Submission to
WorkSafe Victoria
Proposed Occupational Health and Safety Regulations 2017

09 September 2016
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1. INTRODUCTION

HIA notes the proposed changes to improve and streamline the Victorian Occupational Health and Safety Regulations. These submissions are provided in response to public comment and the Regulatory Impact Statement (RIS).

HIA generally considers that most of the proposed changes would be beneficial, and with a few exceptions, as detailed below, consider that the proposed changes represent a reasonable and balanced approach that would enhance the OHS Regulations.

2. RESPONSE TO SPECIFIC REGULATIONS

DRAFT REGULATION 5 - DEFINITIONS

Definition of Hazardous Manual Handling

HIA supports the proposed definition and particularly supports the proposals to:

- remove the word ‘sustained’ in relation to movements. HIA notes that that a movement that is sustained can be characterised as a posture and would be captured by proposed Regulation 5(a) (ii);
- remove reference to ‘repetitive’ in relation to posture. HIA notes that an awkward posture that is repeated is better characterised as a movement and would be captured by proposed Regulation 5(a)(iii)

Definition of Demolition

HIA considers that the proposed change to the definition will provide consistency with the construction part.

PART 3.3 - PREVENTION OF FALLS

HIA generally supports the proposed changes to the prevention of falls part of the Occupational Health and Safety Regulations.

DRAFT Regulation 41 – Application of Part

HIA believes that the prevention of falls part of the Regulations, along with the Compliance Code Prevention of Falls in General Construction, the Code of Practice Prevention of Falls in Housing Construction and other guidance currently available on how to prevent falls, collectively provide a reasonable level of clarity about how to control fall risks, including how to control risks of falling below two metres. However, of the three options canvassed in the RIS, HIA agrees that the proposal to include a note to further clarify the legislative obligations is the most appropriate and suitable option.

The proposed option would retain the certainty provided by the prevention of falls part of the Regulations about the specific ways to minimise the risk of a fall from more than two metres. The proposed option will also have the added benefit of providing extra clarity to assist duty holders to meet their obligations under the OHS Act and would not result in additional impacts on Victorian businesses. It will also improve safety by reducing any potential misunderstanding of the obligations that exist in relation to the risk of falls below two metres.

Adopting any of the other options would not be supported. The other options identified in the RIS could have a negative effect as they complicate the prevention of falls regulations, introduce confusion and/or introduce significant impacts. HIA notes that in particular, the potential impact of adopting the WHS approach of
defining risk of a fall “from one level to another”, identified as option B in the RIS, has been previously assessed the Victorian Government\(^1\) as quite considerable.

**PART 4.4 – ASBESTOS**

*Draft regulation 225 and 240 - Application of Division*

HIA supports the proposal to 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, subject to certain conditions.

We believe that the current requirements are an unnecessary regulatory compliance burden and that it is appropriate and realistic to introduce the proposed cut-off date. It is not logical to continue to mandate an asbestos register for buildings, structures, ship or plant constructed after 31 December 2003 - a date after which manufacture, supply, storage, installation and use of asbestos was prohibited nationally, and after which buildings, structures, ships or plant must absolutely be made of materials that do not contain asbestos. This has been recognised in the majority of Australian jurisdictions and the proposed cut-off date would be consistent with the provisions of jurisdictions that have adopted the WHS laws.

HIA is aware of the fact that recently, some building products found to contain asbestos have been unintentionally imported into Australia. However, HIA considers that it would not be sensible to continue, on this basis, to mandate an asbestos register for buildings built after the ‘prohibition’ date. There is no reason to believe that this will ensure that imported asbestos containing materials (ACM) are detected. Indeed, the current provisions have not helped to do that, and furthermore, the great majority of buildings built after the prohibition date would be asbestos free and not expected to have ACM. Reinspecting all the buildings built after that date to produce an asbestos register on the basis of a remote possibility that some ACM might have been inadvertently used will require testing all the materials in the building. This would not be feasible and is not likely to be done.

It is also worth noting that one of the key principles for this review, as outlined in the RIS and the Victorian Guide to Regulation, is that that the Regulations must be proportional to the risk to safety that they seek to address. The quantity of imported ACM found has been so small when compared with the overall quantum of building materials used since the ‘prohibition’ date, that the overall risk posed would be very low. Therefore, the proposed cut off date, along with the safeguards proposed, will ensure that this regulatory principle of ‘proportionality’ is met.

The proposed introduction of a 31 December 2003 cut-off date is both practical and realistic. It will reduce regulatory burden without diminishing safety, as it is subject to sufficient safeguards. It is subject to a condition that asbestos has not been identified and subject to a further condition that asbestos is not likely to be present.

**CHAPTER 5 - HAZARDOUS INDUSTRIES**

*Draft regulation 331 - Emergency procedures*

HIA notes the proposal to include a new regulation requiring employers and self-employed persons to develop emergency procedures if there is a risk of a person becoming engulfed by soil or other material when construction work is being performed.

HIA is of the view that this matter would increase red tape and does not require further regulation. It will become another cost of doing business, but with a questionable safety benefit. Will the proposed provision improve workplace safety? This is by no means clear, as the impacts and benefits of introducing this new provision have not been adequately addressed in the RIS. Unlike the assessments and analysis for other proposals, the proposal for emergency procedures for construction has not been assessed. The assessment of options for construction in chapter 15 of the RIS totally fails to account for the proposed emergency provision under option 2 – the preferred option that introduces this requirement.

No sizable problem has been demonstrated. Evidence of a problem to warrant regulatory action has not been provided. The proposal does not meet the approach for preparing the RIS, as stated in the RIS at pages 6-7, such as:

- **Identification of the problem** to be addressed, i.e., the nature and extent of the problem, the need for government intervention.
- **Identification of options** to achieve the objectives of the proposed Regulations, including alternative options.
- **Assessment of costs and benefits** under all options relative to a base case of no regulation, consistent with requirements outlined in the Victorian Guide to Regulation.
- **Assessment of other impacts** of the preferred option on small business and competition generally.

HIA suggests that there are already adequate provisions for establishing arrangements for managing emergencies for construction projects, e.g., OHS Regulation 5.1.17, which would include the incorporation of emergency response procedures into health and safety coordination plans. Employers must also develop Safe Work Method Statements (SWMS) for high risk construction work, including work involving trenches shafts and tunnels, as well as construction work involving a risk of drowning. SWMS require the duty holder to include the hazards and risks associated with the work, the risk control measures, and how those risk control measures will be implemented (OHS Regulation 5.1.5), which would be expected to include emergency response procedures (according to advice provided by WorkSafe).

HIA recommends that this proposal be rejected and that the best place to deal with the issue of emergency procedures is via practical guidance from WorkSafe for individual sectors of the construction industry. HIA would be happy to assist WorkSafe in developing guidance to address the needs of the domestic housing construction sector.

**SCHEDULES**

**Draft Regulation Schedule 3 – Part 2 – Licence classes for crane, hoist and fork lift truck operation**

**Draft Item 13 - Vehicle loading crane operation licence**

HIA notes the proposal to amend this item to provide that the scope of the work for a vehicle loading crane operation licence includes the application of load estimation and slinging techniques to move a load with a vehicle loading crane.

While HIA supports this change, it is not clear how it will affect existing vehicle loading crane operation licence holders. Will existing licence holders be ‘grandfathered in’, or will they require additional training to meet the competency requirements in the application of load estimation or slinging techniques?