

OHS Regulations Reform – Public comment submission form			
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I am providing feedback on:	<input checked="" type="checkbox"/> Proposed OHS Regulations 2017 <input type="checkbox"/> Proposed OHS Regulations 2017 <input type="checkbox"/> Regulatory Impact Statement for proposed Occupational Health and Safety Regulations 2017 and Equipment (Public Safety) Regulations 2017		

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ANMF (Vic Branch) Submission on the Proposed OHS Regulations 2017

**Lisa Fitzpatrick
Secretary
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[25 August 2016]

Preamble

ANMF (Vic Branch) is Victoria's peak nursing and midwifery industrial and professional body, representing over 76,000 members across the full spectrum of health care services in Victoria industrially, professionally and significantly including occupational health and safety, and workers compensation matters.

ANMF (Vic Branch) acts on behalf of its members, lobbying governments and other key stakeholders to ensure that nurses and midwives are provided with a healthy and safe workplace, and thus ensures that the community continues to receive professional standards of nursing and midwifery care.

We welcome this opportunity to provide comment to the proposed Occupational Health and Safety Regulations 2017.

Comments on the proposed OHS Regulations

Part 3.1 Hazardous Manual Handling

Recommendation 1

All reference to "risk of a musculoskeletal disorder" be replaced with "risk of hazardous manual handling" throughout Part 3.1.

For example section 27 (1) and (2) would be amended to:

"An employer must, so far as is reasonably practicable, eliminate the risk of hazardous manual handling. If it is not reasonably practicable to eliminate any risk of hazardous manual handling, an employer must reduce the risk so far as is reasonably practicable.

It is ANMF's position that this recommendation will:

1. *Ensure the terminology in Part 3.1- Hazardous Manual Handling is consistent with that used in other parts of the Regulations, such as noise, prevention of falls, confined spaces and asbestos.*

In other Regulations it is the risk of the hazard rather than the risk of injury that is the focus of control. This seems to be inconsistent with Part 3.1 which requires the duty holder to control of the risk of a musculoskeletal disorder (refer to table 1- below). A more consistent approach would be to replace the risk of a musculoskeletal disorder with the risk of hazardous manual handling.

Part of current Regulations	Control of risk under current Regulations	Possible outcome of exposure to the hazard
Manual Handling	Risk of a musculoskeletal disorder	Musculoskeletal disorder
Noise	Exposure to noise	Noise induced hearing loss, tinnitus
Prevention of Falls	Risk of fall	Musculoskeletal injury, death
Confined Spaces	Risk associated with work in a confined space	Suffocation, inhalation of hazardous gasses, explosion

		etc.
Asbestos	Exposure to airborne asbestos fibres	Mesothelioma, asbestosis etc.

Table 1: Comparison of terminology used in the OHS Regulations 2007

2. *Focus on controlling the risk at the source*

ANMF maintains this recommendation is more in line with the objectives of the Occupational Health and Safety Act 2004 (OHS Act), specifically section 2(1)(b), to eliminate, at the source, risks to the health, safety or welfare of employees. In order eliminate the risk of musculoskeletal disorder it is necessary to eliminate exposure to the hazard, in this case the risk of hazardous manual handling.

We are concerned that focusing on controlling the “risk of injury” rather than the hazard will result in some employers focusing on the individual worker and their “fitness for work” rather than on eliminating or reducing hazardous manual handling. We are aware of trends in the healthcare industry whereby employers are requiring all potential employees to complete a pre-employment medical questionnaire and to attend pre-employment medical examinations, to determine the “injury risk” the worker may pose.

We maintain that the focus should be on reducing the risk at the its source, in this instance eliminating or reducing the hazardous manual handling, rather than looking at how susceptible an individual may be to developing a musculoskeletal disorder (MSD) as a result of hazardous manual handling.

3. *Not place any additional obligations on the employer than the proposed Regulations*

ANMF’s view is that the adoption of this recommendation would not place any additional obligations on the employer. We believe that reducing the risk of hazardous manual handling requires the same measures/intervention as reducing the risk of a MSD and would result in the same outcome.

