9 September 2016

WorkSafe Victoria
222 Exhibition Street
Melbourne VIC 300

Dear WorkSafe,

Re: Occupational Health and Safety Regulations 2017

Thank you for the opportunity to provide comment on the proposed *Occupational Health and Safety Regulations 2017*.

Please find attached to this letter the Victorian Trades Hall Council (VTHC) submission.

Following this public comment period, VTHC is looking forward to working with the Authority and with Government on ensuring that the regulations which are published in 2017 continue to cement Victoria's reputation for leading the way on health and safety.

Yours sincerely,

Luke Hilakari
Secretary

Encl

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VICTORIAN TRADES HALL COUNCIL OHS PROPOSED REGULATIONS SUBMISSION

VTHC OHS Proposed Regulations Submission

Preamble

The Victorian Trades Hall Council (VHTC) was founded in 1856 and is the peak body for unions in Victoria. VTHC represents approximately 40 unions and over 400 000 Victorian workers. These workers are members of unions that reach into every industry in the state, both in public and private sectors.

Since gaining the Eight Hour Day in April 1856, VTHC has had a long history of fighting and defending the rights of workers in Victoria. The importance of winning the eight hour day is significant not just in Australia but worldwide. Few advances in the quality of life for working people would have been achieved without the involvement of the Victorian union movement.

Over the last 160 years, VTHC and its affiliated unions have campaigned for and successfully won a range of important rights and entitlements for Victorian (and Australian) workers, including:

- Minimum wage
- Penalty rates
- Collective bargaining rights
- Freedom of association and the right to representation
- Occupational Health and Safety (OHS) protections
- Annual as well as sick (and carer's) leave
- Maternity and parental leave
- Domestic violence leave
- Superannuation
- Protections from unfair dismissal and redundancy entitlements, and
- Long service leave

VTHC will continue to campaign tirelessly for the rights, entitlements, protections and health and safety of workers in Victoria, no matter their employment status, employer or workplace.

Occupational health and safety (OHS) is a vitally important issue. All workers have the right to work in an environment that is safe and without risks to health. Employers have a duty to make every effort to ensure the safety and health of workers. It is an important role of the Victorian Government to ensure that workers are safe by providing a regulatory framework that prohibits unsafe workplace practices. It is also vital that these regulations are enforced to ensure compliance.

VTHC welcomes the opportunity to contribute to the proposed *Occupational Health and Safety Regulations 2017*.

VTHC looks forward to working with the Victorian Government and other stakeholders to improve workplace health and safety. Strong legislation backed by a commitment to its enforcement will

go a long way to helping making Victoria's workplaces safe. **The price of inaction on this issue is too great.**

Executive Summary

A. It is axiomatic that a change to our regulations should not result safety standards slipping in Victorian workplaces. VTHC puts people ahead of profits and our only criteria for assessing the changes is whether or not the change will result in safer workplaces. On the whole, most of the proposed changes meet this criteria.
B. Overall, VTHC makes 13 recommendations to the Authority and to Government - all of which are made to maximise the health and safety of all working Victorians.
C. There are 3 areas of grave concern that the VTHC strongly urges the Authority and Government to act on:
    a. Noise – the Authority is proposing to removal two safeguards that currently operate to protect workers from Noise Induced Hearing Loss (NIHL). NIHL is permanent, there is no undoing it and once a workers loses their hearing it is gone forever. VTHC is implacably opposed to any changes that reduce our regulatory requirements on Noise and urge the Authority and Government to retain the current regulatory protections.
    b. Falls – following a coronial inquest into the death of Keith Dickman, the Coroner recommended that Victoria dispense with the false and dangerous distinction between a fall of more than 2 metres and a fall of less than 2 metres. This distinction was created by the definition in the current regulations. The proposed regulations fail to address the Coroner's recommendation. This is our opportunity, as a society, to make the change that could have helped prevent Keith's tragic death. It is imperative that we have a regulatory control over all falls that can occur in workplaces.
    c. Asbestos – in the last few years a slew of asbestos containing materials (ACM) has been discovered in Victoria and Australia more broadly. The recent Yuanda scandal is simply the latest in a tsunami of ACM that is being negligently imported into Australia and Victoria. It is in this environment of constant ACM importation scandals that these proposed regulations seek to allow people who operate buildings constructed after the importation ban to assume that their building is asbestos free. VTHC has no confidence that all buildings made post-2003 are asbestos free. The weight of evidence leads to the conclusion that even where a building was constructed post-2003, owners and occupiers should still exercise caution to ensure no asbestos is present. Given the extreme risk to health and safety posed by asbestos, VTHC strongly recommends that the Authority and Government scrap this proposed change.

