

**Model Work Health and Safety Regulations and
Codes of Practice Public Comment Response Form**

Individual/Organisational name:
Section A: Model Work Health and Safety Regulations Exposure Draft
General Comments (e.g. regulatory impact, level of prescription, notification, record-keeping requirements)
<p>1. See attached Australian Hotels Association covering letter.</p> <p>2. We believe that qualifiers such as 'so far as is reasonably practicable' should be used in this Regulation wherever there are specified obligations or duties. Where the word 'ensure' is used it should be pre-fixed by the term 'so far as is reasonably practicable' so that the Regulation cannot be interpreted as imposing a duty greater than the Act.</p> <p>3. The level of record-keeping required by business will increase markedly with the introduction of this legislation. A proportion of this increase appears to be process driven, rather than focussing on safety outcomes. There are concerns that obligations to keep records is just an exercise in providing 'evidence' for inspectors i.e. a lack of record-keeping supports an offence having been committed. We oppose any increase in the record-keeping obligations for business.</p> <p>4. The introduction of this Regulation should be accompanied in the transition period by a commitment from the regulator to inform and educate business on these significant changes. In our view, there needs to be an initial grace period relating to minor or routine non-conformances.</p>
Chapter 1: Preliminary (e.g. definitions)
<p>1. Definitions</p> <p><u>Comment:</u></p> <p>1.1 There is no definition of Personal Protective Equipment (PPE) within Chapter 1.</p> <p>1.2 There is also no definition in Part 3.2 which contain the relevant PPE regulation.</p>

1.3 There is no mention of Personal Protective Clothing in the Regulation. This should go hand-in-hand with PPE i.e. such as high visibility vests.

1.4 There is no definition of risk or risk control measures in the Regulation.

It is recommended that for clarity purposes the above definitions should be included in the Regulation.

Chapter 2: Representation and participation (e.g. power to request review of risk control measures in certain circumstances)

1. Work Health and Safety Representatives (HSRs) and Workgroups

Comment:

The AHA concern relates back to the Model Work Health and Safety Act which:

- Do not limit the number of HSRs for any workplace, and
- Can appoint a HSR for any sized workplace e.g. a workplace with only one worker.

1.1 There is no limitation under the legislation to limit the number of HSRs in each workplace. In fact, the situation is quite the opposite. The Act and Regulation allows for multiple HSRs (and Deputy HSRs) in any sized business, dependent upon 'workgroup' and subsequent 'negotiations'. It is obvious that the intent of the legislation is to allow multiple HSRs to operate in a workplace with enhanced powers that allow appointees to shut work down and/or issue Provisional Improvement Notices as they see fit. This situation is untenable and an unwarranted burden for small business.

1.2 Under some jurisdictions, the HSR concept is familiar and embedded in workplace culture. However, the number of HSRs are controlled and generally restricted to one for each workplace, except for any other negotiated outcome. In the hotel industry (in those particular jurisdictions) this system generally operates within the accommodation hotel sector. However, that situation will now change as workers in all businesses are encouraged to participate in the new structure. The potential for abuse is also high in unionised workplaces where the use of HSRs could be potentially politicised.

1.3 For a small business operator the cost of training a HSR, in an industry where the turnover of staff is high, will be out of kilter with the level of safety obligations the operator will be required to provide.

1.4 AHA recommends that strict limits be placed on the number of HSRs within a workplace and exempt small business (perhaps in workplaces with less than 20-25 full time equivalent employees) from complying, although encouraging them to participate on a voluntary basis.

1.5 The position of 'Deputy HSR' should be eliminated. It is superfluous in a system that allows multiple HSRs to operate in any workplace.

1.6 All HSR-related training should be competency-based and delivered by a Registered Training Organisation recognised or approved by the regulator.

Chapter 3: General workplace management

Part 3.1 General working environment

Part 3.2 Personal protective equipment

1. Read in conjunction with Chapter 1, Preliminary (see above).

There is no description of what constitutes Personal Protective Equipment within the Regulation, although under Section 1.1.5 Definitions, personal hearing protectors are referred to as Personal Protective Equipment.

