



**Proposed Occupational Health and Safety Regulations 2017 and  
Equipment (Public Safety) Regulations 2017**

**Response to public comment**

**April 2017**

## Summary of Public Comment and WorkSafe’s response

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## Summary of Public Comment and WorkSafe's response

### Introduction

The Occupational Health and Safety Regulations 2007 (former OHS Regulations) and Equipment (Public Safety) Regulations 2007 (former EPS Regulations) will expire in June 2017.

WorkSafe Victoria (WorkSafe) has undertaken a process to review and remake these Regulations, and as of this process, draft replacement Occupational Health and Safety Regulations 2017 (draft Regulations) and associated Regulatory Impact Statement (RIS) were released for public comment from 18 July until 9 September 2016. This document summarises the matters raised in public comment and WorkSafe's responses to these, including how they have informed the completion of the OHS Regulations 2017 (final Regulations).

### Aim and principles of the development of the Occupational Health and Safety Regulations 2017

WorkSafe has undertaken a comprehensive examination of the former Regulations. The aim of the review of the former Regulations was to:

- evaluate the effectiveness of the Regulations
- improve health and safety outcomes for workers
- identify and deliver savings to business without reducing safety standards
- ensure the Regulations target the areas of greatest risk
- ensure the Regulations deliver a proportionate regulatory response
- streamline and modernise the Regulations while maintaining best practice.

In accordance with the aims set out above, the following principles have guided the approach:

- Removing duplication – the Regulations will be carefully examined to remove any residual duplication or inconsistency between the Act duties and those in the regulations.
- Providing guidance – Regulations should not simply provide 'guidance' on how to comply with the OHS Act 2004. That is a subject matter for compliance codes, guidelines or other guidance material.
- Enforceability – Regulations should be made only where it has been determined that they are capable of enforcement.
- Consolidation – The final Regulations will continue to be a consolidated set of regulations. The review has ensured streamlined provisions where appropriate and that a consistent approach is adopted throughout (unless a different approach is justified for a particular regulated area).
- Consistent and predictable – Regulations will be consistent with other policies and laws to duty holders to avoid confusion. They will also be predictable to create a stable regulatory environment and foster business confidence.
- Flexibility – Where possible duty holders will be provided with flexibility regarding how they comply with their obligations.
- Proportionality – The Regulations will be proportional to the risk to safety that they seek to address.

## Summary of Public Comment and WorkSafe's response

### Consultation

WorkSafe established nine subject-specific stakeholder reference groups (SRGs) (Appendix D) to support the review of hazard-specific chapters within the former Regulations.

These groups comprised of both employee and employer representatives, drawn mainly from WorkSafe's established Health and Safety SRG. An additional SRG, made up of Government and Emergency Services representatives, was set up to review the Major Hazard Facilities Part of the OHS Regulations.

WorkSafe undertook a significant amount of stakeholder engagement throughout the review, with more than 236 hours of face-to-face engagement with stakeholders taking place. 65 topic-specific SRG meetings were held, and a total of 73 stakeholder organisations contacted to ensure their awareness of the review of the former Regulations and the opportunity and process to provide input.

The WorkSafe website provided the public information on the progress of this review, and a dedicated email address was set up to provide opportunity for SRG members and the public to seek further information or clarification from WorkSafe.

In addition, Deloitte Access Economics undertook stakeholder consultation in developing the Regulatory Impact Statement (RIS) for the draft OHS and EPS Regulations in accordance with the Victorian Guide to Regulation. In developing the RIS, Deloitte undertook extensive stakeholder consultation including:

- 148 one-to-one interviews with employers across affected industries
- a web-based survey that received responses from 167 small, medium and large employers across all affected industries
- two metropolitan focus group sessions with employee and employer representative bodies
- three regional focus group sessions with local businesses, employee and employer representatives.

### Public comment

The draft OHS and EPS Regulations were made available for public comment from 18 July to 9 September 2016. During the public comment period, WorkSafe held eight stakeholder information sessions throughout Victoria attended by 272 stakeholders. WorkSafe received 61 submissions during this period (Appendix A).

### Summary of main issues arising from public comment

There was general support for the proposed OHS Regulations and the proposed EPS Regulations, although there were specific areas that were not supported by some stakeholders. In particular the following issues generated a large amount of comment:

- **Asbestos – Assuming post-2003 structures do not contain asbestos**

Submissions were received in support of and opposition to the proposal to allow duty holders to assume that asbestos is not present in buildings, structures, ships or plant built or made after 31 December 2003 if no asbestos has been identified and asbestos is not likely to be present. The final Regulations remove this proposal.

## Summary of Public Comment and WorkSafe's response

- **Hazardous substances and materials – Labelling of agricultural and veterinary chemicals**

Submissions opposed the requirement for prescription-only veterinary medicines to include Globally Harmonised System of Chemical Labelling (GHS) and GHS hazard and precautionary statements. An exemption has been included in the final Regulations.

- **Prevention of falls – Application of Prevention of Falls part**

A number of submissions from employee representative groups proposed extending the Prevention of Falls Part to apply to risks of falls from two metres or less. In response, the note to reference an employer's obligation to apply a hierarchy of controls when addressing risks of falls from two metres or less was strengthened.

- **Emergency procedures for risk of ground collapse (engulfment provisions)**

There was a mixed response from respondents to the proposal to require emergency procedures where there is a risk of ground collapse or the site becoming engulfed with soil. The proposed emergency procedures have been retained in the final Regulations.

## Summary of changes made in response to public comment

WorkSafe has considered all comments received. A comprehensive response to public comments received and any changes made as a result are listed in the 'Specific comments and responses' part of this report.

As a result of the rigorous review process, and comments raised by respondents, amendments have been made to the draft Regulations and are reflected in the final Regulations. The most significant changes are:

- **Asbestos – Assuming post-2003 structures do not contain asbestos**

The final Regulations do not include the proposal to allow duty holders to assume that structures constructed after 2003 do not contain asbestos.

- **Asbestos – Notification of training**

The requirement for asbestos removalists to notify WorkSafe of changes to the training, or experience of persons undertaking removal work was reinserted in the final Regulations.

- **Noise – Selecting hearing protectors**

The requirement for employers to consider certain matters when selecting hearing protectors has been retained in the final Regulations.

- **Noise – Risk control plans**

The requirement for a written risk control plan to be developed, where implementation of a higher order risk control measure is delayed for more than six months has been retained in the final Regulations.

- **Plant – Inspection and maintenance record keeping**

Extension of the inspection and maintenance record keeping requirements to chairlifts has been included in the final Regulations, given that they have a comparable maintenance risk profile to plant that is subject to these requirements.

## Summary of Public Comment and WorkSafe's response

- **Hazardous substances and materials – Labelling of agricultural and veterinary chemicals**

An exemption for prescription-only veterinary medicines from the Globally Harmonized System of Classification and Labelling of Chemicals (GHS labelling) requirements is included in the final Regulations.

- **Hazardous substances and materials – Definition of container:**

The Globally Harmonized system of Classification and Labelling of Chemicals (GHS) has been applied to bulk containers of dangerous goods in the final Regulations.

## **Summary of Public Comment and WorkSafe's response**

### **Specific comments and responses**

This section provides a detailed response to feedback received and considered by WorkSafe as a result of public comments received.

## **Summary of Public Comment and WorkSafe's response**

### **Hazardous manual handling**

Comments were received regarding Part 3.1 Hazardous Manual Handling and Part 1.1 Introductory Matters, specific to hazardous manual handling.

#### **Regulation 5 – Definition of hazardous manual handling**

##### **Comments received**

Submissions from a number of industry and employer groups supported the amalgamation of three separate definitions (hazardous manual handling, manual handling and object) in the previous regulations to create the new streamlined definition in the final regulations.

##### **WorkSafe response – noted**

##### **Comments received**

A submission from an academic made comments regarding the definition of hazardous manual handling, indicating that it implies musculoskeletal disorders can only be caused by activities that required force, when it is known that these disorders have been acquired in low impact jobs such as those in call centres.

Further, musculoskeletal disorders may be caused by psychosocial hazards. This hazard is not reflected in the definition of 'hazardous manual handling'.

##### **WorkSafe response – noted**

The term 'use of force' refers to all force, irrespective of the level of pressure exerted. For example, typing involves force and would be considered 'hazardous manual handling' on the basis that it also involves repetitive movements. The definition of 'hazardous manual handling' is not restricted to protracted or substantial force.

Further, the definition of 'hazardous manual handling' is intended to identify the physical elements of an activity that amounts to hazardous manual handling. It is not intended to identify the types of workplace hazards that cause hazardous manual handling, such as psychosocial hazards.

Part 3.1 of the final Regulations requires employers to identify hazardous manual handling and to control any risk of musculoskeletal disorder associated with this hazardous manual handling. This includes manual handling that may be hazardous due to psychosocial factors.

##### **Comments received**

A respondent from the legal profession indicated that the terms 'sustained' and 'repetitive' have been combined and confused in the revised definition of hazardous manual handling.

##### **WorkSafe response – noted**

In the definition of hazardous manual handling, the term 'repetitive' has been deleted in relation to posture amounting to hazardous manual handling. A posture that is repeated meets the definition of hazardous manual handling by virtue of the fact that it is a repeated movement.

Similarly, the term 'sustained' has been deleted in relation to movement amounting to hazardous manual handling. A movement that is sustained meets the definition of hazardous manual handling on the basis that it is a sustained awkward posture.



## **Summary of Public Comment and WorkSafe's response**

### **Comments received**

An employer group indicated that changes to the definition of 'hazardous manual handling' may confuse some employers, and there is a need for new or additional guidance material to provide employers with a clear rationale for the practical implications of this change.

### **WorkSafe response – noted**

Explanatory guidance materials will be made available to assist employers to understand the practical implications of the change to the definition, and to comply with their duties.

### **Comments received**

An industry association indicated that the reference to 'handling' in the definition of 'hazardous manual handling' suggests that something must be held or used by the hands. A preference was expressed for the Model Work Health and Safety (WHS) Laws definition of 'hazardous manual task'.

### **WorkSafe response – noted**

The term 'hazardous manual handling' is defined to mean any work involving use of force having one or more of the characteristics set out in the definition. It is not limited to work involving use of the hands. It is not proposed to adopt the phrase 'hazardous manual task' because the meaning of 'task' can be unclear.

## **Regulation 5 – Definition of musculoskeletal disorder**

### **Comments received**

A submission from an academic indicated that the definition of 'musculoskeletal disorder' is too narrow as it excludes injuries and diseases that do not arise in whole or part from 'hazardous manual handling'.

### **WorkSafe response – noted**

The definition of musculoskeletal disorder in the final Regulations relates only to Part 3.1, which deals specifically with musculoskeletal disorders caused by hazardous manual handling. The definition is therefore limited to injuries, illnesses or diseases associated with hazardous manual handling. Employers are required to identify and control other hazards and risks, including those that may result in musculoskeletal disorder, under the general duties in the OHS Act.

## **Part 3.1 – General comments**

### **Comments received**

A number of industry and employer representative groups expressed support for the removal of references to 'task' from Part 3.1, and changing the title from 'Manual Handling' to 'Hazardous Manual Handling'.

### **WorkSafe response – noted**

### **Comments received**

An employee representative group indicated that references to 'risk of a musculoskeletal disorder' should be replaced with 'risk of hazardous manual handling'. This would ensure that terminology in Part 3.1 is consistent with other parts of the Regulations, where it is the risk of hazard – rather than the risk of injury – that is the focus of control.

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – noted**

The term 'musculoskeletal disorder' is defined in Regulation 5 to include any injury, illness or disease arising in whole or part from hazardous manual handling (excluding certain crushing, entrapment or cutting injuries resulting primarily from the use of plant related injuries covered by other parts of the Regulations). Therefore, the references to 'risk of a musculoskeletal disorder' in this Part have been retained to ensure that the Part specifically addresses these types of injuries, illness or disease specified in the definition.

## **Regulation 27 – Control of risk**

### **Comments received**

Submissions from several academics made comments and recommendations regarding draft Regulation 27. It was suggested that the term 'systems of work' should be defined to clarify that the term encompasses organisational and psychosocial hazards.

Further comments suggested that amendments be made to the draft Regulation to reflect that systems of work can affect the risk of musculoskeletal disorder even where they are not directly linked to hazardous manual handling, and finally, psychosocial hazards should be included in the Regulation as a factor to consider when determining risk control measures, as there is literature that demonstrates a link between psychosocial hazards and musculoskeletal disorders.

### **WorkSafe response – noted**

The term 'system of work' has a well-understood ordinary meaning, which encompasses both organisational and psychosocial factors that could increase the risk of musculoskeletal disorder in the workplace. It is proposed that further guidance will be provided in the Hazardous Manual Handling Compliance Code regarding the meaning of the term.

Part 3.1 of the final Regulations is intended to specifically address the risk of musculoskeletal disorder associated with hazardous manual handling. It is not intended to address risks of musculoskeletal disorder arising as a result of other activities. Employers are still required to identify other workplace hazards and control risks under the broader duties in section 21 of the OHS Act.

Finally, Part 3.1 of the Regulations requires employers to identify hazardous manual handling and to control any associated risk of musculoskeletal disorder. This includes manual handling that may be hazardous due to psychosocial factors. It is proposed that further guidance will be provided in the Compliance Code about hazardous manual handling that may be hazardous due to psychosocial factors.

## **Regulation 28 – Review of risk control measures**

### **Comments received**

An employer representative group supported the removal of the trigger requiring review of a risk control measure before an object is used for purposes other than that for which it was designed.

### **WorkSafe response – noted**

## **Summary of Public Comment and WorkSafe's response**

### **Noise**

Comments were received regarding Part 3.2 Noise.

#### **Part 3.2 – General comments**

##### **Comments received**

An industry association suggested that the change in the ordering of the Regulations appears to be unnecessary and illogical.

##### **WorkSafe response – noted**

The ordering of the Regulations reflects the sequence in which an employer should comply with the Regulations in practice.

This change does not alter employer duties to control workplace noise. The change in ordering ensures that the structure and format of the final Regulations is in line with other Victorian legislation.

#### **Regulation 34 – Control of exposure to noise**

##### **Comments received**

A number of industry associations and employee representative groups supported the removal of the guiding factors to consider when selecting hearing protectors. However others expressed their concern citing the incidence of occupation-induced hearing loss and noted that the removal of the guiding factors could result in reduced safety protection for Victorian workers, as employers would no longer be required to spend time considering the best protection to give employees.

##### **WorkSafe response – adopted**

Guiding factors are included in the final Regulations (34(6)). The Regulatory Impact Statement (RIS) found there were no associated costs with these provisions.

