risk assessment or to document such a process. This was included in the National Draft policy on Workplace Hazardous Chemicals<sup>9</sup> and is essential to the process for determining the risk control measures necessary to prevent/control exposures. The drafters have no doubt argued that the risk assessment duty from the National Draft Policy has been included in Regulation 7.1.31. Substantial parts have been included, however an essential component of risk assessment has not been transferred i.e.

**32.2. (c)** the nature of work required to be performed with the hazardous chemical, including any handling processes within the workplace, and the potential for exposure;

The bypass of the Risk assessment process means no duty holder is required to decide if there is potential for exposure. This is nonsensical!

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<sup>9</sup> Policy Proposal for Workplace Chemicals Model Regulations, SafeWork Australia, July 2009

(Note Regulations 7.1.46 and 47 refer to monitoring for that sub set of substances which have an exposure standard. This is different to assessing the potential for exposure during the use of a hazardous chemical).

The document covers use, handling and storage throughout the document and then talks about a person who operates, tests, maintains and decommissions (Regulation s7.1.48). The AMWU is unsure if cleaning is automatically covered by the work maintenance.

**Regulation 7.1.2 (2)**

The AMIEU is concerned by the exemption of

(a) Chemicals in batteries when in plant. According to the exemption the recharging of a forklift battery when there is a spill of battery fluid leading to worker exposures is excluded from the Regulations. This is not supported by the AMIEU in conjunction with the AMWU.

(e) Hazardous chemicals form integrated refrigeration systems – what of the maintenance worker who services these systems?

**Regulation 7.1. 4 Correct Packaging - a manufacturer's duty.**

Does not impose a positive duty (see comment above)

Manufacturers need to take into account any reasonably foreseeable damage situations – or keeping the product for a longer time than is 'likely'.

**Regulation 7.1.6 Labelling** The AMIEU disagrees with the exemption. Hazardous substances in Household quantities must be labelled appropriately.

**Regulation 7.1.7** The container should be clearly labelled (not just correctly). If this is not reasonably practicable then another means of recognising the product should be used – colour, container shape.

**Regulation 7.1.8 Change Pipe** - to Pipe, Piping system, reactor vessel or any plant that form a part of the manufacturing process

**7.1.9 Missing** - risk phrases; Decomposition/ alterations (e.g. when heated),

SDS There should be a requirement to keep MSDS (old variations) for 60 years.

**Regulation 7.1.17**

A supplier must not supply the chemical if they are aware that it is not properly labelled.

**Regulation 7.1.21**

The AMIEU does not support the current wording for incidental use: as the use of the chemical may be incidental to the task at hand but the potential for exposure may be significant.

**Regulation 7.1.22**

The note should be a section. The person who changes the MSDS must only do this to ensure the information is current and conforms to 7.1.11

**Regulation 7.1.31**

Need inclusion of reference to MSDS and Label is identification.

Add and additional Point (iii) Waste expelled as a consequence of process

**Regulation 7.1.32 and 7.1.33 Risk controls and review of risk control measures**

There is no requirement in either of these Regulations to inspect and conduct maintenance and servicing of the controls e.g. ventilation, closed pipe systems etc. These are critical for the controlling of exposures to hazardous chemicals. Regulation 7.1.33 refers to changes in the substance or evidence to suggest risk controls are not working. However for many hazardous substances performance of the control measures are critical e.g. face velocity for a fume cupboard, then exposures are likely to occur.

**Regulation 7.1.39**

Need to add reference to bunding for Containment and managing spills – and the containment of spills to ensure no leakage into the waterways/

**Regulation 7.1.42 Emergency Equipment** needs to be easily accessible, not just available.

**Regulation 7.1.44**

This needs a note referring to the obligations under Part 3.2 Personal Protective Equipment.

**Regulation 7.1.46** Remove “at the workplace”

**Regulation 7.1.47** Replace with Vic Regulation -

**Regulation 7.1.48 (2)** insert ‘Cleans’

**Regulation 7.1.49** Should be an AS or refer to a schedule.

**Regulation 7.1.43 Emergency plans** should be developed also where the RA indicates a potential for fire, spill or explosion - not just when the quantities are greater than the manifest quantities

#### Part 7.2 Inorganic lead

#### Part 7.3 Asbestos

The AMIEU does not support Part 7.3 as is currently drafted, as it reflects a reduction in safety standards currently in place to protect workers from asbestos.