1.1 A definition of Personal Protective Equipment should be included in Section 1.1.5 Definitions.

Part 3.3 First aid

Part 3.4 Emergency plans

1. The proposed emergency plans contained in the Regulations may be consistent with state-based building safety legislation and some current practices are reinforced. However, this is very much a skeleton chapter in that, because it is 'bare-boned', does not contain enough detail to be of much use e.g. there is little information about emergency exits, first-response fire fighting equipment, testing of emergency procedures, who needs to be trained for specific tasks or fire prevention. Consideration should be given to deleting Part 3.4 from the Regulation and leave these

matters to individual state jurisdictions and their own legislation.

Part 3.5 Review of general workplace management measures

Chapter 4: Hazardous work

Part 4.1 Noise

1. The Regulation and Code of Practice relies on an Australian Standard (AS/NZ 1269) for much of its technical support. It's unlikely that small business will readily pay to access regulatory documentation. It is a disincentive for compliance. Our advice is that this Australian Standard is inaccurate with many technical issues apparent. It is recommended that the legislation incorporates more appropriate technical detail and discontinues referring to the Standard.

Part 4.2 Hazardous manual tasks

1. Part 4.2 Hazardous manual tasks

Comment:

All sections of this Regulation (4.2) should be prefaced with 'so far as is reasonably practicable', including the risk control components – which are not at present. The nature of manual tasks is that the function can be subjective and without using this qualifier will be too prescriptive for all circumstances.

2. Section 4.2.5 (1)(g) and (2) HSR can request a review of risk control measures

Comment:

We believe that the power contained in this provision exceeds the intention of the Act. There is scope for misuse of the provision and it should be removed. There is no impediment to HSR's raising this type of issue in the consultation process. It does not need a legislated power or authority.

3. Section 4.2.1 Meaning of hazardous manual task

(1) In this Part, hazardous manual task means a manual task that involves any of the following:

(d) Sustained or awkward posture;

Comment:

There is a lack of consistency between the Regulation and the Hazardous Tasks Code of Practice in terminology and meaning concerning the definition of hazardous manual task.

3.1 The definition of hazardous manual task within the Regulation is inconsistent with the Code of Practice. In the Regulation above at (1) (d), it is referred to specifically as 'sustained or awkward posture'. However, references in the Code of Practice refer to 'sustained and/or awkward posture' (Chapter 1.2 Meaning of key terms p5, and Chapter 3.1 How to find hazardous manual tasks p10). There is also additional references to 'sustained or awkward postures' (Question 2: Does the task involve long duration? p21) and 'sustained postures or awkward postures' (Chapter 5.4 Can the system of work be changed – rest breaks p31).

4. Section 4.2.4 Control of risk of musculoskeletal disorder

(3) If complying with sub-regulation (2) does not minimise the risk of a worker being affected by a musculoskeletal disorder, the person must minimise the remaining risk, so far as is reasonably practicable, by the provision of information, training and instruction.

Comment:

There is a lack of consistency between the Regulation and Hazardous Tasks Code of Practice with regard to controlling the risk of musculoskeletal disorder.

4.1 Section 4.2.4(3) of the Regulation is replicated in the Hazardous Tasks Code of Practice (Chapter 1.3 Duty Holder Responsibilities p6). However, the last line adds-on 'to minimise any remaining risk' to provide information, instruction and training. This is not consistent with the Regulation.

5. Section 4.2.5 (1) (a) Review of risk control measures

(1) A person conducting a business or undertaking must review and as necessary revise all measures implemented to control the risk of a worker being affected by a musculoskeletal disorder arising wholly or partly from carrying out a hazardous manual task:

(a) before any change is made to a thing or a system of work that involves the performance of a hazardous manual task, including a change in the place where the task is performed.

Comment:

It is recommended the words 'specific to or affecting a worker's safety' or similar be added to Section 4.2.5 (1) (a).

