

**AMWU SUBMISSION**  
**Proposed Occupational Health and Safety**  
**Regulations 2017**



**Introduction**

On commencing the review in 2014 of the Occupational Health and Safety Regulation (Regn) WorkSafe gave a commitment that:-

- there would be “*No reduction in health and safety outcomes for workers*”, where possible changes would strengthen protection for workers and
- the aim was to remove “*red tape*” and where possible deliver a reduction in costs;

Worksafe web notes that the *Occupational Health and Safety Regulations 2007* (OHS Regn) “*specify the ways duties imposed by the Act must be performed*”, or “*prescribe procedural or administrative matters to support the OHS Act, such as requiring licenses for specific activities, keeping records, or notifying certain matters*”.

Thus the regulation articulates what employers need to do to meet their OHS obligations. In addition the OHS regn provides some detail for employees and HSRs to understand their right to a safe and healthy workplace. Finally the OHS Regn provides information by which inspectors can monitor compliance.

It is essential that there be no erosion of the protection these regulations provide.

The AMWU recognizes that the Draft Regulation has included a number of new issues which adds to the safety of employees. (For Example r64 - Confined Spaces). In addition, where appropriate for Victoria, the Draft regulation has incorporated criteria and definitions from WHS. (eg GHS in hazardous substances). Where these are supported the AMWU does not intend to comment.

The AMWU submission focuses on areas where the removal, alteration or addition has downgraded the protection of workers. In some circumstances we have proposed improvements to the regulation.

## **PART 2.1 GENERAL DUTIES**

### 2.1.2 Provision of information, instruction and training

The AMWU is opposed to the removal of this section.

Arguably the obligation to provide information, instruction and training is covered by S21(2e) of the Occupational Health and Safety Act 2004 (OHS Act). This section directs the employer to

*".. provide information , instruction , training and supervision to enable those persons to perform their work in a way that is safe and without risk to health".*

However this does not go far enough. It is not sufficient to just tell an adult what to do. The adult needs to understand what the issue is.

R2.1.2 expands on s21(2e) such that where a control is used the employees should be told what the hazards are to which they are exposed, what controls are used and how these should be maintained.

Example – There are numerous jobs where waste fumes are caused by a process where controls are implemented to protect workers. One such example is fumes from Fluxing aluminum. One of our manufacturers has implemented a couple of controls – including an extraction system and putting the flux in with a 60 foot pole. Clearly it is important for workers to understand the nature of the hazard and the reason for control measure but also how these controls should be used and properly maintained. They can then become the observers for management to know when something needs attention.

A second example would be purging the plastic molding machines.

Information Instruction and training for the above 2 examples is not covered by the regulation as the original products are not hazardous substances and not a confined space.

## **PART 3.2 NOISE**

During 2016 WorkSafe is implementing an inspectorate program to address the increasing hearing loss problems in Victorian workplace. Consequently it is somewhat surprising that they choose to downgrade the Noise regulation.

Our union have notices an increase in hazardous noise in our workplaces and a greater apathy from employers to applying OHS Act s4 principle of *"control at source"*. Increased Hearing loss is evidenced in our industry by comparing the 2 versions of WorkSafe Hotspots for Metal manufacturing 8% to 18%.

The AMWU in Victoria is spearheading a Noise campaign to be launched by the VTHC at the HSR Conference.

Reorganisation of the Regulation to place "Determination of exposure to Noise(r32) and Record of Determination (r33) is supported by the AMWU. It is logical. Not with standing this the following sections need to be put back into the regulation.

The AMWU recommends reinstating r3.2.4(2) and r3.2.5. after new R34

R3.2.4(2) provides direction to the employer that they need to consider various aspects of Noise when selecting PPE. It also helps Employees and HSR's ask questions about noise and the PPE provided to them.

R3.2.5 This regulation is needed to assist in compliance. How can a HSR, or the inspector for that matter, ask about improved control measure if no record is kept. The only alternate is for each new HSR to ask for the assessment to be redone – which is an additional cost to the employer and a waste of time. Removal of this regulation reduces continuous improvement and undermines the objective of the Hierarchy of Control.

### **PART 3.3 PREVENTION OF FALLS**

The AMWU supports the position expressed in the VTHC submission to adopt the WHS definition .