Introduction

1. The current Victorian *Occupational Health and Safety Regulations 2007* (the current Regulations) are due to expire in June 2017.
2. After a long process of internal consultation with its statutory stakeholders, WorkSafe Victoria (WorkSafe) has released *Proposed Occupational Health and Safety Regulations 2017* ("the proposed Regulations).

3. VTHC has reviewed the proposed Regulations, the Regulatory Impact Statement, the summary of changes proposed to the OHS Regulations and the Reconciliation table – Occupational Health and Safety Regulations.
4. In this submission VTHC makes a number of recommendations for improving the proposed Regulations to ensure that they best serve to protect Victorian employees.
5. Government should retain uppermost in its mind that occupation injuries and illnesses remain a massive public health issue for Victoria. On average, 25,000 Victorians receive workers' compensation every year as the result of an injury or illness contracted in their workplace. So far in 2016, more than 20 people have been killed while at work in Victoria. Every single one of these illnesses, injuries and killings are preventable.
6. The purpose of the proposed Regulations is to help prevent further injuries, illnesses and deaths in Victorian workplaces. The old adage is true for workers' compensation as it is for a heart attack through obesity: prevention is better than the cure.
7. Government should also keep uppermost in its mind the fact that it is employees who bear all the risk when an employer fails to maintain a safe and healthy workplace. And when that risk eventuates, it is the employee and their family who bears 74% of the economic cost of the illness, injury or fatality. Society pays 21%, while the employer only pays 5%.[1] This is outrageous rent seeking from those who employ labour in this country.
8. It makes economic sense to reduce employer OHS rent seeking by ensuring that employers take the appropriate preventative measures to protect their employees. It is reasonably practicable to spend money on safety – where employers fail to spend money on safety and the inevitable happens, the taxpayer picks up 21% of the bill while the workers and their family are left with the other 76%. An Andrews Labor Government needs to take a stand against employer OHS rent seeking and bolster the protections offered to Victorian workers.
9. On this basis, VTHC proposes the following amendments to the proposed Regulations to increase the protection offered to Victorian workers.

Chapter 2 General Duties and Issue Resolution

How to involve HSRs in consultation

10. VTHC strongly supports the small but critical change included in proposed regulation 21 to clarify that the regulations which cover how HSRs are to be consulted with applies to both the Act and the Regulations.
11. Consultation is the bedrock of our system and this removes the potential confusion created by the current wording.

Provision of information, instruction, and training.

12. In July 2014, regulation 2.1.2 'Provision of information, instruction, and training' was revoked by the then Liberal Government. The old regulation 2.1.2 provided that where the current regulation require an employer to control a risk, then the employer must ensure its employees who might be exposed the risk are adequately informed, instructed and trained to work safely.

[1] Safe Work Austrlia, *The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community: 2008-09*, Canberra, March 2012.

13. VTHC seconds the reasons submitted by the CFMEU – Construction and General Division Vic/Tas Branch (CFMEU C&G).
14. Furthermore, VTHC supports the reinstatement of regulation 2.1.2 and calls on the Andrews Labor Government to restore it in 2017 because:
    a. It is employees who bear all the risk of working with any risk/hazard in a workplace. Where controls have been mandated through regulation then it is appropriate that those controls be communicated via information, training and instruction. Therefore, it is correct for the regulations to have a catch all provisions which ensures that regulation specific controls are also subject to regulation specific information, instruction and training requirements.
    b. The OHS Act also provides generic duties in this area but the regulations cover specific hazards that apply in a range of industries: manual handling, noise, construction, to name a few. The generic duties to hazard/risk control in the Act are supplemented by the regulations because of the severity of the hazard and the extreme risks to health and safety posed by the hazards controlled by regulation. Given the extreme risks to health and safety posed by these regulated hazards, it is necessary that the information, instruction and training for these hazards are mandated by the regulations as well.