5.1 We believe that this section has too wide an interpretation of 'before any change is made to a thing or system of work'. There appears to be an obligation for a PCBU 'to review' under any change of circumstances. For instance, if hours of work were altered temporarily then it could be argued that a review of risk control measures would be required. This appears to go beyond what should be acceptable and reasonable practice. It doesn't pass the 'common sense' test.

6. Section 4.2.1 Meaning of hazardous manual task

(1) In this Part, hazardous manual task means a manual task that involves any of the following:

(d) Sustained or awkward posture.

Comment:

Hazardous manual task, Section 4.2.1(1) (d) above, should be applied together i.e. 'sustained and awkward posture'.

6.1 We believe that the two terms should be interconnected and read together. There is a nexus between awkward and sustained. An awkward posture is not necessarily harmful on its own. In fact, it can be a positive for good body function by increasing joint mobility and strength. However, in conjunction with other actions it can be harmful, in particular for a prolonged period of time.

6.2 Surely a sustained and awkward posture is more appropriately 'hazardous' than a sustained or awkward posture. Taken together, it appears sensible to adopt this enhanced description of the hazard. Consistency of terminology between the Regulation and Code of Practice in terms of 'sustained and awkward' is also relevant.

Part 4.3 Confined spaces

We agree with the current definition of 'confined spaces'. It is appropriate that this part of the Act/Regulation relates only to spaces which are

not meant for human access. Areas which are meant for human access are appropriately dealt with in other provisions.

Part 4.4 Falls

Part 4.5 High risk work (e.g. Accreditation of Assessors)

Part 4.6 Abrasive blasting

Part 4.7 Electrical work

1. Section 4.7.21 Residual Current Devices

(1) A person conducting a business or undertaking must ensure that, in relation to each socket outlet at the workplace, the circuit is protected by a residual current device.

Comment:

The imposition of Section 4.7.21 (1) of the Regulation, which legislates the mandatory installation of residual current devices (safety switches) in all workplaces, will impose unacceptable business costs on the hotel industry. This is not only a question of cost, as if implemented there would not be sufficient time before 1 January 2012 to enable all hotels to comply. Trades people are currently in high demand and if this were insisted upon within the prescribed time frames, the costs would escalate due to the demand. There needs to be some transitional period.

1.1 The current legislative requirements for safety switches to be located on electrical circuits or individual sockets at hotel workplaces (i.e. the service industry) throughout the states and territories, is diverse.

1.2 Generally, each state or territory provides some degree of regulatory protection for workplaces. This ranges from specific safety switch protection for high risk industries such as construction to a more modest regime – for example, in Queensland a safety switch is optional for service workplaces and may be used in lieu of testing and tagging requirements. In some other states, it is not mandatory but only captured under duty of care obligations that 'ensure electrical equipment is safe'.

1.3 The table below lists current state and territory safety switch compliance requirements relevant to the hotel industry:

Safety Switch Requirement – Service Industry Workplaces	
Queensland	Optional for service workplaces and may be used in lieu of testing and tagging requirements.
NSW	Currently, use is based on a risk assessment. However, new regulations have been introduced to phase-in safety switches for: <ul style="list-style-type: none"> • Higher risk moveable electrical equipment by February 2012. • All businesses by February 2015 where reasonably practicable.
Victoria	Safety switches are not mandatory for the service industry. A testing and tagging regime is used as a method of discharging OHS obligations.
Tasmania	Safety switches are not mandatory for the service industry. Risk based assessments are used in certain circumstances to determine safety switch requirements.
South Australia	Regulations state that risks associated with the supply of electricity through a socket outlet must be minimised so far as is reasonably practicable by the use of a safety switch. Where damage to hand-held or mobile plant or flexible supply cord could reasonably occur or electrical safety affected by the environment, the plant must be protected by a safety switch.
Western Australia	A safety switch is required to be installed at a switchboard if electricity is supplied to hand held/portable electrical equipment through a fixed socket at the workplace.
ACT	Not mandatory for the service industry but a duty of care to ensure electrical equipment is safe.
Northern Territory	A safety switch is required to be installed at a switchboard or socket if electricity is supplied to hand held/portable electrical equipment through a socket outlet at the workplace.

