



**Australian
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Working for business.
Working for Australia

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Submission on Victorian OHS/WHS Regulations

The Australian Chamber speaks on behalf of Australian business at a national and international level and across industries and businesses of all sizes. Australia's largest and most representative business advocate, the Australian Chamber develops and advocates policies that are in the best interests of Australian business, economy and community.

The Australian Chamber network represents in excess of 300,000 private enterprises engaging over four million employees or contractors, of which 85 per cent are small and medium businesses. We represent the broad interests of the private sector rather than individual businesses or narrow sectional interests.

The Australian Chamber supports the comments and submissions provided by our members. This feedback is provided without prejudice to Australian Chamber or its members' views and represents a collated view of member consultations.

The Australian Chamber strives to make Australia a great place to do business in order to improve standards of living for all. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs. Our industries are a vital part of the Australian economy now and in future.

The Australian Chamber welcomes the opportunity to make a submission to the Executive Director of WorkSafe on the *Victorian OHS Regulations reform*.

Consistent application across Australia

It remains a challenge for Australian industry to be sustainable in a global market and retain a global perspective at a cost that is not prohibitive. This is also true for the borders within Australia. Currently, multi - state employers or those doing business across borders face additional burden in checking and ensuring they meet the varied requirements for health and safety in WA and Victoria.

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The inter-governmental agreement (IGA) that supports the development of the model legislation was based on an *optimal model for a national approach*. We strongly support the adoption of the model work health and safety (WHS) laws in each jurisdiction in Australia. This consolidation of legislation and resulting model laws is a positive step towards strengthening health and safety outcomes in Australian businesses. We believe that WHS will be further improved by the alignment, and where possible, adoption of the model in Victoria.

Consistent application of the legislation including compliance and enforcement across jurisdictions is much needed. Industry commends the effort to eliminate inconsistencies and duplication in WHS legislation. There is much of the model WHS package that can be easily adapted or aligned with Victorian OHS legislation. We encourage wherever possible this alignment.

Australian Chamber believes that more could be done to minimise the number of regulations. The Australian Governments' Principles of Best Practice Regulation¹ means that other avenues should be explored to achieve the aims of regulation and that each and every regulation should be imposed only when it can be shown to offer an overall net benefit.

Adoption of Australian or other standards

Australian Chamber commends the Ministerial direction and Safe Work Australia (SWA) commitment to the removal of references to Australian Standards in legislation. Australian Standards are costly and numerous. Business cannot be expected to purchase the range of Australian Standards (AS), especially given the high volume of cross-referencing between standards.

When a reference to Australian Standards is made, government should ensure that these standards are free, accessible and that they are in plain simple language.

Reduce unnecessary record keeping

Australian Chamber recommends a minimal approach to record keeping requirements where there is an established proven need.

There are opportunities even within the Model WHS Act and Regulations to remove unnecessary record keeping, e.g. written notification of an incident as well as initial notifications, retention of some records and some health monitoring requirements.

We believe that more could be done in the proposed new Victorian OHS Regulations to minimise record keeping and duplication.

¹ The Australian Government's online resource for regulation reform <https://cuttingredtape.gov.au/handbook/ten-principles-australian-government-policy-makers> accessed 26 August 2016



Reasonably practicable

'Reasonably practicable' is used to qualify duties to ensure health and safety and certain other duties in the WHS Act and Regulation. It means that which is, or was at a particular time, reasonably able to be done to ensure health and safety whilst taking into account relevant matters including:

1. the likelihood of the hazard or the risk occurring;
2. the degree of harm that might result from the hazard or the risk;
3. knowledge about the hazard or risk;
4. ways of eliminating or minimising the risk; and
5. the availability and suitability of ways to eliminate or minimise the risk.

A duty holder must consider what can be done and what would be reasonable in the circumstances.

Australian Chamber maintains that this qualifier should be used whenever there is an alternative or a complex response possible. As an example; the duty to provide changing and washing facilities should be qualified by what is reasonably practicable. There are a range of responses possible and these should be commensurate with the size and nature of the operations. As an illustration, businesses that have dynamic work requirements and environments should not be required to provide the same facilities as would be the case for a static workplace. Furthermore, small business should not be overburdened and expected to provide to the same standard of that of a larger and better resourced business unless there is specific reason that a certain standard is expected.