#### **Final Regulation 34 – Control of exposure to noise**

##### **Comments received**

Numerous employee representative groups and an industry association raised concerns regarding the proposal to remove the requirement for a written risk control plan where higher order risk controls cannot be implemented within a six month period.

They argued the duty to consider certain matters when selecting hearing protectors is a necessary provision as they provide a high level of consistency and certainty to employers and employees, and therefore should be retained.

They also queried whether the removal of the provisions achieved the desired benefits of consistency, proportionality and streamlining of the regulations.

##### **WorkSafe response – adopted**

This duty has been retained in the final Regulations.

## **Summary of Public Comment and WorkSafe's response**

### **Regulation 37 – Audiometric tests**

#### **Comments received**

An employer representative group indicated that the trigger for audiometric testing should be aligned with the Model WHS Regulations. The Model Regulations require employers to undertake audiometric testing for employees who 'frequently' wear personal protective equipment (PPE) to protect themselves from occupational induced hearing loss.

#### **WorkSafe response – noted**

The Model WHS Regulations trigger for audiometric testing has not been adopted, as the term 'frequently' is ambiguous and may lead to uncertainty when interpreted and applied by duty holders.

### **Regulation 38 – Audiological examinations**

#### **Comments received**

Two industry associations expressed their support for this provision, however sought clarification regarding alignment with equivalent provisions under Victorian workers' compensation legislation. Specifically, does the 15dB threshold align with the equivalent provisions under Victorian workers' compensation legislation?

#### **WorkSafe response – noted**

The threshold in the respective provisions of the OHS Regulations and the WIRC Act are not aligned, as they serve different purposes. However, they are complimentary.

Under regulation 38, the threshold for provision of an audiological examination is where a worker experiences a reduction of hearing levels equal to or greater than 15dB. Under the WIRC Act, injured workers are entitled to compensation for non-economic loss resulting from a workplace injury, including hearing loss, if their impairment rating is assessed to be more than 10%.

## Summary of Public Comment and WorkSafe's response

### Prevention of falls

Comments were received regarding both Part 3.3 Prevention of Falls and Part 1.1 Introductory Matters, specific to the prevention of falls.

#### Regulation 5 – Definition of fall arrest system

##### Comment received

An employee representative group recommended that the term 'catch platform' be defined as it is used in the example note for the definition of 'fall arrest system'. The respondent noted that use of a catch platform could still allow for a fall of at least two metres.

##### WorkSafe response – noted

The term 'catch platform' has not been defined as there is a high level of understanding of the meaning of the term by industry.

Fall arrest systems such as catch platforms can only be used if it is not reasonably practicable to use higher level control measures, or if the higher level controls are not fully effective in preventing a fall. Where the risk of a fall, or part of a risk remains, the duty holder must control that risk.

#### Regulation 5 – Definition of industrial rope access system

##### Comment received

An employee representative group recommended that the definition of 'industrial rope access system' be amended to align with the definition used in the current ISO standard for *Personal Equipment for Protection against Falls – Rope Access Systems*. This definition allows for rope access systems used on the horizontal plane.

##### WorkSafe response – noted

The current definition does not exclude an industrial rope access system that can be used on the horizontal plane as well as the vertical plane.

#### Regulation 5 – Definition of passive fall prevention device and work positioning system

##### Comment received

An employee representative group recommended that the definitions of 'passive fall prevention device' and 'work positioning system' be amended to denote that a temporary work platform, or any type of powered equipment, is a type of work positioning system rather than a passive fall prevention device.

##### WorkSafe response – noted

Temporary work platforms, which may include powered equipment, meet the definition of passive fall prevention device when used correctly. In practice, this means a passive fall prevention device requires no ongoing adjustment, alteration or operation after initial installation to ensure the integrity of the device to perform its function.

## **Summary of Public Comment and WorkSafe's response**

### **Regulation 5 – Definition of temporary work platform**

#### **Comment received**

An employee representative group recommended that the definition of 'temporary work platform' be amended to include rope access, which prevents a fall.

#### **WorkSafe response – noted**

A work platform is required to satisfy numerous requirements in addition to its ability to prevent a fall. A work platform must provide a safe and solid working surface for the duration of work conducted at heights, and once erected, require no human intervention to maintain its safety, whereas rope access relies on human operators to ensure their safe use. Therefore, rope access that prevents a fall does not fit the definition of temporary work platform.

### **Part 3.3 – General comments**

#### **Comments received**

An industry association and employee representative group suggested that better statistical data should be collated regarding the circumstances of workplace falls, particularly in regards to whether falls are from above or below two metres.

#### **WorkSafe response – noted**

There are currently a number of mechanisms which allow for the collection of data regarding workplace incidents and injuries including WorkSafe claims and workplace incident notifications, inspector records and investigation and prosecutions records. Further work will be undertaken to determine how these existing mechanisms can be better utilized to collate data about the circumstances of workplace falls.

### **Regulation 41(1) – Application of Part**

#### **Comments received**

Seven respondents, including employer and industry groups and an individual, supported the inclusion of Note 2 in draft Regulation 41 to clarify employers' legal obligations for falls from two metres or less.

Four employer groups and an industry association indicated that Victoria should adopt the Model WHS Regulation approach, which does not apply a height threshold, while one employee representative group supported the option to introduce a separate hierarchy for falls from two metres or less.

One employee representative organisation recommended that Note 2 apply stronger and more robust wording to ensure employers understand their obligation to control the risk of a fall from any height, and to assist WorkSafe in enforcing the requirement for falls from two metres or less.

#### **WorkSafe response – adopted**

The note in final Regulation 41 has been amended to strengthen its application. The amended note emphasises the employer's duty to eliminate risks associated with a fall from two metres or less, so far as is reasonably practicable, and reduce any remaining risk so far as is reasonably practicable. In addition to the obligations under the Act, the risk of falls

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below two metres in construction, mining and confined spaces are covered by specific regulations.

Falls from two metres or less can potentially occur in myriad circumstances and environments. A hierarchy of controls to cover all circumstances would need to be generic, thereby adding little value to the existing obligations under the Act. Further, the RIS estimated the total cost to business associated with the option to remove the height threshold at an additional \$329 million per annum, and to introduce a separate hierarchy of control for falls from two metres or less at an additional \$15.6 million per annum.

### **Regulation 41 (2) – Application of Part**

#### **Comments received**

An industry association sought clarification that the exception for abseiling in draft Regulation 41(2)(a)(vii) is confined to recreational abseiling.

#### **WorkSafe response – adopted**

The final Regulations have been amended to clarify that the exemption for abseiling from Part 3.3 only relates to recreational abseiling.

### **Regulation 44 – Control of risk**

#### **Comments received**

An individual and employee representative group made a general comment recommending a review of the hierarchy of risk controls for falls in Part 3.3.

#### **WorkSafe response – noted**

The current hierarchy appropriately addresses the risk of falls, by ensuring employers use the highest level of control that is reasonably practicable to reduce risks associated with falls from heights over two metres.

While two submissions proposed altering the status of specific types of equipment or devices within the hierarchy (which are addressed in turn), no submissions indicated the overall hierarchy of control is not fit for purpose.

#### **Comments received**

An individual and an employee representative group sought clarification on where types of building maintenance equipment (BME) sit in the hierarchy of risk controls, and suggested that the definition be expanded to include items such as rope access and suspended scaffold.

#### **WorkSafe response – noted**

BME and suspended scaffold are both types of temporary work platforms. Industrial rope access is a type of work positioning system and a lower order of control.

The hierarchy of risk controls provides the flexibility to adopt the most appropriate BME to the situation.

## **Summary of Public Comment and WorkSafe's response**

### **Comments received**

An individual and an employee representative group noted that elevated work platforms (EWP) are not as safe as scaffolds and should therefore not be in the same category of 'passive fall prevention devices.'

### **WorkSafe response – noted**

Both scaffolds and EWP meet the definition of passive fall prevention device. There may be situations where the use of a particular type of passive fall prevention device is the safer option, due to factors such as the nature of the worksite or employees' skills and training.

### **Comments received**

An individual recommended the removal of fixed ladders from draft Regulation 44(5), on the grounds that working from a fixed ladder is exempted from the application of draft Regulation 44 by draft Regulation 41(2)(b).

### **WorkSafe response – noted**

For a task undertaken on a fixed ladder to be subject to the exception in final Regulation 41(2)(b), several criteria must be met. Not all tasks undertaken on a fixed ladder will meet these criteria.

In these instances, the task on a fixed ladder may be an appropriate risk control for the purposes of final Regulation 44(5).

## **Regulation 49 – Working alone at heights**

### **Comments received**

A Victorian business and an industry association supported the proposal not to specifically regulate people working alone at heights, and sought clarification as to whether draft Regulation 49(4) conflicted with the RIS comments that working alone at heights did not require further regulation.

### **WorkSafe response – noted**

Final Regulation 49(4) is a new provision that clarifies that the emergency procedures that can be carried out immediately after a fall (as required by Regulation 49(2)) are carried out immediately after a fall.

Paragraph 8.4.2.3 of the RIS sets out why it is not necessary to prescribe specific regulation around people working at heights alone, on the basis that existing general obligations capture the need to address risks associated with working alone. The addition of the clarifying provision in final Regulation 49(4) does not alter the effect that employers will need to address risks associated with working alone when establishing emergency procedures.

## **Regulation 49 – Emergency procedures**

### **Comments received**

An individual recommended that draft Regulation 49(2)(a) was amended to ensure that the rescue and/or provision of first aid after a fall must be 'prompt'.

### **WorkSafe response – noted**

The requirement for prompt response in the event of a fall is captured in final Regulation 49(4), which provides that an employer must ensure that the emergency procedures are



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carried out immediately after the fall. In addition, Regulation 49(2)(b) provides that the emergency procedures referred to in Regulation 49(2)(a) must be able to be carried out immediately after a fall.

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### Confined Spaces

Comments were received regarding Part 3.4 Confined Spaces and Part 1.1 Introductory Matters, specific to confined spaces.

### Regulation 5 – Definition of confined spaces

#### Comments received

An industry association recommended that the definition of 'confined space' be modelled on the Model WHS Regulations, and raised the following concerns:

- that listing example spaces followed by a qualifying "if" statement creates confusion and examples of confined spaces should be provided in a revised Compliance Code
- the definitions of risks associated with explosive vapours or dusts are not explicit, but rather inferred in the 'harmful contaminant' statement, and
- that excluding 'engulfment by liquids' may create confusion in some industries.

#### WorkSafe response – noted

The Model WHS Regulations definition of 'confined space' was explored, however, is broader than the Victorian definition and does not include limitations or restrictions for entry or exit to confined spaces. Adopting the definition would have the effect of increasing the scope of the confined spaces Regulations to include facilities that have hazardous atmospheres such as cool stores and warehouses.

The Victorian definition refers to 'harmful level of any contaminant', which includes flammables. This is further elaborated in the Confined Spaces Compliance Code, along with information to assist duty holders to identify that a confined space is a confined space for the purposes of the OHS Regulations.

Engulfment means to be swallowed up in or be immersed by material, which may result in asphyxiation. Examples of stored materials that may pose a risk of engulfment include plastics, sand, fertiliser, grain, coal, coal products, fly ash and animal feed. WorkSafe will make guidance available to support duty holders seeking clarification.

### Removal of former Regulation 3.4.4 (2)

#### Comments received

Numerous industry associations and employer groups expressed their support for the removal of the responsibility for suppliers to eliminate the need for a person to enter a confined space in an item of plant where the manufacturer has failed to.

An employee representative group did not agree with the proposed removal of the former Regulation 3.4.4(2) and recommended it be retained to ensure that both locally and internationally manufactured plant were subject to the same level of scrutiny.

#### WorkSafe response – noted

Under final Regulation 53, suppliers of plant are required to ensure, so far as is reasonably practicable, that the designers and manufacturers of plant have complied with their obligations to ensure that the need for a person to enter a confined space is eliminated or reduced so far as is reasonably practicable. This Regulation applies where Plant is imported

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from jurisdictions outside of Victoria and ensures that all Plant supplied in Victoria is subject to the same safety standards.

### **Regulation 50 – Application to employers of emergency service employees**

#### **Comments received**

An industry association sought clarification as to whether the exemption applies to volunteers such as State Emergency Services, Country Fire Authority, St John Ambulance and others, as they are neither employers nor employees?

#### **WorkSafe response – noted**

Regulation 50 exempts employers of emergency services personnel from the confined spaces Regulations. As volunteers are not employees, they are not bound by the regulation 50.

### **Regulations 51, 52 and 53 – Duties of designers, manufacturers and suppliers of plant**

#### **Comments received**

An industry association commented that draft Regulations 51, 52 and 53 should reference Australia Standard 2865, section 2.4, Design, Manufacture, Supply and Modification Considerations.

The standard outlines minimum specifications for the safe design of confined spaces, minimum dimension of manholes and other entry points and other pertinent factors.

#### **WorkSafe response – noted**

Referencing Australian Standards in regulation has the impact of mandating the approach prescribed in the Australian Standard. Australian Standards can often be highly prescriptive and subject to change.

Compliance Codes and guidance materials will be developed to support duty holders to effectively comply with their duties.

### **Regulation 58 – Atmosphere**

#### **Comments received**

An industry association commented that draft Regulation 58 (5) provided a definition for 'purging' but did not define 'ventilation'. If an entrant purges a space with an inert gas such as nitrogen, when they should have ventilated with clean air, it can lead to potentially life threatening issues. Clarity on this process should be provided in the Regulations or the Compliance Code.

#### **WorkSafe response – adopted**

The Confined Spaces Compliance Code will provide the additional clarity and detail to address both ventilation and purging requirements.

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### **Regulation 63 – Confined Space entry permit**

#### **Comments received**

An industry association commented that clarity on draft Regulation 63 (3)(d) is required in relation to draft Regulation 65, as some may interpret the standby person as optional.

#### **WorkSafe response – noted**

The circumstances in which an employer would not assign a person, are those where the employer undertakes the standby duty themselves, and therefore does not need to assign a standby person.

#### **Comments received**

An industry association noted that, in regard to draft Regulation 63 (3)(e), different industries define 'maximum timeframes' differently, which may cause some confusion, and risks the possibility of employees working for prolonged periods.

#### **WorkSafe response – noted**

Final Regulation 63(3)(e) acknowledges that the time to complete tasks may vary from situation to situation, which is why there is no absolute timeframe placed on the confined space entry permit.

To assist duty holders to minimise the risk of employee fatigue, WorkSafe provides guidance on fatigue prevention in the workplace

### **Regulation 64 – Employer to keep entry permits**

#### **Comments received**

Submissions from a number of employer and industry groups supported the removal of the requirement for entry permits to be retained for 30 days, however, one respondent did not support the need for the record to be preserved for two years in the event of a notifiable incident.