1.4 What the legislation reveals is a mish-mash of compliance regimes that do not currently mandate safety switches for electrical circuits and power sockets in all jurisdictions and in all circumstances. Frequently, testing and tagging under AS/NZS 3760:2001 (In-service safety

inspections and testing of electrical equipment) are used in lieu of safety switches in some states and territories. Another example of this is that AS/NZ Wiring Rules 3000:2007 which excludes a requirement for safety switches to be attached to dedicated computer circuits.

1.5 NSW are currently phasing-in a change to a total safety switch electrical environment by February 2015, although a proportion of hotel circuitry will be captured by Stage 1 (due for implementation in February 2012 for higher risk portable electrical equipment).

1.6 The AS/NZ Wiring Rules AS/NZS 3000:2007 sets out the requirements for design, construction and verification of electrical installations. This standard now recommends safety switch coverage for all electrical sockets and lighting circuits. All jurisdictions use this regulatory tool as guidance for new electrical work; however, it is neither retrospective nor legislative.

1.7 Imposing safety switch compliance on all states and territories in one fell swoop will impose unacceptable business costs on the hotel industry. This is especially the case in country areas where many older establishments do not have safety switch protection on electrical circuits.

1.8 An indicative cost of \$175.00 per safety switch is the approximate retail charge per installation. Many establishments have numerous power boxes with multiple circuits. In fact, older-style hotels with accommodation may have an individual power box per room. In addition to the cost of installation, safety switches operate more efficiently than circuit breakers or fuses. Consequently, when they are fitted they frequently detect earth leakage in existing electrical wiring which needs to be replaced and increases the cost per installation.

1.9 It is acknowledged that there will be some cost savings made in terms of discontinuing test and tag activities in certain jurisdictions but this is unlikely to defray overall expenditure. The Australian Hotels Association supports the thrust of proposed electrical safety improvements and recognises the value of safety switches in this process. A staged implementation program for all business with an appropriate level of public dissemination is preferable. To arbitrarily impose a target that will deliver an immediate and significant cost burden on many hoteliers is not supported.

Part 4.8 Diving work

Chapter 5: Plant and Structures

1. Plant – Definition

Currently, the definition of plant encompasses handheld and other equipment such as hair dryers, toasters, microwave ovens and electric screwdrivers. Handheld plant that poses a minimal risk should be excluded from this definition.

2. Section 5.1.20 Duties of persons conducting businesses or undertakings that install, construct or commission structures

Low risk minor structures, for example temporary stages, should not be obliged to conform to 5.1.20 (2) (b) 'The person must ensure that the structure is installed, constructed or commissioned having regard to the instructions provided by a competent person to the extent that those instructions relate to health and safety'. This suggests that all structures of this type, no matter how simple, will require engineering advice or similar.

3. Section 5.2.5 Registration of plant

The supposed purpose of registering an item of plant is to ensure that it is inspected by a competent person to make sure it is safe to operate. However, fees accompanying that plant registration are only a revenue-raising exercise and not realistically linked to safety outcomes. Fees and charges are a burden on small business in particular and should be eliminated.

Chapter 6 Construction (e.g. construction induction requirement)

Chapter 7: Hazardous chemicals

Part 7.1 Hazardous chemicals

1. Section 7.1.9 Safety Data Sheets - Content

Why would SWA change the terminology 'Material Safety Data Sheet' (MSDS) to 'Safety Data Sheet' (SDS) when the former is a standard term used world-wide and many workers in Australia would be familiar with the acronym? We recommend it be amended to again read MSDS.

2. Section 7.1.21 PCBU to obtain and give access to safety data sheets

3. Sub-Section (1): PCBU's are required to obtain an SDS from 'manufacturers or importers'. This is not realistic in practice as most businesses receive goods from a wholesaler or supplier, not a manufacturer or importer. The term 'supplier' and/or 'wholesaler' should be inserted.