In this instance it is in the interest of Victorian workers and their safety to adopt the definition outlined in the National Model Work Health and Safety Regulation (WHS Regs). The WHS Reg definition will provide greater safety. This definition is as follows:

*“A fall by a person from one level to another that is reasonably likely to cause injury to the person and any other person”*

Regrettably with a specified level of 2 meters it is seen by management, employees and HSRs that anything below 2 meters is not hazardous. As a consequence it is not uncommon to see workers standing on trucks to work or in the food industry standing on conveyor lines cleaning. The AMWU agrees that this is covered by s21 however in practice where there is a line drawn then employers/ employees will use that line. The regulation must address this shortfall in the current regulation and give recognition that working from heights below 2 meters can constitute a hazardous hazard. 'Note 2' does not achieve what is required for a hazard with this level of risk. .

### **PART 3.5 PLANT**

R106 Record of Inspecting and Maintenance

The AMWU recommend that records of inspection and maintenance of all plant referred to in Schedule should be kept for the life of the plant – whilst the employer has the plant.

The current Draft has been very selective regarding the need to record maintenance. All Plant noted in schedule requires a registration of Design. These should all be regularly maintained and a record should be kept. We are past the era of paper – it cost nothing to record on the computer when maintenance occurs. Surely this is still required?

This enables management to risk manage these plant.

### Schedule 3 High Risk work license Classes

During the consultation period there was significant discussion around licenses relating to Forklift trucks (24) and Order picking trucks (25). The AMWU notes there has been some changes and supports the rewording.

## **PART 4.4 ASBESTOS**

The AMWU have a history of campaigning to remove asbestos from Australia. The final legislation delivering a prohibition on the manufacture and importation had a commencement date of 31 December 2003. Despite this prohibition there have been a series of Plant and construction material which has been imported into Australia.

Examples where the AMWU – Vehicle Division has been involved include:-

1. January 2014 – The New Holden Engine Plant at Fishermen’s Bend imported and installed plant containing asbestos. It remains in situ and will only be exposed when dismantling the plant on closure - post December 2017.
2. July 2012 – Chery Motors / Great Wall vehicles were imported into Australia with asbestos gaskets
3. October 2013 - MTU Detroit Diesel were exposed to asbestos whilst working on SCT Imported Locomotives
4. December 2015 – MaxiPARTS brake shoes, Maxus, imported from China were recalled

Following the October 2013 exposures the AMWU wrote (email) to the Australian Customs and Border Protection Service (ACBPS). Their response was that they enforce strict controls on illegal goods entering Australia ..... (See full email trail at end of submission)

*“ACBPS is not able, however, to guarantee that all imported goods will be free of asbestos.”*

The construction industry is another area where products containing asbestos continue to enter Australia.

Implementing these changes is contrary to what WorkSafe wanted to achieve by reviewing the Regulation as it takes away protections currently offered by ) the OHS Reg 2007

R225(2) and r240(2) The AMWU urge WorkSafe to consider the information above and DELETE these 2 sections.

R216(2)

The AMWU object to the introduction of 216(1).

Despite prohibitions in Australia there remains instances where vehicles are imported containing brake pads, gaskets. Why would you allow there to be an exemption for fibre level not exceeding .01f/ml? This is not acceptable - there should be no use of the tools identified in (1) where there is a remote possibility of asbestos.

And Employee is not going to know that the air should be tested and neither is the employer. So not practical.

## **PART 5.1 CONSTRUCTION**

R322 What is High Risk Construction?

New The AMWU strongly recommends the additional of an additional high risk category:  
(t) Welding of Structural Steel.

Concerned by members raising the poor quality and practice in welding structural steel on construction sites, the AMWU engaged 2 welding inspectors to assist organisers. During 2015 and 2016 they visited about 60 construction sites. Only one (1) site was deemed to comply with AS1554. They identified significant numbers of sub standard welds and short cuts being taken. Regulation must be introduced to raise the awareness of this issue and make workplaces safer and structures safer.

There is increasing use of structural steel in high rise; different gauged steel and various types of steel increase the risk. Where there are short cuts done there is a very real potential for welds to fail which could lead to a catastrophic event up to and including structural collapse killing construction workers.

Including welding of structural steel as a High Risk Construction will raise the profile of this hazard. Employers have a duty/ an obligation, to implement AS 1554 by implementing welding procedures which include progressive inspection and signing off of welding which is done by suitably qualified and experienced workers. This small inclusion will improve safety of construction persons.

We would also draw your attention to the fact that this issue has great public safety implications.