RECOMMENDATION 1: That the old OHS Regulation 2.1.2 'Provision of information, instruction, and training' be restored in 2017 to ensure the highest standards of employee health and safety.

Part 3.2 Noise

Regulation 3.2.4 – Control of exposure to Noise

15. VTHC opposes the removal of regulations 3.2.4(2) and 3.2.4(3) from the proposed regulations. These regulations determine how an employer should select hearing protection for employees who have to work around hazardous noise levels.
16. VTHC seconds the reasons submitted by the CFMEU C&G.
17. VTHC makes the following further points in relation to these regulation:
    a. Hazardous noise improperly eliminated or controlled results in permanent hearing loss. A significant number of hearing loss claims continue to be made. Many modern workplaces cause industrial deafness – an entirely preventable disease.
    b. It may not be reasonably practicable to totally eliminate noise from the environment an employee has to work in. But it is reasonably practicable for the best hearing protection be provided to employees. The regulations are designed to ensure that employees are provided with the best hearing protection that suits their working conditions. If an employer is going to put a person at the risk of industrial deafness, it is reasonably practicable for that employer to spend time considering the best protection to give their employees.
    c. To remove these regulations is to reduce protections for Victorian workers.

RECOMMENDATION 2: That the current OHS Regulations 3.2.4(2) and 3.2.4(3) be republished in 2017 to better ensure Victorian workers are protected against industrial deafness.

Regulation 3.2.5 – Written risk control plan

18. VTHC opposes the removal of the regulatory requirement that an employer who cannot implement a control measure make a written record that describes the actions necessary to implement the risk control measure and when the actions will be carried out.
19. VTHC seconds the reasons submitted by the CFMEU C&G on this topic.
20. VTHC has considered a number of factors and it is our position that these factors, if given adequate consideration, lead Government to conclude that regulation 3.2.5 be retained. We have considered the need for the regulations to promote safety, consistency, be proportionate to the hazard and, where necessary, to streamline the regulations.
21. Safety Considerations Removing this requirement will affect safety outcomes. Noise is generated by plant that can be difficult to replace or have an engineered control added to it at short notice. The plant often costs a significant amount of money and any elimination or engineering control of the risk will take considerable planning and resources. Where a company is no longer required to write up a plan that HSRs and employees can hold them to, noise risks that will take longer than 6 months to eliminate or control via engineering controls will remain uncontrolled. This regulation prescribed a specific action that employers have to take under the hierarchy of control that assists them to ensure long term compliance with the Act and Regulations. Unions make use of this regulation to ensure that worksites have plans to eliminate or reduce noise risks. Noise damage takes a long time to occur. The tests look for a drop in hearing over a two year period. In this context, providing employers with time to eliminate or reduce the noise hazard is reasonable.
22. Consistency Given the unique nature of noise risks, it is appropriate that it has specific regulations suitable to it. There are unique regulations for Asbestos, Manual Handling, Construction, etc. and there is no proposal to remove them to achieve "consistency". Finally, accurate record keeping is an hallmark of the Victorian OHS regulatory scheme. By focusing the duty holder's attention on the records they need to create and maintain to adequately deal with risks and hazards, the regulator and employees are then able to assess whether an employer is complying with their duties under the Act and Regulations. It is inconsistent to now propose to remove a key record created to ensure the long term elimination or reduction of a noise hazard. Finally, where Victoria has a better OHS scheme, we should not be looking to reduce our scheme to the lower WHS standard.
23. Proportionality WorkSafe's analysis of proportionality in the drafting brief appears to be more focused on consistency. The real question to be asked here is: is the proposed regulation proportionate to the hazard it seeks to address? The drafting brief stated that noise exposure is "one of the **most prevalent hazards**" and ONIHL is "a **common** occupational disease." (Emphasis mine). Studies show that only 1 in 4 workers eligible to make an ONIHL claim do so; while the claim data shows that over a seven year period 12,211 claims for noise related hearing loss were received. If the claim figure is correct, when combined with the studies about how many people make a claim, it is likely that approximately 48,000 Victorians suffered from ONIHL between 2007 and 2014. In this context, it is proportionate for the regulations to require an employer to produce a plan to

eliminate or reduce a risk even where that elimination or reduction will occur more than 6 months down the track.