<p>4. Definitions/Terminology</p> <p>Hazardous chemicals are referred to in various parts and sections of the Regulation as ‘substances, mixtures and articles’. Wouldn’t it be simpler to just refer to them as hazardous chemicals?</p> <p>5. Record-keeping</p> <p>The legislation appears aimed at the major players but, yet again, an overwhelming burden of record-keeping is required for small business. Exemptions or simplification for minor quantities and lower risks should be the aim. The focus needs to be on safety outcomes at the workplace.</p>
Part 7.2 Inorganic lead
Part 7.3 Asbestos
Chapter 8: Major hazard facilities
Chapter 9: Mines
Chapter 10: General
Part 10.1 Review of decisions
<p>1. External Review. The Regulation doesn’t go into any detail of how the external review process (external review of internal review decisions by the regulator) is to be conducted and by whom. There has been some suggestion that each jurisdiction determines that process themselves. There needs to be a consistent approach across all jurisdictions.</p>
Part 10.3 Exemptions

Section B: Model Codes of Practice
General Comments
<p>1. It is our view that the Model Codes of Practice should in fact be published as Guidance Notes. In their current format, we believe that they are too 'loose' and not specific enough to be enforceable by law. The purpose of a guidance note is to amplify the objectives of regulations, codes of practice and standards. They are also used to identify general issues that should be considered, provide examples to illustrate and suggest possible approaches. This is what the Model Codes of Practice appear to do. They are more explanatory documents written in a language that contains too many variables and are not entirely prescriptive.</p> <p>2. There appears to be many inconsistencies between the Regulation and Codes of Practice, particularly in terminology. If the Codes are to be used as evidence in court to support prosecutions they should not be subjective and open to interpretation. The term 'must' should be used when there is a regulatory obligation to meet.</p> <p>3. There will be a significant increase in the number of records required to be kept under the Model Regulation and Codes of Practice. It appears as though there is now more focus on the process, as opposed to the safety outcome. This is a negative for business especially when accompanied by the lack of a convincing argument to keep more records. It seems that 'recordkeeping' is now a euphemism for 'evidence' (or a lack of – if omitted).</p>
How to manage work health and safety risks
How to consult on work health and safety
<p>1. The Code of Practice is overly prescriptive and bureaucratic in places. It is clearly unreasonable to have rigid procedures in place that forces business to consult on how a consultation will occur (Para 3). This might be acceptable for a public service-type workplace but in our view it is not appropriate for a commercial enterprise.</p> <p>2. The Code of Practice needs to be reviewed in order to simplify its contents and make it more applicable to the private sector – small business in particular.</p>
Managing the work environment and facilities

1. Section 4.1 Outdoor Work

The provision requires provision protection against UV exposure, for example by providing personal protective clothing (describes items of clothing) and sunscreen. This should be consistent with the Model Regulation in terminology – personal protective clothing included as (PPE). Definition of PPE should be in both the Regulation and Code of Practice.

Managing noise and preventing hearing loss at work

Hazardous manual tasks

1. We have mentioned previously (above) that Model Codes of Practice appear more suited as Guidance Notes rather than specific codes. The Hazardous Manual Tasks Code of Practice is a prime example of this. This comprehensive document appears to contain primarily educative material for business and is not prescriptive or specific in many instances. Business will want some certainty and/or clarity with regard to what is compliant and how to get there, not a rambling narrative that contains every potential or likely course of action imaginable. The ‘maybe’ or ‘possibly’ or ‘could be’ factor is too dominant.

Code of Practice/Regulation:

2. Hazardous Tasks Code of Practice (read in conjunction with: Regulation, Section 4.2.1 Meaning of hazardous manual task)

(1) In this Part, hazardous manual task means a manual task that involves any of the following:

(d) Sustained or awkward posture.

Comment:

There is a lack of consistency between the Regulation and the Hazardous Tasks Code of Practice in terminology and meaning concerning the definition of hazardous manual task.