## **5.2 MAJOR HAZARDOUS FACILITY**

The AMWU supports Recommendations put forward by the VTHC

**EMAIL TRAIL 2013 – 2014**

**AMWU EMAIL TO CUSTOMS OFFICE REQUESTING INFORMATION ON HOW THEY CONTROL THE IMPORTATION OF ASBESTOS INTO AUSTRALIA**

Dear Sarah,

We apologise for the delay in responding to your query.

The Customs Act 1901 and the Customs (Prohibited Import) Regulations 1956, prohibit importation of all forms of asbestos without permission.

Importers are responsible for ensuring the goods they import are free from asbestos and must declare this on import documentation.

The Australian Customs and Border Protection Service (ACBPS) enforces the strict controls on the importation of hazardous and illegal goods such as asbestos.

Importers found to have imported goods containing asbestos without a permit face penalties of up to \$170,000 for individuals, \$850,000 for companies, or three times the value of the goods whichever is the greater.

ACBPS is currently investigating the matters involving the importation of train locomotives and wagons containing asbestos. We are working closely with a number of other government agencies. It would be inappropriate to comment further while these investigations are underway.

While ACBPS will not comment further on the train locomotive and wagons matter, and noting it is the responsibility of the importer to declare any goods containing asbestos, ACBPS adopts a comprehensive and multilayered approach to significantly reduce the risk posed by asbestos importation. **ACBPS is not able, however, to guarantee that all imported goods will be free of asbestos.**

Our comprehensive approach addresses the unlawful importation of goods containing asbestos by verifying compliance with the Customs Act 1901 and the Customs (Prohibited Import) Regulations 1956, which prohibit importation without permission of all forms of asbestos, through monitoring and intervention activities that are proportionate to the level of risk.

ACBPS works proactively with a range of federal, state and territory agencies to address concerns about the importation of goods containing asbestos, and our multi-layered approach includes education, campaigns, outreach activities and refining our targeting activity to account for high-risk countries of origin and suppliers. It was through this work that we first identified the risk with Great Wall and Chery motor vehicles, as well as a range of other products.

ACBPS also works closely with a broad range of industry sectors to ensure that goods are asbestos free before exportation to Australia. As a result of the outreach work we have undertaken, some companies have employed Australian expert hygienists to inspect and certify goods at their place of manufacture, prior to shipment to Australia. Some overseas suppliers have also changed their manufacturing and quality assurance practices, to ensure they are compliant with Australian laws.

Regards



Customs Officer | Customs Information & Support Centre  
Trade Branch | Trade & Customs Division  
Australian Customs and Border Protection Service  
P: 1300 363 263 | F: 02 8339 6713 |  
E: [information@customs.gov.au](mailto:information@customs.gov.au)  
W: [www.customs.gov.au](http://www.customs.gov.au)

This information is provided as a guide only and should be clarified either by lodging a formal advice request with the appropriate section of Customs or employing the services of a customs broker if appropriate.

Help protect Australia's border. Report suspicious behaviour to Customs Watch 1800 06 1800.

**From:** "Sarah Ross" <[sarah.ross@amwu.asn.au](mailto:sarah.ross@amwu.asn.au)>  
**Sent:** Monday, 25 November 2013 3:06:22 PM  
**To:** [information@customs.gov.au](mailto:information@customs.gov.au)  
**Subject:** Asbestos imported in Products

To Customs,

I am hoping you can assist me by providing information on what is done at Customs to ensure plant/equipment is not imported containing the prohibited substance, asbestos.

In 2012 it became obvious that Great Wall and Cherry Vehicles were being imported containing Asbestos gaskets ? a prohibited substance. Workers / maintenance workers were unnecessarily exposed. Great Wall underwent a process of removal of the asbestos.

More recently automotive workers at MTU Detroit Diesel were exposed to asbestos whilst working on SCT Imported Locomotives . It was found that the locomotives contained ?flagging? insulation which contained asbestos. These workers have been doing the job for 2 years . Again unnecessary exposure. The immediate issue has been addressed however there remains the question - how did this occur?

Can you please provide me with the steps taken to prevent prohibited substances form entering Australia. If it is not the responsibility of Customs to play a role in stopping the importation of Asbestos then whose responsibility is it? Any assistance you can provide is appreciated.

Yours Sincerely,

Sarah Ross

Education&OHS Officer  
AMWU Vehicle Division  
[sross@amwu.asn.au](mailto:sross@amwu.asn.au)  
Mob: 0425 784 817