In addition, one respondent indicated that draft Regulation 64 will have little effect in reducing the burden of compliance on national companies, as record-keeping requirements are longer under the Model WHS Regulations.

#### **WorkSafe response – noted**

The two-year timeframe for the preservation of entry permits in the event of a notifiable incident aligns with the timeframe prescribed in the OHS Act in which WorkSafe can, after becoming aware of an offence, initiate legal proceedings.

National companies will be able to standardise their record keeping systems, as the timeframes for keeping entry permits will be same under the Victorian and Model WHS Regulations.

## **Summary of Public Comment and WorkSafe's response**

### **Regulation 69 – Emergency procedures**

#### **Comments received**

An industry association commented that, in the event of an emergency, local work-based interventions are in place to avoid potentially long delays, rather than placing an undue reliance on contacting 000.

#### **WorkSafe response – noted**

The Regulations stipulate that local emergency procedures be in place.

## Summary of Public Comment and WorkSafe's response

### **Plant and Equipment (Public Safety) Regulations (EPS Regulations)**

Comments were received regarding the draft EPS Regulations, draft OHS Regulations Part 3.5 Plant and draft OHS Regulations Part 1.1 Introductory Matters, specific to Plant.

The EPS Regulations largely mirror Part 3.5 Plant, and apply these provisions to plant that exist outside workplaces (e.g. lifts in domestic premises). Respondent comments regarding draft Plant and the EPS Regulations are detailed below.

#### **Part 3.5 – Plant: general comments**

##### **Comments received**

An industry association indicated that Part 3.5 does not include provisions to ensure imported plant complies with Victoria's legislation.

##### **WorkSafe response – noted**

To ensure imported plant complies with Victorian legislation, the OHS Act places duties on suppliers of plant. Those duties equally apply to people who import and supply. It requires importing suppliers of plant to ensure that the plant, to be used at a workplace, is safe and without risk to health.

The OHS Act also places obligations on importing suppliers to provide adequate information about the purpose of the plant and any conditions necessary to ensure it is safe and without risks to health if it is used for a purpose for which it was designed, manufactured or supplied.

Additionally, Part 3.5 of the final Regulations places specific requirements on suppliers, including suppliers of imported plant, on the type of information to be provided with plant when it is supplied.

##### **Comments received**

An employer group noted their support for the proposed changes to Part 3.5.

##### **WorkSafe response – noted**

#### **Regulation 5 – Definition: abseiling equipment**

##### **Comments received**

An individual recommended that the defined term 'abseiling equipment' be replaced with 'rope access equipment' as the term 'abseiling equipment' is an outdated one. It was recommended that content for the definition could be sourced from ISO standards.

##### **WorkSafe response – adopted**

The defined term 'abseiling equipment' has been replaced with 'rope access equipment'. The content of the definition and the meaning of the defined term has not been changed.

The definition in the ISO standard is unsuitable for a regulation, as it describes a technique rather than equipment, and includes ambiguous language that may be open to interpretation.

## Summary of Public Comment and WorkSafe's response

### Regulation 5 – Definition: presence-sensing safeguarding system

#### Comments received

A health and safety consultancy suggested that revision of paragraph (c) of the draft Regulation definition of 'presence-sensing safeguarding system' to clarify that the machine stopping capabilities must cause the dangerous parts of a machine to be brought to a safe state before a person can reach the dangerous parts.

#### WorkSafe response – adopted

The definition of 'presence-sensing safeguarding system' has been amended to confirm that the machine stopping capabilities must cause the dangerous parts of a machine to be brought to a safe state before a person can reach the dangerous parts.

### Regulation 5 – Definition: emergency stop device

#### Comments received

A health and safety consultancy questioned whether the definition of 'emergency stop device' addresses situations where it is not safe for plant to come to an immediate stop?

They also questioned the word 'isolate' in the definition, as emergency stop devices do not isolate all energy sources on plant.

#### WorkSafe response – noted

The definition in the final Regulations provides for an emergency stop device to be either a device that immediately stops an item of plant, or a device that effectively isolates the hazardous operation of an item of plant.

With respect to the latter, it must be designed to ensure that the emergency stop device isolates the hazardous part of the plant until it is in a safe state. It does not extend to the isolation of all energy sources.

### Regulation 5 – Definition: temporary access equipment

#### Comments received

An individual suggested the definition of 'temporary access equipment' be amended to include several other forms of temporary access such as elevating work platforms and scaffolds. It was also suggested that harness-based fall arrest equipment should be classified as 'fall arrest equipment' rather than 'access equipment'.

They also noted that the term 'temporary access equipment' is only used in draft Regulation 74(1)(h) and that draft Regulation 74(1)(g) refers to 'scaffolds'. It was suggested this might be confusing because a scaffold is also temporary access equipment.

#### WorkSafe response – noted

'Temporary access equipment' has been defined specifically for final Regulation 74, and is intended to cover only the plant listed in the definition. The definition of 'temporary access equipment' helps to establish the scope of plant regulated by Part 3.5 of the Regulations.

In the final Regulations, harness-based fall arrest equipment is covered by the definitions of both 'temporary access equipment' and 'fall arrest system'.

## **Summary of Public Comment and WorkSafe's response**

The term 'scaffold' is defined in the final Regulations for the purposes of its use throughout the Regulations, including in Part 3.5.

### **Regulation 72 – Maintenance of Plant**

#### **Comments received**

An industry association recommended that the Regulations should reference AS1891.4 as it details maintenance requirements for height safety equipment, as well as AS1716 for respiratory protection.

#### **WorkSafe response – noted**

Referencing Australian Standards in regulation has the impact of mandating the approach in the Australian Standard. Australian Standards can often be highly prescriptive and subject to change.

Details to assist duty holders to comply with the Regulations will be provided in Compliance Codes and Guidance materials.

### **Regulation 73 – Information, instruction and training**

#### **Comments received**

An industry association recommended introducing a level of robustness across nationally accredited training by including, at a minimum, the topics and duration of training sessions.

#### **WorkSafe response – noted**

The aim of Regulation 73 is to ensure employees receive relevant information, instruction and training. There is flexibility on how this training is delivered. For example, training may be delivered via an accredited course, or in-house experts.

Additional information will be provided in the Compliance and Guidance Materials to assist duty holders comply with their duties.

### **Draft OHS Regulation 79 – Emergency stop devices (designers)**

### **Draft EPS Regulation 15 – Emergency stop devices (designers)**

#### **Comments received**

A health and safety consultancy questioned why the requirement in the former Regulations for emergency stops to be of a 'stop and lock off' type has been omitted in the proposed Regulations. Emergency stop devices should latch when activated.

#### **WorkSafe response – noted**

The final Regulations distinguish operator control requirements (which require a 'lock off' component) from emergency stop control requirements.

A requirement for an emergency stop device to be of a 'stop and lock off' type is not consistent with the relevant Australian Standard or industry practice. Final Regulation 79 reflects this and requires an emergency stop device to be of a type that can be manually reset which, in turn, requires that it be a 'latch in' type device.



## **Summary of Public Comment and WorkSafe's response**

### **Comments received**

A health and safety consultancy commented that the reset of an emergency stop button must only permit a restart of the machine, not cause a restart of the machine. Therefore the start function should only be manually activated separately and after the emergency stop has been reset.

### **WorkSafe response – noted**

The final Regulations reflect this recommendation as they specify that the plant can only be restarted if the emergency stop device (that has been used) is manually reset and the start function is manually activated.

The emergency stop device would need to be manually reset, and then the start function manually activated, in order for the plant to restart.

### **Comments received**

A health and safety consultancy indicated that emergency stops should, wherever practicable, also have a yellow background so as to distinguish them as emergency stops.

### **WorkSafe response – noted**

The final Regulations set out the requirements to ensure that emergency stop devices are both distinguishable and accessible. This includes the requirement for any handle, bar or push button associated with the emergency stopping device to be coloured red. The Regulation also requires that the device is prominent. The Regulation provides flexibility as to what coloured background can be used.

### **Comments received**

A health and safety consultancy indicated that draft Regulation 79(2)(c) is not enforceable, as it is not technically possible to create an emergency stop circuit that cannot be adversely affected by electrical or electronic malfunction.

### **WorkSafe response – noted**

Final Regulation 79(2)(c) when read in conjunction with section 27 of the OHS Act, requires designers to ensure, so far as is reasonably practicable, that the design provides that the emergency stop device cannot be adversely affected by electrical or electronic malfunction.

This must be considered in the context that all electrical and electronic circuits have an accepted probability of failure, as specified by relevant Australian and International Standards.

## **Regulation 78 and 79 – Operator controls and emergency stop devices (designers)**

### **Regulation 102 – Specific risk control measures: emergency stop devices**

#### **Comments received**

An industry association expressed support for the clarification made to former Regulations 3.5.5 and 3.5.6.

## **Summary of Public Comment and WorkSafe's response**

Another industry association expressed their support for the removal of the reference to operational stop controls from former Regulation 3.5.6 as it is adequately covered in Regulation 78.

**WorkSafe response – noted**

### **Regulation 83 – Records and information (designers)**

### **Regulation 84 – Record of standards or engineering principles used (designers)**

### **Regulation 87 – Records information (manufacturers)**

#### **Comments received**

An employer group and two industry associations welcomed the reduction of record keeping requirements on designers and manufacturers of plant from 10 to seven years.

Support was also expressed for the removal of former sub Regulations 3.5.10(1)(b),(c) and (d) that required a designer keep copies of information sent to the manufacturer.

**WorkSafe response – noted**

### **Regulation 86 – Information must be given by a manufacturer**

### **Regulation 89 – Information to be given – new plant (suppliers)**

#### **Comments received**

An industry association expressed a preference for the removal of duplication in the Regulations, and welcomed the additional clarity of what information is required from designers and manufacturers.

A second industry association welcomed the proposal to remove the requirement to 'obtain information' from existing Regulations 3.5.13 and 3.5.17.

**WorkSafe response – noted**

### **Regulation 99 – Specific risk control measures – guarding (employers & self-employed persons)**

#### **Comments received**

An industry association suggested that guarding of plant should refer to the appropriate Australian Standard.

**WorkSafe response – noted**

The final Regulations place requirements on employers (and self-employed persons) that use guarding as a measure to control risk associated with plant. It sets out what type of guarding should be used in prescribed circumstances. The Regulation provides flexibility as to which published technical standards an employer (or self-employed person) can reference to comply with the Regulation.

## **Summary of Public Comment and WorkSafe's response**

### **Comments received**

A health and safety consultancy recommended that employers should keep records to demonstrate adequate safety distances from presence-sensing devices to hazards have been achieved.

### **WorkSafe response – noted**

If a presence sensing safeguarding system is used, it must eliminate any risk arising from the area of the plant requiring guarding while a person or any part of a person is in the area being guarded. Compliance with this duty can be readily ascertained without having reference to records.

## **Regulation 100 – Specific risk control measures – guarding from heat and cold**

### **Comments received**

A health and safety consultancy queried why designers of plant are not required to incorporate guarding and insulation from heat and cold into their designs.

### **WorkSafe response – noted**

If components of plant are a hazard because of heat or cold, the designer has a general duty under the OHS Act to ensure, so far as reasonably practicable, that the plant is designed to be safe and without risk to health. This includes, where appropriate, developing suitable control measures for managing the known risks of potential exposures to heat or cold.

In addition, Regulation 100 requires employers (and self-employed persons) to consider and manage the risk of exposure to heat or cold generated by piping or other fittings connected to the plant when installed in the workplace.

## **Regulation 101 – Specific control measures operator controls Regulation 102 – Specific control measures emergency stop devices**

### **Comments received**

Two industry associations expressed their support for the proposal to maintain consistency between the requirements placed on employers and designers regarding operator controls and emergency stop devices, by removing reference to operational stop controls relying on Regulation 101 for all operator controls and applying Regulation 102 solely to emergency stop devices.

### **WorkSafe response – noted**

## **Regulation 104 – Specific risk control measures installation etc. of plant**

### **Comments received**

An industry association suggested that the installation of plant should also consider building code requirements.

### **WorkSafe response – noted**

Final Regulation 104 has explicit requirements for controlling risks associated with the installation of plant to ensure the health and safety of workers or others who may be affected by the work being undertaken at workplaces.

## **Summary of Public Comment and WorkSafe's response**

Installers of plant may also be required to comply with the Building Code, which provides technical provisions for the design and construction of buildings and other structures, inclusion of these requirements is outside the scope of the OHS Regulations.

### **Regulation 106 – Record of inspection and maintenance**

#### **Comments received**

Three employee representative groups suggested that the requirement for a record of inspection and maintenance should apply to all plant listed in Schedule 2 (plant requiring registration of design), and that employers be required to keep those records whilst the plant is in the custody of the employer.

#### **WorkSafe response – adopted**

Regulation 106 provides that records of inspection and maintenance must be kept for the period that the employer has management or control of the plant.

Plant specified in Regulation 106 differs from plant listed in Schedule 2, although some plant is common to both.

The additional items of plant listed in Schedule 2 have a design risk profile as opposed to a maintenance risk profile, therefore inspection and maintenance requirements are not applicable.

Chairlifts have a comparable maintenance risk profile to amusement structures that are currently subject to record of inspection and maintenance requirements, therefore final Regulation 106 now includes chairlifts, as it is appropriate to mandate that records of inspection and maintenance be kept for this plant.

#### **Comments received**

A health and safety consultancy noted that Regulations should mandate timeframes for conducting inspections on guarding, emergency stops, interlocked devices and presence sensing devices.

The Regulations should also require records be kept of inspections in relation to these safety devices.

#### **WorkSafe response – noted**

In addition to the requirements of the OHS Act (section 21(1)(a)) and Regulation 106, there are several mechanisms to ensure that plant is safely maintained.

Regulation 18 requires risk control measures be maintained and Regulation 105 requires plant to be inspected to the extent necessary to ensure that any risk with the use of the plant is monitored.

The final Regulations do not prescribe a frequency for inspection and maintenance of plant as requirements will vary from plant to plant and the circumstances in which they are used.

## **Summary of Public Comment and WorkSafe's response**

### **Regulation 112 – Industrial lift trucks**

#### **Comments received**

A health and safety consultancy recommended that interlocked seat belts and gas bottle lifters should be a minimum requirement for LPG trucks.

#### **WorkSafe response – noted**

In complying with duties under the OHS Act and Regulation 98, an employer may determine that interlocked seat belts and gas bottle lifters are appropriate and reasonably practicable measures to control specific risks associated with the use of LPG forklift trucks in the workplace.

Further information about the use of such risk control measures will be made available to duty holders in guidance materials.