24. Streamline The removal of this regulation does not so much streamline the regulations as it does reduce clarity for duty holders about their obligations. The current regulation is clear an unequivocal. It assists duty holders, HSRs, employees and unions to ensure that where noise cannot be eliminated or brought under an engineering control within the next 6 months that a plan exists to eliminate or reduce the risk associated with the hazard. Removing it from the regulations only makes it more likely that employers will fail to adequately plan to reduce noise hazards in the future.

RECOMMENDATION 3: That the current OHS Regulation 3.2.5 be republished in 2017 to better ensure Victorian workers are protected against industrial deafness.

Part 3.3 – Prevention of Falls

25. Keith Dickman, a plumber, died because of a fall from a ladder. The coroner investigated the death and out of that investigation there was a recommendation made about how Victoria regulates falls:

> *That the Victorian Workcover Authority and/or its agency WorkSafe Victoria, abolish the distinction between working at height above or below two metres, in its publication of guidelines to industry in relation to falls protections.*

26. The current proposed Regulations fall woefully short of implementing the Coroner's recommendations. This serious error by the regulator is compounded because in prior stakeholder consultation, there was an agreed 'in principle' approach that would have addressed the Coroner's concerns.
27. For some inexplicable reason, the Authority is now proposing to back away from an 'in principle' position with unions and with agreed employer groups, it is proposing to ignore the Coronial findings and recommendations, and it is proposing to do nothing further to regulate the extremely dangerous consequences of falls in workplaces.
28. There are two key issues:
    a. The definition of a fall; and
    b. The hierarchy of control for falls.

Definition of Fall

29. The Coroner recommended abolishing the distinction between a fall from more than two metres and a fall from below two metres because, in the Coroner's words, it "is a dangerous and illusory distinction." Furthermore, the Coroner found that this distinction is dangerous because it is

> *prone to encouraging a lack of attention to the risk of falls from working at any height off ground level and also results in less attention to remedial steps to prevent falls from the lesser height.*

30. The definition of fall in the proposed regulations reads:

> *A person's involuntary fall of more than 2 metres.*

31. The current model *Work Health and Safety Regulations* (WHS Regulations) define a fall as:

> *A fall by a person from one level to another that is reasonably likely to cause injury to the person or any other person.*[2]

32. As it currently stands, the decision to retain the status quo definition fails to adequately address the Coroner's recommendation. It is VTHC's position that the Victorian definition ought to match the definition contained in the WHS Regulations because it addresses the coroner's concerns.

RECOMMENDATION 4: That Victorian legislation move towards a nationally consistent approach and adopt the WHS rationale to regulate all falls. This will result in safer workplaces for all Victorians and implement the Coroner's recommendation.

Hierarchy of Control for Falls

33. As noted by the CFMEU and in the drafting brief provided during earlier stakeholder consultation, there was stakeholder consensus around having different hierarchies of control for the risk of falls from greater or less than 2 metres.
34. This consensus was around "Option C" that WorkSafe presented to its stakeholders. It is our view that Option C ought to be revisited and implemented by Government. VTHC has read and seconds the views of the PTEU in their submission on falls.
35. Currently there is no proscribed hierarchy of control for falls of less than 2 metres in the regulations. As WorkSafe's stakeholders and the Coroner have stated, this system results in a lack of attention being paid to the risk of falls under 2 metres. This lack of attention can have fatal consequences – as demonstrated by the preventable death of Keith Dickman. Having a hierarchy of control set for circumstances where a person is at risk from a fall of any height will result in safer workplaces for all Victorians.