As a nation we banned the import and export of asbestos materials in 2003. If the current draft is adopted, that initiative will be undermined. Already we have one of the highest incidents of asbestos related disease in the world. The proposed diminution in current standards is strongly opposed. This Chapter needs significant rewriting.

All forms of asbestos must be treated as prohibited carcinogenic substances. The regulations must be written to enable the Regulators to enforce the prohibition. Schedule 10 must be amended to include ALL forms of asbestos.

#### **General comments:**

##### Definition of Friable asbestos

The proposed regulation does not cover asbestos which is a dust, as the definition of friable asbestos only refers to asbestos material that can be made into powder by hand pressure. This reduces the coverage of the regulations from what is currently the case in many states and territories. The definition must be consistent with NOHSC Code of Practice for the Management and Control of Asbestos in the Workplace.

#### **Control of Risk**

At no point in the proposed regulation does it clearly state that exposure to airborne asbestos fibres should be eliminated, so far as is reasonably practicable, by removing asbestos-containing material and no reference to the hierarchy of control which was in some form in the Management and Control Code, has now also disappeared

#### **Content of register, control plan and removal plan**

The proposed regulation does not specify what a PCBU must include in the Asbestos Register, nor does it specify what a licensed asbestos

removalist must include in a Control plan. These requirements are now covered by Codes which is deregulatory and dangerous.

This issue is specifically raised on p16 of the 'Issues Paper': The draft model Code of Practice on How to Manage and Control Asbestos in the Workplace sets out what should be included in the asbestos register and plan. Consideration should be given as to whether this detail is more appropriately included in the model WHS Regulations.' This detail MUST be in the regulations and must include a provision that the register be kept current and reviewed when there are any changes or at least every 5 years.

#### **Health surveillance:**

Currently in Victoria, the action level for the requirement for the PCBU to arrange health surveillance is set at half the exposure standard – however in the proposed draft, this is when the exposure standard is likely to be exceeded. Victorian asbestos removal workers or workers who may be working in activities involving asbestos must not have their protections reduced.

#### **Removal of Asbestos**

In the draft regulation, a licence is not required for the removal of 10 square metres of non-friable asbestos – there are no further limitations. This represents a lessening of controls for Victorian workplaces, where there is a time limitation placed on such removals of one hour per week. This limit ensures that only one such removal can take place 'on a job' or at a particular workplace. By not having such a limitation, there is the real danger that new companies will begin to offer themselves as 'unlicensed removalists' and do any number of such limited removal jobs at the same workplace. There must be a time limitation for removals not requiring a licence.

#### **Asbestos as a stand alone chapter**

Asbestos should be a separate stand alone chapter. It's not appropriate under the general 'Chapter 7: Hazardous Substances' chapter as this chapter deals with how to use hazardous substances in workplaces – ie how to use, control risk, etc. In the case of asbestos, it's a substance that should not be in the workplace, and so the regulations are primarily about prohibitions, elimination of the risk, and safe removal.

- As a major part of the chapter will be used by asbestos removalists the information should be located in one part in the regulations, and the removal code attaching to that Part . We believe that requiring the removalists to refer to different parts of the regulations will cause confusion and increase the potential of non-compliance

#### **Structure and omissions**

In an effort to shorten and simplify the regulation (in comparison to the Victorian regulation), sections have been combined, losing some of the necessary controls and making it difficult to follow – e.g. training of workers for licensed jobs is done under Division 6 'Removal' , but training of other workers, including those doing removal not requiring a license, is under Division 4 'Asbestos in the workplace'

While references to 'unlicensed removalists' have been removed there is no reference to 10 cubic metres of contaminated soil (as there were in previous versions) this current version of the regulations is very confusing as it does not have clear SEPARATE divisions for:

- Removal jobs NOT requiring a licence (in Vic, called 'Limited removals'). The regulation defines Class A and Class B removals (7.3.52 and 7.3.53) but at no point does it specify the exception to requiring a licence AND the protections for those workers.
- Activities involving asbestos (e.g. maintenance, electrical work, etc)

This means that these are dealt with in a confusing and ad hoc manner, throughout the regulation.