### **Former Regulation 3.5.16 – General duties (suppliers)**

#### **Comments received**

Two industry associations expressed their support for the removal of the duty imposed on suppliers by former Regulation 3.5.16, and instead, rely on the general duties placed on suppliers by the OHS Act.

#### **WorkSafe response – noted**

#### **Comments received**

An employee representative group recommended the retention of the suppliers' duties to ensure that hazard identification and control of risk requirements imposed on designers and manufacturers have been carried out. This would continue to ensure that any plant supplied into Victoria is subject to Victorian OHS standards.

#### **WorkSafe response – noted**

Under section 30 of the OHS Act, suppliers are required to ensure, so far as is reasonably practicable, that plant they supply is safe and without risks to health if it is used for a purpose for which it is designed, manufactured or supplied. This duty also applies where plant is imported into Victoria from overseas.

## Summary of Public Comment and WorkSafe's response

### High Risk Work

Comments were received regarding Part 3.6 High Risk Work, and Part 1.1 Introductory Matters, specific to High Risk Work, Schedule 3 High Risk Work Licence Classes and Part 8.1 General Transitional Provisions.

### Regulation 5 definitions – dogging work

#### Comments received

A local council queried whether the definition of 'dogging work' means that persons who select slings for vehicle loading cranes under 10 tonne will now need to have a dogging licence. The also queried whether the amended dogging work definition introduces a new requirement for persons who select slings for cranes under 10 tonne to have a dogging licence. Clarification was sought as to whether the vehicle loading crane licence class will now cover vehicle loading cranes under 10 tonne.

#### WorkSafe response – noted

The final Regulations have not introduced changes to the size of a crane covered by the dogging licence.

Vehicle loading cranes that are under 10 tonnes/metres are not covered by the vehicle loading crane licence requirements.

The definition of vehicle loading crane in Regulation 5 refers to one that is 10 metre tonnes or more.

#### Comments received

An industry association suggested the addition of a new sub paragraph to the definition of dogging to include: 'the re reeving of a hook block under the instruction of an advanced rigger/operator or higher'.

#### WorkSafe response – noted

The activity described falls within the definition of 'rigging work' and to include it in dogging work would change the scope of the dogging licence.

The training material for dogging work used across Australia, is based on the definition of dogging work included in the final Regulations.

Adding the proposed new sub paragraph would create disparity between the Victorian dogging licence requirements and those in other jurisdictions, thereby impacting on the portability of the dogging high risk work licence.

### Regulation 5 – Definitions: forklift truck

#### Comments received

An industry association recommended that the following exclusion be added to the definition of forklift truck:

- A forklift that is unable, by design, to raise its fork arms 900mm or more above the ground.

The exclusion would cover a ride-on forklift with a vertical mast and fork tynes.

## **Summary of Public Comment and WorkSafe's response**

This would exempt one type of forklift truck that is used in operations where order-picking/manual handling takes place that is not by definition, a pallet truck or an order-picking forklift truck.

### **WorkSafe response – noted**

The final Regulations exclude low-level order picking forklift trucks (with fork arms or other load holding attachments that cannot be raised 900mm or more) and low level pallet trucks (unable by design to raise fork arms above 900mm) from the high risk work licence requirements.

## **Part 3.6 High Risk Work – general comments**

### **Comments received**

An industry association asked that WorkSafe explore the possibility of an approved industry training document being referenced in the Regulations as an alternative to the dogging high-risk work licence requirements for steel industry workers.

### **WorkSafe response – noted**

Part 7.2 of the final Regulations provides an avenue for any person or class of person to apply for an exemption from the high-risk work licence requirements. To grant an exemption, WorkSafe must be satisfied that a person who does not hold a high-risk work licence can perform the work that is the subject of the application just as safely.

WorkSafe can grant the exemption subject to conditions including the provision of information, instruction and training to specified persons or classes of persons.

### **Comments received**

A number of industry associations were supportive of the proposed changes to high risk work licencing. General support was expressed for changes to align with the Model WHS Regulations, and in particular:

- the alignment of vehicle loading crane and bridge and gantry crane licences
- the inclusion of a reach stacker licence class
- the move to replace three boiler operation licence classes with the standard boiler class and advanced boiler class.

### **WorkSafe response – noted**

## **Regulation 130 – Exemptions to Regulations 128 and 129**

### **Comments received**

An energy provider queried the intention of the change in draft Regulation 130(1)(a) to include the word 'only'. The provision exempts high risk work trainees from needing a licence while training.

### **WorkSafe response – noted**

The inclusion of the reference to 'only' in final Regulation 130 ensures that the exclusion only applies where unlicensed high risk work is performed for no other purpose other than training for a high risk work licence.

## **Summary of Public Comment and WorkSafe's response**

This ensures the exclusion is not interpreted to mean that a trainee is able to perform high risk work that is not related to the employee's training.

### **Regulation 459 – Additional matters to be satisfied before licence can be granted**

#### **Comments received**

An industry association raised concerns with the requirement for a High Risk Work licence applicants to live in Victoria, indicating that reasonable grounds should support licence holders that work for cross jurisdictional / national companies.

#### **WorkSafe response – noted**

To ensure WorkSafe activity is focussed on the health and safety of Victorian workers and workplaces, the final Regulations state that where an applicant lives outside Victoria, WorkSafe must refuse to grant a licence if it is not satisfied that the applicant has reasonable grounds for applying for the licence in Victoria.

Where the Notice of Assessment is complete in Victoria, current operational practice supports employees of cross jurisdictional and/or national companies that live outside Victoria, to apply for high risk work licences.

### **Regulation 557 – Licence classes for pressure equipment operation**

#### **Comments received**

An industry association stated that the new Standard Boiler Licence should be made available from the date of commencement of the Regulations to fall in line with other jurisdictions, and allow industry the opportunity to choose to be compliant with the national standards from the earliest date possible.

#### **WorkSafe response – noted**

The standard boiler operation licence class will come into being on 18 June 2018.

The transitional period is required so that training organisations, licence holders and WorkSafe can make necessary arrangements to implement the new licence class.

#### **Comments received**

An industry association suggested the removal of the transitional provision that recognises a basic boiler operation licence as a standard boiler operation licence as it suggests that both licences are identical.

It also suggested the basic boiler operation licence is only being issued combined with the intermediate boiler at application for the collection of two licence fees.

#### **WorkSafe response – noted**

Basic boiler operation licences are still issued although most licence holders have undergone further training to attain the intermediate boiler operation licence. The transitional arrangement ensures that persons who hold only a basic boiler operation licence do not need to obtain a new licence to operate the same type of boiler.

From 19 June 2018, a person can apply for a standard or an advanced boiler operation licence.



## **Summary of Public Comment and WorkSafe's response**

### **Comments received**

An industry association suggested that transitional arrangements for intermediate boiler licence operators should be changed so that the Advanced Boiler Operation Licence is available from the date the Regulations commence, and a 12-month transitional period only be required for those licence holders to upgrade to the Advanced Licence class.

This response also recommended that the option for recognition of prior learning allow intermediate boiler operators to transition to standard boiler operation from the commencement date of the Regulations and for the fee to be waived.

### **WorkSafe response – noted**

The transitional arrangement for intermediate licence holders has been included to allow employers and assessors necessary time to transition to the new Advanced Boiler Operation Licence class.

Intermediate Boiler Operation Licence holders will be able to continue operating the same boilers during the transitional period. Intermediate Boiler Licence Holders will be taken to have a Standard Boiler Operation Licence as of 18 June 2018, and no fee will apply.

## **Schedule 3 – Item 4: Dogging licence**

### **Comments received**

An industry association queried whether the dogging licence class applies where an excavator is used to position an item through predominantly lateral and lowering movements.

### **WorkSafe response – noted**

The dogging licence class will apply where an excavator is used in the application of slinging techniques, including lateral and lowering movements.

## **Schedule 3 – Item 14: Non-slewing mobile crane operation licence**

### **Comments received**

An industry association suggested the removal of the requirement for operators of telehandlers (or multipurpose tool carriers) with a capacity above three tonne and fitted with a jib, to have a non-slewing mobile crane licence or the C2 slewing mobile crane licence (for slewing mobile cranes with a capacity up to 20 tonne) as currently, this requirement is unsustainable and at odds with other jurisdictions.

### **WorkSafe response – noted**

Telehandlers or multipurpose tool carriers are complex and high-risk plant. Whether plant of this type with a capacity above three tonne is fitted with a loading bucket, hay prongs or a jib, the risk profile would not alter because it still involves movement of loads at height. The licensing requirements for telehandlers are based on the risk profile of telehandlers. Removing the licensing requirement where the plant is fitted with a different attachment would result in a diminution in safety.

## **Summary of Public Comment and WorkSafe's response**

### **Schedule 3 – Item 19: Reach stacker operation licence**

#### **Comments received**

An industry association indicated support for the discrete reach stacker licence class but proposed removal of the reach stacker encompassments in the non-slewing mobile crane licence and in each of the slewing mobile crane licence classes.

#### **WorkSafe response – noted**

In Victoria, the slewing and non-slewing mobile crane licence classes enable the licence holder to operate cranes that could be characterised as a reach stacker.

Including the reach stacker as an encompassment on the slewing and non-slewing mobile crane licence classes will ensure that holders of these licences will be able to continue to operate a reach stacker without needing to transition to a reach stacker licence.

### **Schedule 3 – Item 13: Vehicle loading crane operation licence**

#### **Comments received**

An industry association queried how changes to the licence class for vehicle loading crane operation licence holders will affect existing vehicle loading crane operation licence holders. Specifically, it sought clarification as to whether licence holders will be 'grandfathered in', or if they will require additional training to meet the competency requirements in the application of load estimation or slinging techniques.

#### **WorkSafe response – noted**

Whether an employee requires additional training to meet the competency requirements for load estimation and slinging technique (as a result of not performing the activity prior to the changes) should be considered by the employer. Load estimation and slinging technique are part of the nationally approved training material for high risk work dogging licence.

It is incumbent on the employer to ensure that any gaps in proficiency are addressed through additional training.

### **Schedule 3 – Item 14: Non-slew mobile crane operation licence Item 15: slewing mobile crane operation licence (up to 20 tonne)**

#### **Comments received**

An employee representative group raised concerns that the Units of Competency for bridge and gantry crane operation, and vehicle loading crane operation, do not cover load estimation and slinging technique.

#### **WorkSafe response – noted**

When read in conjunction with the assessment instruments issued by WorkSafe (final Regulation 136), the Units of Competency for bridge and gantry crane operation and vehicle loading crane operation licence classes, require assessment of load estimation and slinging technique.

## **Summary of Public Comment and WorkSafe's response**

### **Schedule 3 – Item 12: Bridge and gantry crane operation licence**

#### **Comments received**

An industry association requested inclusion of the following note to Schedule 3, Part 2 (12):

“Whilst a HRWL for Bridge and Gantry cranes covers load estimation and slinging techniques, the operation of remote cranes with less than 3 powered motions may still require operators to complete a HRWL for dogging if load estimation and slinging techniques are used.”

#### **WorkSafe response – noted**

Guidance materials will be made available to assist in providing clarification regarding circumstances where a separate dogging licence is required in relation to the bridge and gantry and vehicle crane license classes.

## **Summary of Public Comment and WorkSafe's response**

### **Hazardous Substances**

Comments were received regarding Part 4.1 Hazardous Substances and Part 1.1 Introductory Matters, specific to Hazardous Substances.

#### **Part 4.1 – General comments**

##### **Comments received**

Several industry associations expressed their support for recasting the regulations in the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

##### **WorkSafe response – noted**

##### **Comments received**

A local council and industry association called for additional transitional arrangements for moving to GHS Chemical labelling.

##### **WorkSafe response – noted**

Under the Model WHS Regulations, Victorian manufacturers that distribute to other Australian states were required to move to GHS labelling as of 1 January 2017. As the Victorian OHS Regulations do not require Victorian manufacturers to comply with GHS labelling until 18 June 2017, additional transition time has been provided.

Manufacturers and importing suppliers will be required to label hazardous substances in accordance with the GHS. It is important to note that Victoria differs from jurisdictions that apply the Model WHS Regulations in that hazardous substances which are already in the Victorian supply chain do not need to be relabelled by employers or non-importing suppliers to comply with the regulatory change.

##### **Comments received**

An industry association and a health and safety consultant queried why the content of the DG Regulations were not subsumed into the OHS Regulations in a manner similar to that in the Model WHS Regulations.

##### **WorkSafe response – noted**

The DG legislative framework (including the DG Regulations) has application beyond workplaces. For example it includes domestic premises and public roads.

The OHS Act and Regulations are specific to health and safety at workplaces, therefore it is outside the scope of the OHS Regulations to subsume the DG Regulations.

#### **Regulation 5 – Definition: container**

##### **Comments received**

An industry association noted that the definition of 'container' in the draft Regulations exempts bulk containers of dangerous goods from GHS labelling requirements, and that this is inconsistent with the Model WHS Regulations and GHS requirements.

It was recommended that Victoria align with Model WHS Regulations definition.

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – adopted**

The definition of 'container' in the final Regulations has been amended to align with the current Model WHS Regulations definition.

## **Regulation 5 – Definition: Globally Harmonized System of Classification and Labelling of Chemicals**

### **Comments received**

An industry association, a health and safety consultant and an Australian business raised concern that the draft Regulations refer to GHS 6th Revision, which is not referenced in the Model WHS Regulations.

### **WorkSafe response – accepted**

Reference to the GHS 6<sup>th</sup> Revision has been removed from the definition of GHS in the final Regulations. The final regulations are in line with the Model WHS Regulations and reference the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> revised editions of the GHS system of classification and labelling.

## **Regulation 5 – Definition: hazardous substances**

### **Comments received**

A health and safety consultant sought clarification as to whether the reference in the definition of hazardous substances to 'solely for one of the following hazard classes' actually means for any combination of the listed hazard classes.

### **WorkSafe response – noted**

A substance will not meet the criteria for a hazardous substance where there is a combination of the listed hazard classes.

Additional clarification on the definitions is included in the Hazardous Substances Compliance Code.

## **Regulation 145 – What must a safety data sheet contain?**

### **Comments received**

A health and safety consultant noted Victorian Regulations do not mandate the same number of safety data sheets (SDS) requirements as those in the Model WHS Regulations.

### **WorkSafe response – noted**

The Model WHS Regulations have a broader scope than that of the Victorian Regulations. For example, environmental hazards are included in Model WHS Regulations. These cannot be part of the Victorian Regulations as the OHS Act and Regulations only apply to health and safety at workplaces.

Victorian manufacturers that comply with the Model WHS Regulation requirements will also comply with the Victorian Regulations.

## **Summary of Public Comment and WorkSafe's response**

### **Regulation 149 – Manufacturers and importing suppliers must label containers**

#### **Comments received**

An industry association requested that the requirement to include the identity and proportion of ingredients on labels should be removed as this is not a requirement of Australia's major trading partners.