Whist MSD is defined in the proposed regulations in general terms, it is the current Code of Practice for Manual Handling (2000) which provides specific guidance as to what elements of hazardous manual handling pose risk of MSD. It is apparent that not all hazardous manual handling will meet the criteria of posing risk of MSD, therefore will not require further action to be taken to reduce the present level of risk.

ANMF agree that there are examples of hazardous manual handling which might pose a risk that is so low that it is not reasonably practicable to reduce this risk further. An example of this is a cleaner working in a commercial building who is required to turn on and off light switches in numerous rooms during the course of a shift, meeting the criteria of repetitive movement. Under the current Code of Practice this would not meet the criteria of posing a risk of MSD so would not require further measures to reduce this risk. We believe that the same outcome would be achieved with our recommendation in place under the concept of reasonably practicable. In this example, the employer could demonstrate that the risk is minimal and it is not reasonably practicable to take further steps to reduce this risk.

4. *Not be inconsistent with current Occupational Health and Safety legislation or with WorkSafe Victoria guidance*

ANMF maintain this recommendation is consistent with section 21 of the OHS Act. The WorkSafe Position on How WorkSafe Applies the Law on Relation to Reasonably Practicable (2007) uses the terms hazard and risk mostly in conjunction with each when discussing eliminating or reducing hazards and risks. Although these two terms have two quite distinct meanings it is apparent that implementing our recommendation would not be inconsistent with this guidance.

5. *Assist with the difficulty associated with the fact that “there is no specific, measurable and enforceable “exposure standard” that determines when hazardous manual handling will have a risk of MSD” (OHS Regulatory Impact Statement)*

The Regulatory Impact Statement acknowledges that there is no specific, measurable and enforceable “exposure standard” for hazardous manual handling. It is stated there is “general guidance” in the Compliance Code however a degree of judgement is required as to determining what activities have a risk. Therefore ANMF believe there is little benefit in specifically referring to the “risk of musculoskeletal disorder” and the focus should be on “hazardous manual handling”, which as the name implies has an inherent risk.

Recommendation 2

All reference in this part to a Health and Safety Representative (HSR) is amended to HSR/s.

A Designated Working Group (DWG) may have more than one HSRs representing employees. There may also be situations where multiple DWGs may be involved in similar issues in regards to hazardous manual handling. The employer would be required to consult with all HSRs.

Recommendation 3

Creation of new regulations to encompass a broader range of notifiable incidents, including exposure to occupational violence and aggression and psychosocial hazards.

ANMF believe the current incident notification criteria under section 37 of the OHS Act do not sufficiently capture psychosocial hazards and exposure to occupational violence and aggression. While the current provisions in the Act require notification in circumstances involving the exposure of a person to an immediate risk to health and safety through the collapse of plant, they would not require notification of a situation where a staff member was held up at gunpoint in the workplace. We maintain such an incident exposes an individual to a serious and immediate risk to their health and safety and would require a thorough OHS incident investigation. This type of incident should require notification to the Authority.

Recommendation 4

WorkSafe Victoria to ensure clear and consistent guidelines on what is considered a breach under the OHS Regulations which are enforceable under the OHS Act 2004.

Although beyond the scope of this review of the regulations we feel this recommendation is

important to ensure the regulations play an effective role in WorkSafe's enforcement framework.

We are aware that there is currently inconsistency between inspectors as to the level of proof required to demonstrate a breach of the regulations that is enforceable under the OHS Act. For example, under the current Part 3.1.3 an employer is required to review risk control measures following a reported occurrence of a musculoskeletal disorder in the workplace (3.1.3 (1)(d)). This section is enforceable under section 21 of the OHS Act. We are aware that some inspectors will form the opinion that a failure by the employer to implement this requirement forms a breach of section 21(1)(2)(a), specifically failure to provide a safe system of work. However, we are also aware of situations where the inspector has found this is potentially a one off occurrence and is insufficient to demonstrate a failure in the system of work.

In order to ensure consistency in enforcing the Regulations there should be clear guidance to the inspectorate as to the meaning and enforcement of the Regulations and how they link with the requirements under the Act.