While there are some provisions which apply (eg limiting equipment used - 7.3.20 ) there is but nothing on:

- Specifying specific tasks – ie the 'exceptions' in Regulation 7.3.1 (e.g. research/analysis, laundering, & maintenance activities – compare to Vic regulation 4.3.100
- Identification by employer of such activities
- Obtaining register
- Elimination of airborne fibres in the way the job is done (except as a general requirement)
- Specific measures to control risk
- Review of control measures
- Ensuring work area is separated and signed
- Keeping it clean
- Medical examinations & all these entail – NOTE Vic requires this if exposed to HALF the exposure standard [limited, doesn't cover every worker, in 7.3.16(1)(b)]
- Specific PPE
- Decontamination
- Waste containment and disposal
- Laundering of clothes
- Provision of info
- Training record (limited)
- No mandated requirements for PPE (except for disposal – at 7.3.46)

The structure of the Asbestos Chapter (and therefore the codes) that the AMIEU would prefer to see is as follows:

1. general requirements

2. prohibitions & exclusions
3. asbestos in the workplace (in situ and naturally occurring) – identification, registers, etc
4. demolition, refurbishment, etc
5. Removal of asbestos
  - a. limited removal without licence – requirements, etc
  - b. licensed removal (class B, class A) – requirements, etc
6. Activities involving asbestos, e.g. maintenance

For detailed comment on specific amendment to the Asbestos regulations the AMIEU supports the VTHC comment.

## **Chapter 8: Major hazard facilities**

Part 1.1.

Definition of major incident is not accurate: the incidents that are being regulated are those associated with Schedule 15 chemicals. The reference to Schedule 15 must be in the definition of major incident.

**Regulation 8.2.1** Remove the reference to 3 months and replace with 30 days. Three months is too long and open to abuse by some operators.

**Part 8.3** The registration of a facility as a Major Hazards Facility is not a risk control measure in itself. The risks associated with the site must be controlled in the period between registration and licensing. There must be an obligation of risk control at the point of registration. This does not mean a full safety case, but does mean that whilst the preparation of the safety case is occurring the risks are controlled i.e. there needs to be a positive duty on the operator of the facility added based on Victorian regulation 5.2.8 Control of risk.

There are several significant Victorian provisions which have been omitted from the Model regulations, namely:

**Vic Regulation 5.2.19** which provides that registered MHFs must provide information, training and instruction for workers in relation to major incidents, MHF risk controls, the Safety Management System, the emergency plan and the workers safety role

**Vic Regulation 5.2.21** which provides that the MHF operator must ensure that the Safety Management System, Safety Case and the emergency plan are readily accessible to workers

**Vic Regulation 5.2.22** which provides that the MHF operator must inform the worker about the action taken in response to information given by the worker

**Vic Regulation 5.2.24** which requires the operator to provide information to the local community and council at the registration stage

**Vic Regulation 5.2.4(4)** which requires the operator to consult with councils in the area occupied by the local community on all matters that could

affect the health and safety of members of the local community in the event of a major incident occurring

**Vic Regulation 6.1.32**

The inclusion of these provisions in the Model regulation is essential to:

- Assist workers at a facility in performing their safety role and protect them from the risk of a major incident. The obligation on an operator to feed back to workers on actions taken is an essential safety feedback loop recognised as vital in the management of major hazard facilities
- Ensure local community and council involvement which is essential at times of any emergency and is one of the key reasons why the safety case and registration of MHF is undertaken

These Victorian provisions must be included.

**Chapter 9: Mines**

**Chapter 10: General**

Part 10.1 Review of decisions

Part 10.3 Exemptions

**Section B: Model Codes of Practice**

General Comments

The Codes of Practice will have to be altered in line with Regulations. Given that we believe that the Draft Model WHS Regulations need significant redrafting the AMIEU is not making detailed comment on the WHS Draft Model Codes of Practice. A general comment, however is that the second person style renders unprofessional and conversational tone is inappropriate for Code of Practice which has legal status. Also makes codes appear as nothing more than a piece of 'friendly guidance' rather than a minimum standard which must be achieved.

How to manage work health and safety risks

How to consult on work health and safety

Managing the work environment and facilities

Managing noise and preventing hearing loss at work

Hazardous manual tasks

Confined spaces

How to prevent falls at the workplace

Labelling of workplace hazardous chemicals

Preparation of safety data sheets for hazardous chemicals
How to manage and control asbestos in the workplace
How to safely remove asbestos
Facilities for construction sites

<b>Appendix</b>
Penalty levels
Infringement notices
<b>Other Comments</b>