#### **WorkSafe response – noted**

The final Regulations align with the Model WHS Regulations. This is intended to support Victorian hazardous substance manufacturers to continue trading with other Australian jurisdictions.

### **Regulation 150 – Recognition of other labelling systems**

#### **Comments received**

Four chemical manufacturers and an employer group did not support the inclusion of GHS hazard and precautionary statements on AgVet Chemical labels. Another employer group raised a concern that under these Regulations, farmers would be required to re-label used and existing chemicals purchased on or before 1 January 2017.

#### **WorkSafe response – noted**

Safety in the agricultural sector is a priority for Victoria. With the long latency periods between chemical exposure and negative health outcomes, it is important that people are aware of the potential hazards associated with the chemicals they are using. Therefore GHS hazard and precautionary statements are required on AgVet chemical labels.

Compliance with the GHS hazard and precautionary statements on chemical labels is incumbent on the manufacturer. End users are not required to relabel existing stock. To comply with the Regulations, the end-user must ensure that the manufacturers label is attached.

#### **Comments received**

A health and safety consultant noted the Model WHS Regulations exempt hazardous substances labelled in accordance with the Poisons Standards, only where it is reasonably foreseeable that the substance will be used in a workplace in a quantity and method consistent with household use, and in a way that is incidental to the nature of the work carried out by the worker.

#### **WorkSafe response – adopted**

The final Regulations align with the Model WHS Regulations and require poisons to be labelled in accordance with the OHS Regulations to ensure that adequate information is provided to workers.

### **Regulation 155 – Safety data sheets to be obtained**

### **Regulation 156 – Safety data sheet must be readily accessible**

#### **Comments received**

An industry association sought clarification on what constitutes 'current' in 'current safety data sheet.'

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – noted**

'Current' in this context means that the safety data sheet is the one prepared by the manufacturer, and is the latest version.

## **Regulation 156 – Safety data sheet must be readily accessible**

### **Comments received**

An academic and an industry association queried draft Regulation 156, which allows an employer to provide safety data sheets in languages other than English. They recommended that translations be provided by the original manufacturer or importing supplier, to ensure the accuracy of the information.

### **WorkSafe response – noted**

The intention of the Regulation is to ensure non-English speaking employees have the necessary information in the appropriate language. There is flexibility in the Regulation as to how this information is obtained, by either requesting that the supplier provide the safety data sheet in the nominated languages, or ensuring that local technical interpreters provide true and accurate translations.

## **Regulation 158 – Containers must be labelled**

### **Comments received**

A health and safety consultant suggested that the requirements on decanted hazardous substances be strengthened to ensure GHS pictograms are included.

### **WorkSafe response – noted**

It was identified in the RIS that adopting the approach included in the Model WHS Regulations would result in an increased burden on Victorian businesses with limited safety benefits.

As the activity of decanting hazardous substances is a practical reality for many businesses, the duty on employers is to provide instruction and training to their workers on the safe use of any decanted hazardous substances.

## **Regulation 161 – Identification of containers of waste**

### **Comments received**

A university raised concerns about the practice of identifying containers of waste by writing over existing labels.

### **WorkSafe response – noted**

Final Regulation 161 is designed to ensure that all hazardous waste is clearly and correctly identified as such. Writing over an existing label would be considered a breach of the Regulation as it does not clearly identify that the container contains waste products.

## **Regulation 162 – Register of hazardous substances**

### **Comments received**

An academic raised a concern that the term 'product identifier' was too broad, and could potentially be taken to mean any form of identifier.

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – noted**

The term 'product identifier' is defined in Regulation 5 and has a prescribed meaning that is recognised, used by Model WHS laws and taken from the GHS definitions. The Hazardous Substances Compliance Code provides additional information to assist duty holders to comply with their duties.

### **Comments received**

An industry association suggested that Regulation 162 should refer to 'current' safety data sheet, instead of safety data sheet.

### **WorkSafe response – noted**

Under regulation 155, employers are required to obtain a current safety data sheet when a hazardous substance is first supplied. It is this safety data sheet which should be included in the register of hazardous substances under regulation 162.

### **Comments received**

A health and safety consultant recommended that the Regulations specifically state that the register of hazardous substances required in Regulation 162 can be in electronic form and be made available to employees.

### **WorkSafe response – noted**

The Regulations require an employer to prepare and maintain a register of all hazardous substances supplied to the workplace. It provides the flexibility on whether the register is electronic or paper form.

## **Subdivision 4: Labels**

### **Comments received**

An industry association noted the differences between the labelling concessions under the Model WHS Regulations as compared to the Victorian Regulations.

### **WorkSafe response – noted**

The labelling requirements for hazardous substances manufacturers or importing suppliers under the final Regulations are substantively aligned with those in the Model WHS Regulations. The Victorian Regulations allow Victorian manufacturers or importing suppliers to label in accordance with Model WHS Regulations and still be compliant with the Victorian Regulations.

The labelling requirements in Victoria for employers who are not manufacturers or importing suppliers are much less prescriptive, providing flexibility in how compliance is achieved.



## **Summary of Public Comment and WorkSafe's response**

### **Lead**

Comments were received regarding Part 4.3 Lead.

### **Part 4.3 – General comments**

#### **Comments received**

Two industry associations supported the amendments to Part 4.3.

#### **WorkSafe response – noted**

## **Summary of Public Comment and WorkSafe's response**

### **Asbestos**

Comments were received regarding Part 4.4 Asbestos, Part 1.1 Introductory matters and Schedules 12 and 13.

### **Regulation 207 – Independent person**

#### **Comments received**

An employee representative group raised concerns about the lack of training requirements for independent persons.

#### **WorkSafe response – noted**

To ensure flexibility and that the independent person is appropriate for the particular job, independent persons are required to have the requisite knowledge, skills and experience to perform their function.

The Removing Asbestos in Workplaces compliance code sets out what factors a person engaging an independent person should consider.

### **Regulation 216 – Use of certain tools or instruments**

#### **Comments received**

An employee representative group objected to the introduction of draft Regulation 216(2) and recommended that tools should not be used if there is any possibility that asbestos exists.

#### **WorkSafe response – noted**

The provision facilitates the use of certain tools or instruments that do not generate airborne asbestos fibre levels in excess of 0.01 f/ml.

If airborne asbestos fibre levels are likely to exceed this level, the use of the tool or instrument must be controlled so that persons are not likely to be exposed to more than one half of the exposure standard.

### **Regulation 219 – Supply of asbestos**

#### **Comments received**

A health and safety consultancy noted that the procurement and supply of asbestos should be prohibited.

#### **WorkSafe response – noted**

The final Regulations prohibit the manufacture, supply, storage, transport, sale, use, re-use, installation and replacement of asbestos.

A person procuring asbestos would likely be in breach of prohibitions in the Regulations, such as the supply, storage or use of asbestos.

## **Summary of Public Comment and WorkSafe's response**

### **Regulation 225 – Application of Division**

#### **Comments received**

An industry group raised a concern that the proposed Regulations exclude domestic premises from the definition of a workplace, in circumstances where persons are engaged to perform work.

#### **WorkSafe response – noted**

Division 5 of the final Regulations does not apply to a domestic premise that is a workplace, however demolition, refurbishment and asbestos removal work continue to be regulated in the asbestos part of the final Regulations.

### **Regulation 225 – Application of division**

### **Regulation 240 – Demolition and refurbishment where asbestos is present**

#### **Comments received**

A large number of submissions were received in both support of and opposition to the proposal to allow duty holders to assume that asbestos is not present in buildings, structures, ships or plant built or made after 31 December 2003 if no asbestos has been identified, and asbestos is not likely to be present.

#### **WorkSafe response – adopted**

Recent incidents of asbestos-containing material being imported into Australia and in breach of legislative prohibitions have highlighted the ongoing risk of asbestos being present in material imported since 2003.

The proposal to allow duty holders to assume that asbestos is not present in certain circumstances included in the draft Regulations has been removed from the final Regulations.

### **Regulation 226 – Identification of asbestos**

#### **Comments received**

A health and safety consultancy requested further guidance on the identification and risk assessment of asbestos contaminated dust in a workplace.

#### **WorkSafe response – noted**

Practical guidance on the identification and risk assessment of asbestos contaminated dust in a workplace will be provided in the Managing Asbestos in Workplaces Compliance Code.

### **Regulation 244 – Identification and removal of asbestos before demolition or refurbishment**

#### **Comments received**

An industry association and a number of employee representative groups requested the Regulations confirm that any asbestos that has been identified as likely to be disturbed during a renovation must be removed before refurbishment work starts.

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – noted**

The intention of the provision is to enable asbestos to be removed as required throughout a refurbishment process. It is not always practical to remove all asbestos before commencing refurbishment work. For example, the work may need to be completed in stages, or the asbestos-containing material may not become accessible until the refurbishment work has begun.

All asbestos removal work must be completed safely and in accordance with final Regulations Division 7 (Removal of asbestos).

### **Regulation 250 – Limited asbestos removal work**

#### **Comments received**

An individual requested that, without exception, all building demolishers be required to hold a WorkSafe permit to remove asbestos.

#### **WorkSafe response – noted**

The final Regulations permit the removal of limited amounts of non-friable asbestos and asbestos-contaminated dust without an asbestos removal licence by a person performing demolition work. Such removal work must be performed in accordance with the applicable Division 7 provisions in the final Regulations.

All other asbestos removal work must be performed by an appropriate asbestos removal licence holder. These regulatory arrangements are a proportionate response to the risk.

### **Regulation 264 – Class A asbestos removal work**

#### **Comments received**

An employee representative group and industry association supported the proposal to allow a Class A licence holder to engage an independent contractor to operate an excavator, while another employee representative group objected to the proposal and noted the importance that excavator operators must have all the relevant training and health checks.

An industry association respondent expressed their support, and suggested that the proposal be expanded to allow other types of contractors to be engaged.

#### **WorkSafe response – noted**

Under the former OHS Regulations, persons undertaking licensed asbestos removal work must be an employee of a licence holder. A number of situations were identified where this regulation made it difficult to undertake asbestos removal requiring the operation of an excavator, as it is not always practical to employ such persons on an ongoing basis. This need was not established for other types of contractors.

The final Regulations require independent contractors engaged by Class A asbestos removalists to operate an excavator to have the same level of training and health checks as an employee.

## **Summary of Public Comment and WorkSafe's response**

### **Regulation 275 – Requirements in respect of airborne asbestos fibres**

#### **Comments received**

An industry group, a law firm and multiple employee representative groups requested the draft Regulations be amended to align the threshold for airborne asbestos fibre levels with the Model WHS Regulations.

#### **WorkSafe response – noted**

The threshold for airborne asbestos fibre levels in the final Regulations is set at half the exposure threshold for asbestos.

WorkSafe notes that Safe Work Australia has launched a review of the national exposure standards. When the results of this review are available, consideration will be given to whether it provides any evidence for a change to Victoria's airborne asbestos limit for asbestos removal.

### **Regulation 298 – Notice of asbestos removal work**

#### **Comments received**

An individual recommended that the provision mandate removalists to provide WorkSafe with one month's notice prior to the removal of any asbestos.

#### **WorkSafe response – noted**

Regulation 298 requires asbestos removal licence holders to notify WorkSafe of asbestos removal work, either 24 hours or five days prior to the removal, depending on the type and amount of asbestos being removed. The current notification periods are sufficient to enable risk based inspections, without creating unnecessary delay and cost for removalists.

### **Regulation 301 – Information to be provided to persons occupying premises in immediate and adjacent areas**

#### **Comments received**

An industry association, individuals, employee and employer groups and industry council expressed their support to expand the notification of asbestos removal to employees and occupiers of neighbouring properties.

One individual respondent suggested that the notification be extended to include a month's notice period prior to the removal of any asbestos.

#### **WorkSafe response – noted**

The timeframe within which notification must occur prior to the commencement of removal work is consistent with the level of risk associated with the activity.

### **Regulation 263, 283 and 313 – Results of medical examinations**

#### **Comments received**

A number of employee and industry groups expressed their opposition to the removal of the requirement to notify WorkSafe of the name and contact details of registered medical practitioners engaged to undertake medical examinations. One industry group registered their support for this change.

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – noted**

The notification duty was originally intended to allow WorkSafe to provide targeted information campaigns to medical practitioners, however the names and contact details of doctors can now be readily sourced through other means.

Asbestos removalists will still be required to retain the results of medical examinations for up to 30 years. WorkSafe can and does request this information when undertaking inspections.

## **Regulations 260, 280 and 316 – Disposal of asbestos waste**

### **Comments received**

An individual requested that consideration be given to requiring publicly available manifests of dumped asbestos-containing materials.

### **WorkSafe response – noted**

The disposal of asbestos is regulated by the Environmental Protection Authority (EPA), which requires licensed disposal sites to keep records of waste received. Regulations 260, 280 and 316 require that asbestos is disposed of in a timely and safe manner, and at a licenced EPA site.

## **Part 4.4 – General comments**

### **Comments received**

An employee representative group supported the incorporation of the Dangerous Goods Order into the Regulations.

### **WorkSafe response – noted**

### **Comments received**

An engineering consultancy noted workplaces that have identified asbestos should be required to prepare an asbestos management plan, in line with the WHS requirements.

### **WorkSafe response – noted**

Employers have a general duty under the OHS Act to provide, so far as is reasonably practicable, a working environment that is safe and without risk to health and safety. The Managing Asbestos in the Workplace Compliance Code provides duty holders with practical guidance in relation to their general duties. The Code also contains advice and a template for an asbestos management plan if an employer opts to utilise this as a way of managing their obligations. Mandating an asbestos management plan in all instances would impose a regulatory burden without significantly improving safety outcomes.

## **Regulation 5 – Definitions: Asbestos removal work**

### **Regulation 265 – Class B asbestos removal work**

### **Comments received**

Two employee representative groups objected to allowing Class B removalists to remove asbestos-contaminated dust and non-friable asbestos-containing material that is not fixed or installed. They noted that non-friable asbestos in soil is always in poor condition and can become friable during the removal process

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – noted**

The provisions in the final Regulations reflect the requirements of the DG Order 2007. Any friable asbestos-containing material, including material that becomes friable during the removal process, must be removed by a Class A asbestos removal licence holder.

### **Schedule 12 – Information required to be included in an asbestos control plan**

### **Schedule 13 – Information required to be included in a Notice of Asbestos Removal Work**

#### **Comments received**

One employee representative group expressed its support, and two other employee representative groups expressed their concern regarding the removal in the draft Regulations of the requirement for asbestos removalists to notify WorkSafe of their employees' training and experience, and the date of their asbestos register.