RECOMMENDATION 5: Adopt Option C and redraft the proposed regulations to include a hierarchy of control for falls less than 2 meters, this ensuring all falls are regulated.

Part 3.4 – Confined Spaces

Regulation 3.4.4 – Supplier Duties

36. The proposed regulations seek to remove a current duty on a supplier to ensure that any confined spaces they supply have eliminated, so far as reasonably practicable, the need for a person to enter the confined space.
37. Confined spaces are highly dangerous and can frequently result in multiple deaths. If one person enters a confined space and is overcome, the natural instinct of other people is to go to their rescue. It means that in most cases, confined spaces fatalities can be two or more at a time.
38. Given the exceedingly high risk of death, it is appropriate that checks duties are imposed on every stage of the supply chain. If someone is going to supply a confined space then that person has a duty to ensure that the confined space is as safe as it can be. If that means re-engineering the confined space then so be it.

[2] *Work Health and Safety Regulations* r78(1)

39. Similar to asbestos, not all confined spaces are going to be designed or manufactured in Victoria and therefore the designer duties and manufacturing duties will not apply to those designers or manufacturers. People or businesses which supply confined spaces into Victoria are always going to be captured by Victorian law. It is therefore imperative that this duty be retained.

RECOMMENDATION 6: Regulation 3.4.4 be republished in 2017 to ensure that all parts of the confined spaces supply chain are under a duty to ensure the safety of confined spaces.

Part 3.5 – Plant

40. VTHC supports the submission of the CFMEU C&G on Part 3.5 Plant.

Regulation 3.5.16 and 3.5.17 – Duties on Suppliers of Plant

41. Plant results in some of the most horrific injuries suffered by Victorians. Many of the machines used in modern manufacturing, construction, warehousing and heavy industries are capable of killing or seriously injuring the people who have to operate them.
42. Many of these pieces of plant are not designed or manufactured in Victoria. Therefore, the Victorian duties on the designers and manufacturers will not apply when the plant is being designed or manufactured.
43. In its Summary of Proposed Changes, WorkSafe argues that the supplier duty is "unnecessary prescription and duplication." This is erroneous. It is only duplication where the manufacturing and design occurred here in Victoria. For the vast majority of plant, designed overseas and manufactured in Asia, Europe or the Americas, supplier's duties are Victoria's best option to ensure that our health and afety standards are applied to plant supplied into Victoria.

RECOMMENDATION 7: Plant suppliers' duties be retained and republished to ensure that any plant supplied into Victoria is subject to our standards of health and safety.

Part 4.3 – Asbestos

Changes we support

44. VTHC supports a number of the regulatory proposals relating to Asbestos:
    a. Proposed regulations 225(1) and 240(1): the removal of "fixed and installed" and the inclusion of "or has been identified elsewhere at the workplace" will address potential gap and ensure all asbestos is identified and risks controlled.
    b. Proposed regulation 264(c): The current wording would permit very limited removal by a non-licensed removalist in specific circumstances. It is supported by the VTHC. The proposal will allow a an independent contractor who operates an excavator to perform removal work involving the operation of that excavator, **provided** the independent contractor is supervised by the Class A licence holder and the asbestos removal supervisor.
    c. Proposed regulation 301: VTHC wholeheartedly supports the inclusion of employees within the scope of who must receive notice of asbestos removal work. It is vital that an employer who is having asbestos removed from their

premises advise all employees of the work being undertaken and the appropriate safety precautions to take.

d. Division 7: it makes sense to incorporate the Dangerous Good Order into the regulations and VTHC supports this proposal.
e. Schedule 12 and Schedule 13.

45. VTHC is lukewarm on the proposal to remove current regulations 4.3.59, 4.3.80, and 4.3.111 which would bring the asbestos regulations into line with the mines and lead regulations. Given the extreme dangers faced be people who have to work with asbestos, it seems reasonable to require employers to notify WorkSafe about which medical practices conduct the medical testing of their employees. However, if WorkSafe is certain that, if necessary, it can obtain the names of the medical practitioners easily through other channels, VTHC accepts this.