2.1 The definition of hazardous manual task within the Regulation is inconsistent with the Code of Practice. In the Regulation above at (1) (d), it is referred to specifically as ‘sustained or awkward posture’. However, references in the Code of Practice refer to ‘sustained and/or awkward

posture' (Chapter 1.2 Meaning of key terms p5, and Chapter 3.1 How to find hazardous manual tasks p10). There is also an additional reference to 'sustained or awkward postures' (Question 2: Does the task involve long duration? p21) and 'sustained postures or awkward postures' (Chapter 5.4 Can the system of work be changed – rest breaks p31).

3. Hazardous Tasks Code of Practice (read in conjunction with: Regulation, Section 4.2.4 Control of risk of musculoskeletal disorder)

(3) If complying with sub-regulation (2) does not minimise the risk of a worker being affected by a musculoskeletal disorder, the person must minimise the remaining risk, so far as is reasonably practicable, by the provision of information, training and instruction.

Comment:

There is a lack of consistency between the Regulation and Hazardous Tasks Code of Practice with regard to controlling the risk of musculoskeletal disorder.

3.1 Section 4.2.4(3) of the Regulation is replicated in the Hazardous Tasks Code of Practice (Chapter 1.3 Duty Holder Responsibilities p6). However, the last line adds-on 'to minimise any remaining risk' to provide information, instruction and training. This is not consistent with the Regulation.

4. Hazardous Tasks Code of Practice (read in conjunction with: Regulation, Section 4.2.1 Meaning of hazardous manual task)

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Hazardous manual task, Section 4.2.1(1) (d) above, should be applied together i.e. 'sustained and awkward posture'.

4.1 We believe that the two terms should be interconnected and read together. There is a nexus between awkward and sustained. An awkward posture is not necessarily harmful on its own. In fact, it can be a positive for good body function by increasing joint mobility and strength. However, in conjunction with other actions it can be harmful, in particular for a prolonged period of time.

4.2 Surely a sustained and awkward posture is more appropriately 'hazardous' than a sustained or awkward posture. Taken together, it appears sensible to adopt this enhanced description of the hazard. Consistency of terminology between the Regulation and Code of Practice in

terms of 'sustained and awkward' is also relevant.

5. Hazardous Code of Practice Appendix A, p47 and remaining Appendices

Comment:

The Hazardous Codes of Practice appendices (B – D) lacks consistency with the diagram at Appendix A, p47.

5.1 Diagram at Appendix A, p47 details the risk Management Process for Manual Tasks. The remaining Appendices (B – D) should explain this process in depth but lacks consistency with the master document at Appendix A.

Confined spaces

How to prevent falls at the workplace

Labelling of workplace hazardous chemicals

Preparation of safety data sheets for hazardous chemicals

How to manage and control asbestos in the workplace

How to safely remove asbestos

Facilities for construction sites

Appendix**Penalty levels**

1. It is our belief that in relation to penalty levels the aim must be to ensure that there are measurable and valid safety outcomes. Consequently, any penalties imposed should be commensurate with the exposure to risk and allow 'the punishment to fit the crime'.
2. The increase in the penalty provisions under this legislation (fines) are grossly excessive and do not fairly harmonise the current penalty levels of each jurisdiction. The imposition of these increased penalties is not justified.

Infringement notices

1. There appear to be many offences identified that are not suitable for inclusion in the proposed infringement notice scheme because they are too subjective and will result in inconsistent interpretation e.g. Regulation, Section 8.4.7
2. We believe that specialist advice from Inspectors and/or Improvement Notices are far more effective and practical tools than issuing Infringement Notices. Accordingly, there needs to be strict enforcement guidelines across all jurisdictions to ensure that an Infringement Notice is a tool of last resort, not first. We continue to hear anecdotal evidence that this is not necessarily the case in some regulatory departments.
3. The penalty for a transgression in terms of an Infringement Notice should be dependent upon the degree of exposure to risk that the act or omission allowed. The higher the exposure, the greater the penalty. Strict guidelines for Inspectors to follow should be provided and enforced.

Other Comments