#### **WorkSafe response – adopted**

In response to concerns that this proposal removes a measure that may promote compliance with training requirements and does not reduce regulatory burden, the requirement has been reinserted in the final Regulations.

## **Summary of Public Comment and WorkSafe's response**

### **Construction**

Comments were received regarding Part 5.1.

#### **Part 5.1 – General comments**

##### **Comments received**

An industry association noted that, given the prevalence of self-employed persons in the construction industry, the changes that provide specific reference to self-employed persons in relevant provisions within the Regulations, rather than an overarching provision, assists in improving OHS compliance.

##### **WorkSafe response – noted**

#### **Regulation 321 – What is construction work?**

##### **Comments received**

Multiple employee representative groups raised concerns that the example given in draft Regulation 321(2)(c) – “the precasting of a concreted panel on site” – does not reflect current industry practices.

##### **WorkSafe response – adopted**

The example from the former Regulations – “a prefabricated element of a structure is a concrete panel” – has been reinserted in the final Regulations.

#### **Regulation 322 – What is high risk construction work?**

##### **Comments received**

An employee representative group suggested that welding of structural steel be prescribed as high risk construction work.

##### **WorkSafe response – noted**

The control of risks associated with welding of structural steel during the construction phase, is addressed in the current OHS regulatory framework and supported by guidance.

The risks associated with structural steel weld failures have implications beyond OHS, as incidents involving weld failure usually occur after construction, which can result in collapse of the finished structure.

This is more appropriately addressed via the Victorian building regulatory framework.

#### **Regulation 324 – What is a safe work method statement (SWMS)?**

##### **Comments received**

An employer group and an individual respondent suggested that the Regulations be revised to emphasise the importance of a SWMS being clear, understandable and made available in a format appropriate for the employees that will use them.

##### **WorkSafe response – adopted**

Final Regulation 324 has been amended to clarify that a SWMS must be set out and expressed in a way that is ‘readily accessible and comprehensible to the persons who use it’. This explicit requirement reflects WorkSafe’s current policy and guidance on SWMS.



## **Summary of Public Comment and WorkSafe's response**

### **Regulation 331 – Emergency procedures**

#### **Comments received**

An employee representative group supported the new provision, and recommended that it apply to construction work as a whole and not just to engulfment risks.

Three employer groups and industry associations that opposed the introduction of the new provisions indicated that it was unnecessary and would result in increased regulatory burden.

#### **WorkSafe response – noted**

The new provision included at Regulation 331 is specifically designed to address the unique and inherent risks associated with rescuing a person who has become engulfed. Rescues in these circumstances need to occur quickly and may involve a risk of further ground collapse, which can put both trapped people and their rescuers at risk.

An engulfment hazard has a similar risk profile to falls and confined spaces hazards that already have specific emergency response requirements within the OHS Regulations.

The inclusion of a specific provision does not impose a significant increase in regulatory burden but provides greater clarity and specificity as to the emergency procedure requirements to address engulfment risks.

### **Regulation 333 – Who is the principal contractor?**

#### **Comments received**

A law firm suggested that the use of the word 'owner' as either the principal contractor or the person who can appoint a principal contractor for the construction project creates confusion and can be difficult to apply in circumstances such as where the person in management and control of the workplace is not the owner of the building but a lessee, or where there are sophisticated or multi-tiered ownership structures.

#### **WorkSafe response – noted**

The intention of the provision is to ensure that one contractor (the principal contractor) is responsible for coordinating health and safety for a particular construction project.

Under the final Regulations, the principal contractor can be the 'owner' or someone the owner appoints and authorises to be the principal contractor.

In practice if the owner of the site where construction work is to be undertaken does not want to be the principal contractor then they can appoint a principal contractor for the project.

This should be executed irrespective of whether the owner is the person with management or control of the site where the construction work is to be undertaken.

### **Regulation 338 – Application of division**

#### **Comments received**

An individual respondent noted that due to its prohibitive costs, work experience students should be exempt from having to complete construction induction training.

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – noted**

Given the high risk nature and rapidly changing environment of construction sites, construction induction training is a key element to ensuring the health and safety of everyone working on site. It is important that work experience students, who are generally unfamiliar with workplaces and OHS concepts, undergo such training.

## **Division 3 – Construction Induction Training**

### **Comments received**

An individual respondent queried whether WorkSafe would continue to recognise 'red card' construction induction cards.

### **WorkSafe response – noted**

Red card holders who completed their Construction Induction Basic training prior to 1 July 2008 are exempt from the requirement to hold a current construction induction card (white card) (Reg 342 (3)(a)).

Holders of a red card can use the red card to apply for a construction induction card (white card) as a red card is considered written evidence of the completion, before 1 July 2008, of the Construction Industry Basic Induction training course.

## Summary of Public Comment and WorkSafe's response

### Major Hazard Facilities

Comments were received on Part 5.2 Major hazard facilities, and Schedules 14, 16 and 17.

### Regulation 375 – Emergency plan

#### Comments received

An industry association noted the requirement to prepare an emergency plan in conjunction with relevant emergency services and municipal councils, and suggested it would be reasonable to include provisions that major hazard facilities will receive assurances that the respective agencies will provide necessary resources and responses in a timely manner.

#### WorkSafe response – noted

Read in conjunction with relevant OHS Act duties (Section 21), the duty to prepare an emergency plan in conjunction with relevant council and emergency services bodies applies to the extent to which this is 'reasonably practicable' in the circumstances.

#### Comments received

Two employee representative groups recommended that draft Regulation 375(3)(c) be amended to require emergency plans to be prepared in conjunction with the HSR of relevant municipal councils and emergency services, as well as the municipal councils and emergency services bodies themselves

#### WorkSafe response – noted

Under the OHS Act, council and emergency services employers have a duty to ensure they consult with their respective employees, and any HSRs representing those employees, on matters that may affect their health and safety at work.

This would include consultation on an emergency plan in place, or being developed, for a major hazard facility that employees may attend as part of their work.

### Regulation 379 – Review by operator

#### Comments received

An employee representative group raised concerns about the safety of emergency services personnel responding to incidents at major hazard facilities. It was proposed that additional sub-clauses be inserted in draft Regulation 379(2) to specify that relevant matters must be reviewed upon request by an emergency services organisation or a relevant municipal council.

#### WorkSafe response – noted

To ensure emergency services personnel attending an incident have sufficient information to protect themselves from harm, Schedule 16 includes a provision that imposes an express requirement on an operator of a major hazard facility to consider the protection of emergency services personnel when preparing an emergency plan.

Provisions in Regulation 375 and 379 that require major hazard facility operators to consult with emergency services and municipal councils, enable the involvement of these groups' major hazard facility planning.

## **Summary of Public Comment and WorkSafe's response**

In addition, WorkSafe has discretion to direct a major hazard facility operator to conduct a review under Regulation 379, which it may do after considering advice from an emergency services body or local council.

### **Schedule 14 – Materials at major hazard facilities and their threshold quantities**

#### **Comments received**

An Australian business indicated that the move to using CAS numbers instead of UN numbers could pose some difficulties for major hazard facility logistics, where there are potentially thousands of different chemicals being stored on behalf of customers.

A logistics major hazard facility will need to search SDS documentation to determine the relevant CAS number.

#### **WorkSafe response – noted**

Schedule 14 favours the use of CAS numbers rather than UN numbers because CAS numbers are a more specific identifier, and considered more appropriate to the storage of hazardous materials. CAS numbers are widely used internationally to assist with the identification of hazardous materials.

The final OHS Regulations indicated that the number listed against each material in Schedule 14 is given for information only and does not affect the breadth of the name or description of the material. This is consistent with the approach taken in the former Regulations.

Major hazard facility operators that require assistance classifying materials will be encouraged to use SWA's Hazardous Chemical Information System (HCIS), an internet advisory service that provides information on chemicals that have been classified in accordance with the GHS.

Guidance material will be developed to ensure major hazard facility operators understand the impact of changes to Schedule 14.

#### **Comments received**

An Australian business indicated that the changes to Schedule 14 involve a shift away from national uniformity of scheduled chemicals and thresholds that may place an unnecessary burden on major hazard facilities that operate in multiple jurisdictions.

#### **WorkSafe response – noted**

Changes have been made to reflect improved safety knowledge; and align terminology with the transition to the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) published by the United Nations in 2009. Guidance materials will be developed to ensure major hazard facility operators understand the impact of changes to the Schedule.

#### **Comments received**

An Australian business noted that the changes to material descriptions in Schedule 14, coupled with the removal of some UN numbers has led to some chemicals no longer being listed in Table 1. Was this intentional or inadvertent?

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – noted**

Schedule 14 reflects improved safety knowledge and aligns terminology with the transition to the GHS chemical labelling system. The impact of this is that some materials are no longer separately listed in Schedule 14 Table 1. In most cases these materials remain covered by Table 2, meaning the thresholds in that table apply.

In response to this submission, further consideration was given to all materials listed in Schedule 14 Table 1, resulting in 'hydrogen chloride (anhydrous)' being removed from Table 1. It is now covered by the Table 2 criteria (Acute Toxic Category 3 via Inhalation, with a threshold of 200 tonne).

## **Schedule 16 – Matters to be included in major hazard facility emergency plan**

### **Comments received**

An industry association suggested guidance material should be developed to provide advice on the new provision in Schedule 16 requiring major hazard facility Operators to include in the site emergency plan assumptions for the protection of any emergency services personnel that may attend a major incident.

### **WorkSafe response – noted**

Guidance material will be made available to major hazard facility operators to help them comply with the new Regulations.

## **Schedule 17 – Additional matters to be included in major hazard facility safety case**

### **Comments received**

An industry association and a Victorian business suggested that additional guidance was needed on the new requirement to provide seismic data in a major hazard facility safety case (where this data is relevant to the risk of a major incident), including where, and how, to locate the necessary data.

### **WorkSafe response – noted**

Guidance material will be made available to major facility operators to help them comply with the final Regulations.

### **Comments received**

An employer group raised concerns about clause 10(2) of draft Schedule 17, which requires a major hazard facility operator to include a summary of any incidents they have been required to notify WorkSafe of under the OHS Act over the last five years, in addition to the current requirement to include a summary of major incidents.

They questioned the cost impacts of the proposed change and suggested it imposes a burden on operators without improving safety outcomes.

### **WorkSafe response – noted**

The provision is intended to improve safety outcomes by ensuring that major hazard facility operators address hazards and risks highlighted by previous incidents when preparing their safety case. This includes those that may not fall within the definition of a 'major incident.'

## **Summary of Public Comment and WorkSafe's response**

Part 5 of the OHS Act requires employers to keep records of notified incidents for at least five years. The additional requirement to include a summary of these records in the safety case is considered minimal, on the basis that it would involve collating information that is already held.

## **Summary of Public Comment and WorkSafe's response**

### **Mines**

Comments were received on Part 1.1 Introductory matters specific to mines.

#### **Regulation 5 – Definition: mine**

##### **Comments received**

An industry association expressed support for the exclusion of quarries from the definition of mine in the draft Regulations. They noted that quarries do not carry the same risks as underground and remote mining, and to include quarries in the definition would be disproportional to the risk.

##### **WorkSafe response – noted**

## **Summary of Public Comment and WorkSafe's response**

### **Licences**

Comments were received regarding Part 6.1 Licences.

### **Regulation 458 – Additional information to be included in high risk work licence application**

#### **Comments received**

An industry association supported the requirement for a high risk work licence application to include a notice of assessment (satisfactory), and the removal of references to statements of attainment.

#### **WorkSafe response – noted**



## Summary of Public Comment and WorkSafe's response

### EPS Regulations

#### General comment

A law firm enquired as to the need for a provision in the draft EPS Regulations that prohibits the supply of quad bikes without the roll-over protection in certain circumstances, similar to that included in relation to tractors.

#### WorkSafe response - noted

The EPS Act and Regulations provide a framework to ensure the safe use of quad bikes.

Quad bike safety is a high priority for WorkSafe and the organisation has systematically introduced initiatives to address the issue. These initiatives include a dedicated quad bike strategy that includes a subsidy and a high-profile targeted media campaign.

Appropriately fitted rollover protection devices on quad bikes are included on WorkSafe's list of approved safety measures.

### General comments

#### Health and Safety Representatives

##### Comment received

Overall, respondents were confident that the proposed OHS Regulations will help to create safer working environments for all industry participants. They recognised the proposed OHS Regulations included a number of proposals that would increase employee safety.

Specific expressions of support were made for the revised Regulations including specific mentions for the inclusion of 'or the Regulations' in proposed Regulation 21 – How to involve health and safety representatives in consultation; and proposed changes to Chapters 6 and 7.

##### WorkSafe response – noted

##### Comments received

An employee representative group commented that references to 'HSR' should be changed to 'HSRs', on the basis that a designated work group may have more than one HSR representing employees.

##### WorkSafe response – noted

Under Victorian legislation, unless expressly stated otherwise, words that appear in the singular, automatically include the plural.

#### Provision of information, instruction, and training

##### Comments received

A number of employee representative groups commended that former Regulation 2.1.2 – Provision of information, instruction, and training, be reinserted into the final OHS Regulations.

##### WorkSafe response - noted

Former Regulation 2.1.2 was removed from the 2007 OHS Regulations in 2014 on the grounds that it was an unnecessary duplication of section 21(2)(e) of the OHS Act which requires that employers "provide such, information, instruction, training or supervision to employees of the employer as is necessary to enable those persons to perform their work in a way that is safe and without risks to health". This obligation is extended by section 21(3) to independent contractors and their employees.

##### Comments received

An employee representative group recommended that information, instruction and training for employees with disabilities or limited or no English language skills be provided in an appropriate form and medium such as braille, audiotapes and translations in other languages.

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response - noted**

Section 21(2)(e) of the OHS Act requires employers to provide such information, instruction, training or supervision to their employees, as is necessary, to enable them to perform their work in a way that is safe and without risks to health. This duty is broad enough to cover the provision of information and training in other languages and formats, including braille.

Section 22(1)(c) of the OHS Act requires employers to provide information to their employees (in such other languages as appropriate) concerning health and safety at the workplace. The WorkSafe Compliance Code: Communicating OHS across languages assists duty holders to comply with their duties.

### **Insertion of notes regarding consultation**

#### **Comments received**

An industry association questioned the value of the new notes on the consultation requirements under the OHS Act was queried. Their inclusion was seen as an unnecessary duplication of the Act duties.

#### **WorkSafe response - noted**

The objective of the notes is to clarify where consultation is required under the OHS Act as part of complying with certain regulatory obligations, such as those relating to the control of risk.

### **Provision of Personal Protective Equipment (PPE)**

#### **Comments received**

An employee representative group proposed that a provision or note be inserted in the Regulations to clarify that employers must provide and pay for any PPE.