WHS Entry Permits

Australian Chamber notes that there is an ongoing issue of how the WHS Entry Permits relate to Fair Work Act permits. These should be consistent. Some members have reported health and safety issues misused for industrial purposes. It must be clear that the person that seeks to rely on a reasonable concern about an imminent risk to health and safety has the burden of proving that the imminent risk exists. This must also be recorded clearly.

Australian Chamber supports that workers and HSR should seek to first resolve the issue with the relevant PCBUs. We further support notification 24 hours prior to entry or access to a workplace and the reference to the specific breach involved. This should be the minimum allowable standard to provide both consistency with other provisions in the WHS Act and Fair Work legislation, and to give sufficient notice to a PCBU to ensure they can appropriately respond.

Failure by a WHS entry permit holder to provide a report should be grounds for a suspension or revocation of the WHS entry permit holder's permit. Where multiple WHS entry permit holders attend a workplace on the same occasion, each WHS entry permit holder should be required to submit an individual report.



Australian Chamber strongly encourages consistent application and enforcement across WHS jurisdictions of entry permit requirements.

Providing Assistance

Australian Chamber Members note that there are difficulties distinguishing those that are genuinely entering to assist a health and safety representative. Assistance needs to be clearly defined and applied consistently. Australian Chamber has been advised of instances where a union official is requested as an assistant by a health and safety representative, despite not possessing appropriate qualifications or expertise that would enable them to assist in the matter at hand.

Psychological Health

Australian Chamber maintains that the hierarchy of controls does not strictly apply to psychosocial hazards. It is early reporting and early intervention that are the most appropriate responses for minimising the risks to workers psychosocial health and safety. Psychological health is variable, debatable and often relies on perceptions. The focus must be on work-related factors and work design. The PCBU cannot reasonably be held responsible for the diverse range of social, environmental, biological and psychological factors that can impact on an individual's psychological health.

The PCBU is not responsible for the way people feel, think, behave or interact, but they can voluntarily assist and support - so far as is reasonably practicable.

The various definitions of psychological health show the indeterminate nature of a person's mental health and the difficulty with the obligations under the WHS legislation.

The same "stressors" do not always lead to negative outcomes in each individual. Furthermore, 'work related' stressors cannot always be reliably isolated from other factors affecting a person's psychological health.

Similarly, the Australian Chamber does not support monitoring of psychological health and therefore does not support S19 (g) that refers to physical and psychological 'health monitoring' for the purposes of prevention of injury or illness. There are already sufficient and specific monitoring requirements for changes to health status with exposure to specified substances listed in a schedule of the Model legislation.

Enforceable Undertakings

Australian Chamber supports enforceable undertakings. When used correctly these can provide benefit to the organisation, its workers and the wider community.

Individual workers and Cease Work

The right to cease unsafe work should remain with the individual worker. In the model legislation, individual workers have the statutory right to cease work on safety grounds. This acknowledges that individual workers can be best placed to make this decision.



Clear grounds for this belief must be provided and an issues resolution procedure established and used. Health and safety representatives should not have any additional burdens or responsibilities placed on them if these are duplicate in nature to existing individual responsibilities.

Education and Awareness

Industry experience from smaller businesses suggests that the best way to improve safety outcomes is to provide clear and practical solutions to common safety issues with strong education and awareness programmes. Partnering with an industry or employer association to deliver these programmes is the best way to achieve uptake as research indicates that small businesses trust employer associations as a credible source of information and assistance.

Options

The Australian Chamber believes that wherever possible, State and Territory jurisdictions should aim to be as consistent as possible with the model WHS legislation. As noted in the RIS, much of the model WHS package is based on the learning's from Victorian OHS legislation.

The Australian Chamber supports an appropriate balance between deterrence and that of education and information. We believe that non-regulatory options are often more effective and sustainable.

The attempts made in the Regulatory Impact Statement to estimate costs are fraught, and this doesn't give confidence in the outcomes of the cost benefit analysis. The selected improvements don't go far enough and although they may have come from stakeholder discussions, some should also come from broader sources. What has worked and what isn't working across all jurisdictions, what are the net gains from a regulation on a topic.

There were only 18 hazard areas listed in Option 2 and only 12 areas for national consistency listed in Option 3. We would suggest an Option 4 that is a mix of Option 2 and 3 but with more regulations listed for alignment or removed for guidance status.

Yours sincerely,

Carolyn Davis

Director, Work Health and Safety and Workers Compensation Policy