Proposed regulations 225(2) and 240(2) – assumption of no asbestos in buildings constructed after 2003.

46. The VTHC rejects the addition of part (2) to these regulations which allow a person to assume asbestos is not present if the building, structure, ship or plant was built or made on or after 31 December 2003 and no asbestos has been identified and asbestos is not likely to be present.
47. We have no doubt that this clause will lead persons in with management and control of workplaces/those undertaking demolition or refurbishment/ employers to make the incorrect assumption that there is no asbestos present – that is, go no further than 225(2)(a) and 240(2)(a) and not even consider the possibility that materials imported well after 2004 contain asbestos. Making such an assumption would potentially be incorrect in many cases consequently put many workers and the general public at risk of exposure to asbestos fibres. Even though Regulations 226 and 245 (identification) require that 'where there is uncertainty' the person must either assume that asbestos is present or arrange for analysis of a sample to be taken, many will go on the assumption there is no asbestos.
48. Recent examples:
    a. January – September 2016 Yuanda (Perth Children's Hospital; William St skyscraper, Brisbane; more in container seized by ABF, September). The CFMEU has stated that Yuanda has supplied products to nearly 70 jobs throughout Australia in the last 10 years.
    b. February 2016 Asbestos found in the flooring of four new electrical tram substations built in Melbourne - in East Brighton, the CBD, Thornbury and West Brunswick
49. Furthermore, work by ASEA and the Senate enquiries into unfit building products have revealed the following:
    a. 2006, March 10 – AAP news, Asbestos scare at Melbourne building site MELBOURNE - A building alert has been issued to the construction industry after asbestos was found in imported wall panels
    b. 2010, (from ASEA's submission to Senate Inquiry into non-conforming building products) In 2010, asbestos was detected in a range of imported equipment and

components, primarily for use in Australia's resource exploration development industry.

c. 2012, (from ASEA's submission to Senate Inquiry), On 1 August 2012, pre-assembled electrical switch rooms imported into Australia from Indonesia for a LNG plant was confirmed to contain asbestos.
d. 2014, (from ASEA's submission to Senate Inquiry) In November 2014, cement compound board confirmed to contain chrysotile asbestos was imported into the ACT from China.
e. In June 2014, a type of boiler was identified as containing chrysotile asbestos. The boiler was one of six boilers designed and built in South Korea and imported into Australia in February 2008. One of the boilers imported into Australia deteriorated to the point where the metal structure failed at which time it was found to contain chrysotile asbestos.
f. Earlier in the same month, a NSW owner builder purchased a shed from a supplier on the internet. The shed was confirmed as containing chrysotile asbestos in the mastic sealing tape installed between the roof sheets.
g. In March 2014, a product by the name NUTPLUG, imported from China into Australia for use as a component of Loss Circulation Material, was identified as containing chrysotile asbestos. The Loss Circulation Material was for use during the operation of coal-gas drilling rig operation, to help prevent drilling fluids moving sideways.
h. 2016, January 25 – ABC Adelaide, Seaford railway line embroiled in asbestos controversy - The SA Government has advised workers that concrete fibre cement floor sheeting at the Ascot Park Feeder Station and Lonsdale Substation could possibly contain traces of chrysotile asbestos.
i. February 16 – The Age, Four new tram substations built with asbestos floors - Four new electrical tram substations have been built in Melbourne with asbestos flooring imported from China
j. June 9 – ABC Adelaide, Asbestos illegally imported from China provokes questions and anger in SA - It was revealed this week that SA-based company Australian Portable Camps was being investigated over imports from China which illegally contained the deadly substance. It was revealed early this year that Adelaide contractor Robin Johnson Engineering unknowingly imported from China building products containing asbestos. These appear to be portable housing/dongas for building sites across WA especially.
k. July: YUANDA Scandal breaks, Asbestos found in new Perth Children's Hospital; Asbestos found in 'Tower of Power', Government Office Building, Brisbane; "Asbestos scandal sets off fears at 69 sites" - Australasian Business Intelligence.
l. July 14, ABF executes warrants over potential asbestos importations
m. July 27 – The Australian, Fears asbestos sheets used at work sites: A South Australian company that imported more than 8000 sheets of cement board containing asbestos from China is under investigation amid fears that its products are being used at construction