#### **WorkSafe response- adopted**

With the exception of draft Regulation 98(4), the proposed Regulations expressly require that employers or self-employed persons provide PPE.

To improve the clarity of the meaning, and consistency of drafting, final Regulation 98(4) has been amended to require that employers or self-employed persons provide PPE.

#### **Comments received**

An individual responded indicated that the definition of PPE should clarify whether a harness qualifies as PPE.

#### **WorkSafe response - noted**

Given the variety of hazards being regulated, a general definition of PPE is needed. References to PPE are found in many of the Regulations setting out a hierarchy of control measures for addressing risks associated with a specific hazard.

In respect of fall hazards, PPE is not specified as a level of control within the hierarchy of risk control measures set out in Regulation 44.

All harness systems that may be used under the falls hierarchy are individually defined in Regulation 5 – 'fall arrest system', 'travel restraint system' and 'industrial rope access system'.

## **Summary of Public Comment and WorkSafe's response**

### **Infringement Notices and Fee for Intervention systems**

#### **Comments received**

A recommendation was made by an employee representative group that WorkSafe should establish a review to determine whether to implement an Infringement Notice system (as allowed under section 139 of the OHS Act) or a Fee for Intervention system.

#### **WorkSafe response - noted**

### **Psychological hazards and Occupational violence**

#### **Comments received**

It was suggested by employee representative groups and an individual that the OHS Regulations should include provisions on occupational violence, including a definition and obligations on employers to establish a workplace prevention policy, identify risk factors, assess the risks, control the risks, review the controls and establish emergency procedures. An individual also proposed that the Regulations should include a separate part dedicated to psychological hazards.

#### **WorkSafe response - noted**

Given the complex nature of these hazards, a multi-faceted approach to psychological hazards and occupational violence is necessary. The conventional hierarchy of control applied is not suited to address the multifaceted nature of these hazards and their control is best achieved through the implementation of a combination of inter-related or interdependent controls. The general duties under the OHS Act, supported by guidance, are the most appropriate way to achieve this.

A number of WorkSafe publications provide guidance on psychosocial hazards and occupational (or work related) violence, including industry-specific guidance.

WorkSafe continues to work with stakeholders to develop ways to help employers comply with their duties under the OHS Act.

#### **Comments received**

It was recommended by an employee representative group that incidents involving exposure to occupational violence should be prescribed as notifiable incidents.

#### **WorkSafe response**

Incidents involving exposure to occupational violence would be classified as notifiable under section 37 of the OHS Act where they meet the requirements of that section. For example, where the incident results in a person requiring immediate treatment as a hospital in-patient or they have received a serious laceration.

Further, any employee exposed to occupational violence, or that person's health and safety representative, can report any incident to WorkSafe.

#### **Comments received**

A respondent did not support the inclusion of psychological health within the definition of 'health' for the purposes of the hierarchy of controls, or health monitoring in the various parts of the Regulations.

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response**

Section 5 of the OHS Act defines 'health' to include psychological health. Wherever the term appears in the Act or the Regulations, it is referring to psychological as well as physical health. The scope of the OHS Regulations review does not extend to reviewing the OHS Act.

The OHS Regulations make numerous references to health monitoring including in the General duties, Hazardous substances and Lead parts.

To assist duty holders, a clarifying note has been included at the foot of the definition of 'health monitoring' in the OHS Regulations. The note makes reference to the meaning of the term 'health' in the OHS Act. Additionally, guidance material on topics such as psychological health, stress and bullying are available on WorkSafe's website.

### **Australian Standards**

#### **Comments received**

A proposal was made to remove Australian Standards references from the OHS Regulations. If they were to be included, the Standards should be freely accessible and set out in plain language.

#### **WorkSafe response**

Third party documents, including Australian Standards, are incorporated into the Regulations to avoid the need to reproduce large amounts of often technical material. The use of third party documents was considered as part of the review process and the number incorporated has been reduced from 23 to 15 documents.

Documents referenced in the OHS Regulations are freely available to view during business hours at the WorkSafe head office.

### **Use of the 'reasonably practicable' qualifier**

#### **Comments received**

An employer representative group suggested that the qualifier 'so far as is reasonably practicable' should be used whenever there is an alternative or a complex response possible. For example, the duty to provide changing and washing facilities should be qualified by what is reasonably practicable.

#### **WorkSafe response**

The only Regulation that requires the provision of changing and washing facilities is Regulation 191 in the Lead Part. That Regulation is qualified by 'so far as is reasonably practicable'.

The qualifier 'so far as is reasonably practicable' is read into all OHS Act compliance regulations, even where these words are not explicitly stated in a regulation. In general, the qualifier is not explicitly stated in regulations where it is apparent that it would ordinarily be reasonably practicable to comply with the obligation.

## Summary of Public Comment and WorkSafe's response

### Hierarchy of controls

#### Comments received

An individual suggested that the language used in the Regulations suggests risk is managed by the completion of a risk assessment and the use of a hierarchy of controls. The respondent contended that no risk is ever eliminated, it is just moved to a new risk and queried why PPE is being relied upon.

#### WorkSafe response

The duty to control risk is an ongoing obligation, and includes the requirement to implement the highest order control that is reasonably practicable. Where a control measure introduces a new hazard, the same duty extends to risk associated with the new hazard.

For some hazards, the risk control hierarchy allows PPE to be provided as a means of risk control and is recognised as the lowest-order of risk control. Where the Regulations mandate provision of PPE as form of risk control, it is always the lowest order control in the hierarchy.

### Authorised Representatives of Registered Worker Organisations (ARREO) Entry Permits scheme

#### Comments received

An employer representative group raised concerns about the inappropriate use of the ARREO Entry Permits scheme where spurious safety concerns were used to raise industrial relations issues.

#### WorkSafe response

The ARREO Entry Permits regime is established under Part 8 of the OHS Act. The scope of the OHS Regulations review does not extend to reviewing the OHS Act.

### Individual workers and case work

#### Comments received

An employer representative group suggested that individual workers rather than HSRs be allowed to call for a cease work due to health and safety risk. It was also recommended that an issues resolutions process be introduced.

#### WorkSafe response

Section 74 of the OHS Act provides that an HSR may direct that work cease in prescribed circumstances, including that the work involves an immediate threat to the health and safety of any person. The scope of the OHS Regulations review does not extend to reviewing the OHS Act.

Part 2.2 of the final Regulations sets out the procedure to facilitate the resolution of health and safety issues arising at a workplace or from the conduct of an employer's undertaking if there is no relevant agreed procedure for resolution of those issues.

## **Summary of Public Comment and WorkSafe's response**

### **Record-keeping**

#### **Comments received**

Several employer representative groups suggested that the Regulations' record keeping requirements be kept to a minimum and only be required where there is an established need.

#### **WorkSafe response**

One of the aims of the OHS Regulations review was to identify opportunities to reduce regulatory requirements, including record keeping requirements, where this could be done without reducing safety standards. For example, the requirement that designers keep copies of the information provided to the manufacturer has been removed on the basis that manufacturers are required to keep this information.

### **Regulations in general**

#### **Comments received**

One respondent's only criterion for assessing the changes in the proposed Regulations was whether or not the change will result in safer workplaces. The respondent commented that on the whole, most of the proposed changes meet this criterion.

Another respondent commented that the former OHS Regulations delivered significant OHS reforms for Victoria and contended that currently, there is little need for significant change in the OHS Regulations.

It was suggested that the Regulations should be less prescriptive.

#### **WorkSafe response - noted**

Significant flexibility has been built into most of the regulatory obligations. This allows duty holders to determine their own methodology and approach to achieve compliance. Additionally, Compliance Codes and Guidance materials are available to support duty holders meet their obligations.

### **Licenses**

#### **Comments received**

An industry association stated support for the proposed amendments to Chapter 6.

#### **WorkSafe response – noted**

### **Compliance codes and guidance**

#### **Comments received**

An industry association recommended that the updated Compliance Codes, and other guidance material be released concurrently with, or soon after, the launch of the 2017 Regulations.

#### **WorkSafe response**

Updated guidance material will be released when the final Regulations take effect. A suite of proposed Compliance Codes will be made available for public comment after the making of

## **Summary of Public Comment and WorkSafe's response**

the OHS Regulation 2017. This will allow for the codes to be reviewed in line with the final Regulations.

### **Evidence of benefit**

#### **Comments received**

An employee representative group contended that for many of the changes in the draft Regulations, evidence had not been provided to demonstrate that the change provides the benefits and outcomes as provided in two of the main aims of the review – to improve health and safety outcomes for workers, and deliver savings to business without reducing safety standards.

#### **WorkSafe response**

The RIS prepared in development of the draft Regulations includes justifications for policy change proposals incorporated in the proposed Regulations. The RIS assesses the impacts of the OHS and EPS Regulations, including proposed changes and a range of alternative options to address the problem of health and safety risks in the workplace and associated illnesses, injuries and fatalities. The impact of these changes will be evaluated by WorkSafe

### **Compliance and enforcement**

#### **Comments received**

It was recommended that judicial decisions be taken into account in remaking the OHS Regulations.

#### **WorkSafe response**

Judicial decisions or court rulings are one important element that informed the policy decisions required during regulatory development.

#### **Comments received**

It was suggested by an industry association that WorkSafe has never successfully prosecuted duty holders under any OHS Regulations.

#### **WorkSafe response**

While in most prosecutions the OHS Act provisions are cited, there have been several occasions where WorkSafe has successfully prosecuted persons for a breach of the OHS Regulations, often in relation to failure to hold a relevant licence. WorkSafe's Prosecution Result Summaries provides information on prosecution outcomes: [worksafe.vic.gov.au/laws-and-regulations/enforcement/prosecution-result-summaries-and-enforceable-undertakings](https://www.worksafe.vic.gov.au/laws-and-regulations/enforcement/prosecution-result-summaries-and-enforceable-undertakings).

#### **Comments received**

An individual suggested that consideration be given to increasing penalties for breaches of legislation and Regulations.

#### **WorkSafe response – noted**

Penalties are subject to whole of government policy and are determined by OCPC.



## **Summary of Public Comment and WorkSafe's response**

### **Adopting Model WHS laws**

#### **Comments received**

Numerous respondents suggested that Victoria adopt the Model WHS laws or make the Victorian OHS Regulations as consistent as possible with those laws. They suggested this alignment would streamline the OHS requirements of businesses, especially those operating in numerous jurisdictions.

#### **WorkSafe response**

The Victorian Government has indicated that it will not be adopting the Model WHS Regulations where doing so will result in a reduction in safety standards. In the course of the review, consideration has been given to aligning with parts of the Model WHS Regulations where doing so would improve safety outcomes.

### **Public Comment Period**

#### **Comments received**

Some respondents felt the public comment period was too short.

#### **WorkSafe response**

The public comment period was agreed with key stakeholders and held between 18 July 2016 to 9 September 2016, which is almost double the minimum period that is mandated under section 11 of the Subordinate Legislation Act 1994.

#### **Comments received**

It was commented that the document summarising proposed changes was welcome given the size of the draft Regulations and the RIS.

#### **WorkSafe response - noted**

### **Minimising the number of Regulations**

#### **Comments received**

An employer representative group suggested that the review could have done more to minimise the number of Regulations. They referenced the Australian Government's Principles of Best Practice Regulation which notes all avenues be explored to achieve the aims of the Regulations, and that Regulations should only be introduced when they can demonstrate an overall net benefit.

Another employer representative group proposed that there should be further streamlining of the Regulations and even more prescriptive material moved into guidance.

#### **WorkSafe response**

One of the aims of the review was to "streamline and modernise the Regulations while maintaining best practice". This included consideration of non-regulatory options to achieving policy intent. The RIS assessed the costs and benefits of various options as well as the base case where the Regulations are not replaced when they expire. The RIS concluded that the draft Regulations had a positive net benefit to society.

## Summary of Public Comment and WorkSafe's response

### Scope of the reforms

#### Comments received

It was contended by an industry association that the proposed changes focus on detail rather than the goals of the Regulations and thereby represent a missed opportunity for genuine reform.

#### WorkSafe response

WorkSafe has undertaken a comprehensive review of the OHS and EPS Regulations with stakeholders. More than 70 organisations were provided the opportunity to comment on their experience with the former regulations and how they could be improved.

Stakeholders consulted, and the results of public comment indicated that the OHS and EPS Regulations are generally operating well in their current form and that wholesale changes are not needed. As a result, only a small number of policy changes have been identified that are expected to improve the Regulations.

### Training requirements for plant

#### Comments received

It was contended that there is ambiguity of training requirements for low risk plant that results in inspectors relying on their own interpretations. The respondent suggested that some organisations may choose to remove certain plant because of associated training costs included in the draft Regulations.

#### WorkSafe response

Section 21(2)(e) of the OHS Act requires an employer to provide such information, instruction, training or supervision to employees as is necessary to enable those persons to perform their work in a way that is safe and without risks to health. The level of training required for employees using a particular type of plant would depend on a number of factors, including the nature of the plant and its complexity to use; and risks to health and safety associated with its use.

### Farming

#### Comments received

Respondents from the agriculture sector suggested that WorkSafe needs to consider that some farmers in rural areas would find it challenging to comply with some of the Regulations. For example, due to the lack of communications infrastructure in some regional and remote areas, farmers cannot always be confident of their staff's location.

#### WorkSafe response

Significant flexibility is built into most of the regulatory obligations, allowing duty holders to come up with an approach that suits them best in achieving compliance. In addition, WorkSafe prepares and publishes guidance and Compliance Codes to assist duty holders in meeting their obligations under the OHS laws.

## Summary of Public Comment and WorkSafe's response

### Hoist and mast climbing work platform

#### Comments received

The definitions for 'hoist' and 'mast climbing work platform' should not expressly provide that they do not include building maintenance equipment. Both a 'hoist' and a 'mast climbing work platform' should fit within the definition of 'building maintenance equipment'.

#### WorkSafe response

Neither the definition of 'hoist' nor the definition of 'mast climbing work platform' is intended to capture building maintenance equipment. The definition of 'building maintenance equipment' is intended to cover certain types of plant only.

The terms 'hoist', 'mast climbing work platform' and 'building maintenance equipment' have been defined to support the use of the terms in the various provisions in the proposed OHS Regulations. In some cases the same regulatory provisions apply to hoists, mast climbing work platforms and building maintenance but in other cases different requirements apply.

The three terms require separate definitions for the purposes of high risk work licence requirements and design registration requirements under Parts 3.6 and 3.5, respectively.

### Scaffold

#### Comments received

Although the definition of 'scaffold' is technically correct, it may be too broad. Suggested consideration be given to amending the definition of 'scaffold' to refer to the relevant Australian and New Zealand Standards.

#### WorkSafe response

The definition of 'scaffold' is intentionally broad, as it relates to numerous parts of the Regulations. It is a purposely descriptive definition that is suitable for the use of the term in the Regulations, including in the definitions of 'scaffolding work' and 'suspended scaffold', and in provisions in Part 3.5 and Schedule 3.

### Administrative matters and exemptions

#### Comments received

Support was expressed for the proposed amendments to Chapter 7.

#### WorkSafe response - noted

### Emergency plans

#### Comments received

A recommendation was received to insert a Regulation within Part 2.1 (General Duties) that requires all workplaces to have emergency plans, similar to the Model WHS Regulations. Explanatory material to clarify how to comply with the proposed Regulation was also recommended.

#### WorkSafe response

The policy approach adopted in Victorian OHS Regulations is to include specific requirements for emergency plans or emergency procedures for high risk workplaces or

## **Summary of Public Comment and WorkSafe's response**

activities. While there is no general requirement in the final Regulations for a workplace to specifically have an emergency plan in place, there may be a breach of section 21 (1) of the OHS Act in the event that the lack of an emergency plan caused or contributed to a working environment that was not safe and without risk to health,.

### **Electrical licences**

#### **Comments received**

It was suggested that ongoing professional education and development should be required as part of holding and renewing an electrical licence.

#### **WorkSafe response**

WorkSafe does not manage the licensing system for workers in the electrical industry. The licensing and registration of electricians is administered by Energy Safe Victoria.

### **Exemption for miniature railways**

#### **Comments received**

A respondent proposed that a number of miniature trains be exempted from the OHS Act and Regulations.

#### **WorkSafe response**

It is beyond the scope of the OHS Regulations review to make changes to the OHS Act.

The OHS and EPS legislative frameworks both make provision for WorkSafe to grant exemptions from complying with provisions of the regulations. This provides an appropriate mechanism for operators of miniature trains to seek an exemption from regulatory requirements where it can be demonstrated that an equivalent level of health and safety can be achieved.

### **Control of plant**

#### **Comments received**

An industry association welcomed the automatic inclusion of driverless tractors and similar vehicles in the Regulations without requiring additional changes.

#### **WorkSafe response – noted**

## Summary of Public Comment and WorkSafe's response

### Regulatory Impact Statement

In addition to feedback on the draft OHS and EPS Regulations, comments were received regarding the Regulatory Impact Statement (RIS).

#### RIS – General comments

##### Comment received

An employer group indicated a lack of confidence in regards to the cost estimates in the RIS.

##### WorkSafe response – noted

The RIS sought to accurately estimate the dollar value of the costs and benefits of the draft Regulations to employees, employers, the community and Government.

These estimates are necessarily illustrative due to the theoretical nature of some costs and benefits. For example, it was not possible to objectively delineate which costs and benefits are attributable to the OHS and EPS Acts, and which are attributable to the OHS and EPS Regulations.

Drawing from a variety of sources, including WorkSafe data, Safe Work Australia data, stakeholder interviews and focus groups and web based surveys, the robust methodology allowed for comparisons of the relative costs and benefits of the various options.

##### Comment received

An industry association queried the underlying assumption that “technology did not change substantially between 1993-94 and 2014-15 and that it also won't change so substantially between 2017 and 2027”.

##### WorkSafe response – noted

The RIS makes a number of assumptions for the purpose of estimating the projected incidence of injuries and illnesses if there were no OHS Regulations (the Base Case).

This includes an assumption that technological advances between 1993-94, 2014-15 and 2017-2027 are not so significant that they invalidate the estimated projection.

##### Comment received

An industry association noted that the RIS is not consistent in its discussion of Option 2 – Select improvements, and Option 3 – Increased national consistency.

The RIS notes certain unquantified benefits associated with Option 2 that would also apply to Option 3 and improve the estimated net benefit for this Option.

##### WorkSafe response – noted

The RIS notes unquantified benefits associated with Option 2 – Select improvement changes, in order to draw out the differences with Option 1 – Remake existing Regulations. Options 1 and 2 only have marginally different estimated net benefits, \$11.72 billion and \$11.81 billion respectively.

As the estimated net benefit for Option 3 – Increased national consistency, is significantly less (\$2.16 billion), the RIS does not expressly discuss the unquantified benefits in relation to this option.

## **Summary of Public Comment and WorkSafe's response**

### **Comment received**

An industry association stated that references to the reduction in injuries, disease and fatalities in the RIS were based on uncertain statistical data that has been assessed, in particular studies, as underestimated. The response further noted that workplace injury 'claims' have steadily reduced, not injuries.

### **WorkSafe response – noted**

The RIS acknowledges that claims data is used as a proxy to assess the effectiveness of the Regulations and does not account for near misses or incidents that do not result in a claim being lodged.

### **Comments received**

An industry association expressed support for a number of specific changes to the mines Regulations. Although support was expressed for the change to move from a requirement for 'constant' to 'effective' communication with employees working alone, it suggested that the cost benefit noted in the RIS is potentially higher than the actual benefit.

### **WorkSafe response – noted**

The RIS sought to accurately estimate the dollar value of the costs and benefits of the draft Regulations to employees, employers, the community and Government.

These estimates are necessarily illustrative due to the theoretical nature of some costs and benefits.

## **Consultation Process**

### **Comments received**

An industry association and a number of respondents from the agricultural chemical industry did not feel they were adequately consulted for the purposes of the RIS.

### **WorkSafe response – noted**

WorkSafe endeavoured to consult broadly with a range of health and safety professionals and industry stakeholders in regards to the RIS.

Consultation on the RIS included one-on-one interviews with duty holders, metropolitan and regional focus groups and web based surveys which were made available to all industries, and designed to seek feedback from as many interested parties as possible.

Specifically, with regard to the agricultural chemical industry, consultation occurred with representatives from:

- the fertiliser and pesticide manufacturing industry
- the veterinary and pharmaceutical and medicinal product manufacturing industry
- the industrial and agricultural chemical product wholesaling industry.

## **Representation of small to medium sized employers**

### **Comments received**

An industry association commented that small and medium sized employers were underrepresented in the consultation groups.

## **Summary of Public Comment and WorkSafe's response**

### **WorkSafe response – noted**

The RIS considered data from 102 small business (less than 20 employees) survey respondents and 35 medium business (20-199 employees) survey respondents.

It also considered data from 63 one-on-one interviews with small businesses and 48 one-on-one interviews with medium sized businesses.

The RIS recognises that the pooled sample may not be representative of the general makeup of the Victorian economy, as larger businesses are more likely to be familiar with OHS requirements and to have capacity to respond to the requests for interviews and web based surveys. In acknowledgement, the RIS weighted results of the pooled sample by size and industry.

## **Model Work Health and Safety Legislation**

### **Comments received**

An industry association suggested that the RIS should not have considered aligning with the Model WHS laws as the Victorian Government has indicated it will not be adopting these laws.

### **WorkSafe response – noted**

The Victorian Government has indicated that it will not be adopting the Model WHS laws where doing so will result in a reduction in safety standards. The RIS did not consider an Option of full alignment with the Model WHS legislation as this would be contrary to Victorian Government policy.

The RIS did however consider Option 3 – Increased national consistency, whereby amendments would be made in select areas of the Regulations to increase consistency with the national model laws without reducing safety standards.

## **RIS Base Case and Options**

### **Comments received**

An employer group commented that the RIS does not analyse a substantive burden-reduction option or transparently and robustly explain why such an option was not considered practicable, as is required for high impact regulations under the Victorian Guide to Regulations.

### **WorkSafe response – noted**

The RIS notes that consideration was given to including an option focused on reducing regulatory burdens on duty holders without reducing safety standards, however no clear areas for reform could be identified beyond some minor changes included under Option 2 (select improvement changes).

The key reason why no clear areas for reform could be identified is that a process was previously undertaken in 2013-14 to identify and make regulatory burden reduction amendments to the Regulations.

## Appendices

### Appendix A- List of acronyms and terms used in the document

Acronym / term used	Explanation
WorkSafe	WorkSafe Victoria
RIS	Regulatory Impact Statement
Draft OHS Regulations	Draft Occupational Health and Safety Regulations 2017
Final OHS Regulations	Occupational Health and Safety Regulations 2017
Former OHS Regulations	Occupational Health and Safety Regulations 2007
Former EPS Regulations	Equipment (Public Safety) Regulations 2007
Final EPS Regulations	Equipment (Public Safety) Regulations 2017
Former EPS Regulations	Draft Equipment (Public Safety) Regulations 2017
SRG	Health and Safety Stakeholder Reference Group
GHS	Globally Harmonized System of Classification and Labelling of Chemicals
Model WHS laws	Model Work Health and Safety Laws
Model WHS regulations	Model Work Health and Safety Regulations
SDS	Safety data sheets
AgVet chemicals	Agricultural and Veterinary Chemical
DG Act	Dangerous Goods Act 1985
DG Regulations	Dangerous Goods (Storage and Handling) Regulations 2012
DG Order	Dangerous Good Order (2007)
EPA	Environmental Protection Authority
OCPC	Office of the Chief Parliamentary Counsel
SWMS	Safe work method statement
MHF	Major Hazardous Facilities
HSR/HSRs	Health and Safety Representatives
PPE	Personal protective equipment
EPS Act	Equipment (Public Safety) Act 1994
WIRC Act	Workplace Injury Rehabilitation and Compensation Act 2013
BME	Building Maintenance Equipment
CAS numbers	Chemical Abstract Service Registry Numbers



## Summary of Public Comment and WorkSafe's response

### Appendix B – List of submissions received

- Australian Association of Miniature Railways and Model Engineers
- Australian Steel Institute
- Peter Moylan
- Peter Ferguson
- AITAC Pty Ltd
- Vaughan Duggan
- Paul Baggeridge
- Qenos
- Construction Forestry Mining and Energy Union (Construction and General Division)  
Victorian and Tasmanian Branch
- Rawlings Safety Group Pty Ltd
- Wendy Macdonald
- Australian Nursing and Midwifery Federation (Victorian Branch)
- Lisa Stevens
- Master Electricians Australia
- Minerals Council of Australia
- Richard Greenwood
- Haztech Environmental
- Asbestos Council of Victoria
- Australian Chamber of Commerce and Industry
- CropLife Australia
- Australian Industrial Truck Association
- David Barlett
- Vasalia Govender
- Victorian Automobile Chamber of Commerce
- Construction Forestry Mining and Energy Union (Construction and General Division)  
Victorian and Tasmanian Branch (additional submission)
- Civil Contractors Federation Victoria
- CEPU (Plumbing Division)
- Housing Industry Association
- Construction Forestry Mining Energy Union, Education & Training Unit
- Construction Forestry Mining Energy Union, Education & Training Unit (additional  
submission)
- Accensi Pty Ltd
- Fire Protection Association of Australia
- Safety Institute of Australia Ltd
- Bayer Australia Limited
- Solutions in Engineering Pty Ltd
- Victorian Farmers Federation
- Plastics and Chemicals Industries Association
- Maurice Blackburn Lawyers
- Toll Group Pty Ltd
- The Australian Workers' Union
- Victorian Trades Hall Council

## **Summary of Public Comment and WorkSafe's response**

- Master Builders Association of Victoria
- Australian Manufacturing Workers' Union
- AgNov Technologies Pty Ltd
- Greencap
- Herbert Smith Freehills
- Australian Industry Group
- Construction Material Processors Association Inc.
- Crane Industry Council of Australia
- Victorian Chamber of Commerce & Industry

In addition, a number of submissions were received that were marked confidential, or did not provide WorkSafe permission to publish the name or organisation the submission was from.

## Summary of Public Comment and WorkSafe's response

### Appendix C - List of public comment statistics

WorkSafe received: 61 submissions:

- 13 from individuals
- 48 from organisations (including 9 from employee organisations and 11 from employer and seven industry organisations).

During public comment the consultation website received 1,580 visits with 1,627 documents downloads.

## Appendix D - Stakeholder reference groups

Stakeholder Reference Group	Organisations represented
Asbestos	AWU, CFMEU, HIA, MPMSAA, MBAV, PTEU, VCEA, VECI, VTHC
Construction	AiGroup, CCF, CFMEU, HIA, MBAV, PTEU, VCEA, VTHC
Hazardous Substances, Carcinogenic Substances & Lead	AiGroup, AMCA, AMWU, PACIA, VACC, VCEA, VTHC
Major Hazard Facilities	AiGroup, AWU, PACIA, VCEA, VTHC
Major Hazard Facilities (Government Emergency Services)	CFA, MFB, SES, PAV, VCEA, VicPol, VicWater, VTHC
Manual Handling	AiGroup, AMIEU, ANMF, AWU, AMWU, CCF, HIA, VACC, VCEA, VECI, VTHC, MUA
Mines	AiGroup, AWU, CFMEU, MCA, NGMA, PMAV, VCEA, VTHC
Noise and Confined Spaces	AiGroup, AMCA, AWU, CCF, CFMEU, VCEA, VECI, VTHC
Plant and High Risk Work	AiGroup, AMCA, AMWU, CCF, CFMEU, MBAV, VCEA, VTHC
Prevention of Falls	AiGroup, CCF, CFMEU, ETU, HACSU, MBAV, PTEU, VCEA, VECI, VTHC
General Matters	AiGroup, ANMF, MBAV, VCEA, VECI, VTHC

### Abbreviations:

- AiGroup – The Australian Industry Group
- AMCA – Airconditioning and Mechanical Contractors' Association
- AMIEU – Australasian Meat Industry Employees Union
- AMWU – Australian Manufacturing Workers Union
- ANMF – Australian Nursing and Midwifery Federation
- AWU – Australian Workers Union
- CCF – Civil Contractors Federation
- CFA – Country Fire Authority
- CFMEU – Construction, Forestry, Mining & Energy Union Mining & Energy Union
- ETU – Electrical Trade Union
- HIA – Housing Industry association
- MBAV – Master Builders Association of Victoria

## Summary of Public Comment and WorkSafe's response

- MCA – Minerals Council of Australia
- MFB – Metropolitan Fire and Emergency Services Board
- MPMSAA – Master Plumbers & Mechanical Services Association of Australia
- MUA – Maritime Union of Australia
- NGMA – National Gypsum Miners Association
- PACIA – Plastics and Chemicals Industries Association
- PAV – The Police Association of Victoria
- PMAV – Prospectors and Miners Association of Victoria
- PTEU – Plumbing Trades Employees Union
- SES – Victoria State Emergency Service Authority
- VACC – Victorian Automobile Chamber of Commerce
- VCEA – Victorian Congress of Employers Association
- VECCI – Victorian Employers Chamber of Commerce and Industry
- VicWater – VicWater Industry Association
- VicPol – Victoria Police
- VTHC – Victoria Trades Hall Council