50. Both unions and the Asbestos Eradication and Safety Agency (ASEA) believe that these cases are simply the tip of the iceberg, and it is likely that materials containing asbestos

have been imported into Australia continuously even after the December 2003 ban. For example, in its submission to the Federal Senate inquiry into Non-Conforming Building Products:

> *ASEA noted that even though the importation into Australia of all types of asbestos and products containing asbestos is banned (except under limited circumstances) asbestos has been detected in a wide range of goods and materials imported into Australia, including in building and construction materials such as cement compound board. This includes products that were supplied for export as 'asbestos-free' but which subsequent testing revealed to contain asbestos."*[3]

51. The CFMEU had raised concerns well before the well-publicised Yuanda cases:

> *"The submission from the Construction, Forestry, Mining and Energy Union (CFMEU) similarly highlighted a reported rise in imports from China of materials containing asbestos, including plasterboard, automotive parts, and asbestos-tainted toys."*[4]

RECOMMENDATION 8: Sub-regulation (2) be removed from proposed regulations 225 and 240.

CFMEU Proposals

52. VTHC supports two further proposals made by the CFMEU about the Asbestos regulations:
    a. **Proposed regulation 244**: add the words "before the refurbishment work is commenced" at the end of clause 244(1)(a) and (5)(a). This will avoid any potential inconsistency and inaccuracy.
    b. **Proposed regulation 275**: The levels of airborne asbestos stated in sub-section (3) and (5) of this clause are inconsistent with and indeed higher than those under the National Model WHS Regulations (Part 8.8 Asbestos Section 476 (1) a & (2)). If we, in Victoria, are to provide the "highest level of protection and improve safety outcomes for workers", while also being consistent with the national harmonised framework, the airborne asbestos fibre levels as stated in Section 275 – i.e. 0.05f/m, must be lowered to 0.02f/m. We strongly urge this change be adopted in the 2017 Regulations.

RECOMMENDATION 9: The Authority make the changes recommended by the CFMEU to proposed regulations 244 and 275.

Part 5.1 – Construction

53. VTHC supports the submission of the CFMEU C&G on this section.

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[3] (Chapter 2, Interim Report http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming_products/Interim%20Report/c02)
[4] Ibid.

Part 5.2 – Major Hazard Facilities

Proposed r375 – Emergency Plan

54. Currently an operator of an Major Hazard Facility (MHF) has to consult with emergency services and/or local councils when developing their emergency plans.
55. Those emergency services and local councils all have elected Health and Safety Representatives who represent the emergency services employees and council employees who will have to respond to an emergency at an MHF. It is imperative that those employees are consulted on the emergency plans for MHFs. After all, it is those employees who will be put in harms way if an emergency eventuates.
56. VTHC proposes that r375(3)(c) include an additional subclause: "(iii) and the relevant HSRs of the emergency services and municipal councils."

RECOMMENDATION 10: Proposed Regulation 375(3)(c) be amended to include a reference to the HSRs of the emergency services and municipal councils to improve the health and safety outcomes of emergency responders and council responders to Major Hazard Facilities emergencies.

Proposed r379 – Review by Operator

57. Unions affiliated to VTHC have raised the issue that de-manning of Major Hazard Facilities (MHFs) means that operators of MHFs are relying more on community emergency response staff than on their own employees in the event of an emergency.
58. Therefore, it is appropriate that emergeny responders and the local community through their council have the ability to access and understand the operator's emergency response procedures.
59. VTHC therefore proposes to insert two additional subclauses into the proposed regulation 379(2) – highlighted in red below:

> *379 Review by operator*
>
> *(1) In order to ensure that an operator of a major hazard facility is complying with regulation 371 by adopting appropriate risk control measures, the operator must review and, if necessary, revise the following—*
>
> *(a) the major incident hazards and possible major incidents identified under regulation 368;*
>
> *(b) the safety assessment conducted under regulation 369;*
>
> *(c) the risk control measures adopted under regulation 371;*
>
> *(d) the emergency plan prepared under regulation 375. Note Act compliance—sections 21, 23 and 26 (see regulation 7).*
>
> *(2) A review under this regulation must be conducted at least every 5 years as well as in the following circumstances—*
>
> *(a) at the direction of the Authority;*
>
> *(b) before a modification is made to the major hazard facility;*

(c) after a major incident occurs at the major hazard facility;

(d) when an effectiveness test indicates a deficiency in a risk control measure;

(e) if there has been any change to the circumstances that formed part of the property protection assessment under regulation 382; 331

(f) if a health and safety representative requests the operator to conduct a review.

(g) if any designated emergency services organisation requests the operator to conduct a review.

(h) if a relevant municipal council requests the operator to conduct a review.

RECOMMENDATION 11: Proposed Regulation 379(2) be amended to include subclauses (g) and (h) above.

PPE

60. VTHC supports the submission of the CFMEU C&G calling for all PPE to be provided by the employer.

RECOMMENDATION 12: the proposed regulations be amended to contain a catch all provision requiring all PPE required in a workplace to be provided by the employer.

Fees for Intervention or Infringement Notices

61. *The Occupational Health and Safety Act 2004* (Vic) (the Act) underpins WorkSafe's compliance and enforcement policies and activities. Section 4 (1) of the Act gives Victorian workers the right to "the highest level of protection against risks to their health and safety that is reasonably practicable". The Act (section 4 (2)) also stipulates that "persons who control or manage matters that give rise or may give rise to risks to health and safety are responsible for eliminating or reducing those risks so far as reasonably practicable."[5]
62. The Act states (section 7 (c) that it is the role of WorkSafe to "monitor and enforce compliance with the Act and the regulations."[6]
63. WorkSafe, as Victoria's OHS regulator, must have as its primary objective, ensuring that Victoria workers are in fact provided with 'the highest level of protection that is reasonably practicable'.
64. In recent years it has become apparent that WorkSafe is viewed as a toothless tiger when it intervenes onsite. Nearly all prosecution work is post-fatality or injury. Employers are not concerned when WorkSafe enter their worksite. The worst that they face is an improvement notice but many escape with WorkSafe recording a "voluntary compliance" note on the entry record. This is unacceptable given that when illnesses, injuries or fatalities occur, employers only bear 5% of the economic burden of that illness, injury or fatality.
65. The best way to prevent occupational illnesses, injuries or fatalities is to eliminate, substitute or control hazards and risks in the workplace. Employer who are found to have

[5] *Occupational Health and Safety Act 2004* (Vic)
[6] *Occupational Health and Safety Act 2004* (Vic)

failed to provide a safe workplace when an inspector visits their site ought to face some form of penalty for that criminal breach of the OHS Act.

66. There are at least two models that could solve this issue:
    a. Fee for Intervention (the UK Model)
    b. Infringement Notices (the NSW Model).
67. The OHS Act clearly envisages an infringement notice regime through s139 which provides that regulations may provide a person with the right to issue an infringement notice for a breach of the OHS Act or regulations.
68. Both models have been in place for a number of years. VTHC urges Government to help add teeth to WorkSafe and provide it with the ability to shift the economic cost for prevention onto the employers via a fee for intervention or infringement notice regime.
69. To that end, VTHC calls for Government to review the two models through its usual public consultation, before adding new regulations allowing WorkSafe to ensure that there is an economic bite to any enforcement activity undertaken onsite by its inspectors.

RECOMMENDATION 13: A review be established into whether a Fee for Intervention or an Infringement Notice regime would best provide WorkSafe with an additional enforcement tool to ensure compliance with OHS laws in Victorian workplaces.

Support for HSR Submission

70. VTHC has read the submission of Vasalia Govender, a Masters student in Occupational Health, Safety and Ergonomics at La Trobe University, a Disability Development Support Officer and an HSR in her workplace.
71. VTHC supports her submission. We encourage the Authority and Government to consider the improvements suggested by Ms. Govender.