



Victorian
Chamber of Commerce
and Industry



Proposed Occupational Health and Safety Regulations 2017

Victorian Chamber of Commerce and
Industry Submission
September 2016

Introduction

The Victorian Chamber of Commerce and Industry welcomes the opportunity to make a submission on the proposed Occupational Health and Safety (OHS) Regulations 2017. This project represents a once in a decade opportunity to make substantive improvements to Victoria's OHS framework.

The Victorian Chamber has a strong track record of working closely with Government on OHS and workers' compensation matters.

The Victorian Chamber is actively engaged in the statutory OHS and WorkSafe Advisory Committees. We have strong technical capabilities built on the provision of OHS training, advice and consulting services to Victorian business. With a large and diverse membership base, we can speak authoritatively on behalf of business and provide input on priority areas for reform.

OHS is a reform priority for Victorian Chamber members. It is also a high cost area of state regulation. As such, this review, and the concurrent review of OHS compliance and enforcement, provide an important and timely opportunity to improve the current system and provide meaningful savings for business without compromising workplace safety.

In developing this submission, we have surveyed our members on OHS reform priorities, gathered feedback through the Victorian Chamber's OHS and Workers Compensation Advisory Group and collated intelligence from our regular interactions with members on OHS matters.

We consider that through the new regulations, the Victorian Government should seek to achieve a significant reduction in the regulatory burden associated with the OHS scheme. This would consolidate Victoria's position as having the safest workplaces in Australia at the lowest regulatory cost to business. It would also provide broader economic benefits and contribute to the Government's 25 per cent red tape reduction target.

The regulations cost employers \$3 billion per year

In Victoria, workplace health and safety is governed by a system of laws and regulations which set out the responsibilities of employers and workers.

The *Occupational Health and Safety Act 2004* is at the centre of Victoria's OHS framework. It places high level obligations on employers and workers to uphold general duties of care with regard to the health and safety of employees and members of the public.

In contrast, the OHS regulations focus on specific risks and prescribe in more detail how employers and employees must meet their obligations under the act. The specific areas covered by the regulations include: manual handling, noise, prevention of falls from heights, plant and equipment, licensing for high risk work, prevention of slips and trips, hazardous substances and construction.

The Regulatory Impact Statement (RIS) estimates that the total cost to employers of meeting obligations under the OHS act and regulations is approximately \$15 billion in 2017-18. Of this, \$12 billion is attributable to the act and \$3 billion to the regulations.¹

Once in a decade chance

The expiry of regulations every ten years provides the Government with an opportunity to ensure that they are reviewed. This review process should assess whether the regulation is still required and, if it is, how it might be improved to better achieve the desired benefits while reducing the cost it imposes.

The *Victorian Guide to Regulation* is the Victorian Government's definitive guide to developing regulation in Victoria and outlines the Government's policies regarding the preparation of RISs for new and sunseting regulation.

¹ Deloitte Access Economics, 2016, *Regulatory Impact Statement for proposed Occupational Health and Safety Regulations 2017 and Equipment (Public Safety) Regulations 2017*, p. 54 & 57.

The guide states that for high impact regulations, such as the OHS regulations, the RIS must analyse a substantive burden-reduction option or transparently and robustly explain why such an option was not considered practicable.²

The Victorian Chamber does not consider that the RIS for the proposed regulations meets this requirement.

While the preferred option does deliver some minor savings, these do not collectively represent a substantive cost reduction.

The Victorian Chamber is disappointed that additional cost saving options have not even been considered in the RIS.

In explaining why an option to significantly reduce regulatory burdens on duty holders is not included, the RIS states:

“The key reason why no clear areas for reform could be identified is that a process has only recently been completed to identify and implement such reforms. In particular, WorkSafe undertook a major red tape reform identification project in 2013-14 which culminated in the OHS Amendment Regulations . . . As part of that process, a range of other, and in some ways more significant, regulatory burden reduction options were also considered but were ultimately rejected as they would have compromised safety standards.”³

Simply rejecting more significant options outright, rather than outlining and analysing them in the RIS, lacks transparency and goes against the intent of the Government’s policy outlined in the *Victorian Guide to Regulation*.

Missed opportunity

The Victorian Chamber has previously called on the Minister for Finance to ensure that the new OHS regulations achieve a significant reduction in the regulatory burden associated with the regulations.

In this regard, the Victorian Chamber considers that the proposed regulations represent a missed opportunity. More significant changes can and should be made to make it easier and less costly for employers to meet their obligations. Such savings can be achieved without compromising workplace safety.

More significant changes are required

The proposed regulations essentially replicate the current OHS regulations, except for a small number of minor amendments and clarifications.

Some proposed changes will deliver small savings to business, such as those to remove the requirement for a forklift licence to operate certain kinds of low-lift devices. However, these savings are very small compared to the total cost of the regulations.

While the Victorian Chamber welcomes such minor changes, which are estimated to collectively deliver savings of \$9 million per annum, they represent only a 0.3 per cent reduction on the estimated \$3 billion annual cost imposed by the regulations.

A number of proposed improvements are outlined as follows:

Reduce the level of prescription in the regulations

The Victorian Chamber recommends that the regulations be made less prescriptive, thereby giving employers more flexibility to achieve safety outcomes in innovative or lower cost ways.

The OHS regulations should be performance-based and focus on outcomes rather than inputs. The regulations should provide sufficient flexibility for employers to be able to demonstrate that they have met safety requirements in a different way than specified in the regulations.

Guidance and codes of practice can be used to supplement the regulations in instances where certainty is needed. Non-mandatory guidance can be particularly useful where there is no single method of reducing workplace risk.

² Government of Victoria, 2014, *Victorian Guide to Regulation*, Department of Treasury and Finance, p. 47.

³ Deloitte Access Economics, p. 40-41.

Reduce unnecessary record keeping

The Victorian Chamber recommends that a minimal approach to record keeping should apply and only where there is an established need. The OHS Act imposes a general duty on employers to keep information and records relating to the health and safety of employees, while the OHS Regulations include specific record keeping requirements relating to:

- Noise
- Confined spaces
- Design and manufacture of plant
- Hiring and leasing of plant
- Hazardous substances
- Asbestos
- Major hazard facilities
- Mines.

The RIS estimates that the record keeping obligations in the current regulations impose costs on employers of \$262 million per annum.⁴

Many of the record keeping obligations specified in the regulations relate more to demonstrating compliance rather than actively identifying, managing and mitigating risks.

Particular opportunities for reducing the burden of record keeping exist where there is no direct OHS benefit related to keeping a record or where there is no subsequent duty dependent on that record.

Remove references to Australian standards

The Victorian Chamber recommends that the regulations remove references to Australian Standards. When a reference is made, Worksafe should ensure that these are free, accessible and presented in plain english.

The proposed regulations contain references to at least eight different Australian Standards. Australian Standards are costly and numerous. Business cannot be expected to purchase or be cognisant of the range of Australian Standards referenced in the regulations, especially given the high volume of cross-referencing between standards.

Compliance and enforcement

The Victorian Chamber has also provided a submission to the independent review of compliance and enforcement. This submission was informed by member input and highlights the need for WorkSafe to streamline and update its website, ensure inspectors are providing constructive assistance to businesses, engage with stakeholders on policy and program decisions and ensure that communications campaigns are balanced and factual.

The Victorian Chamber supports this review's focus on improving the administration of OHS laws. A focus on improving business experience with OHS regulation therefore has the potential to deliver real savings and benefits to Victorian business.

Continued engagement

The Victorian Chamber looks forward to continuing to engage with the WorkSafe and the Government on OHS regulations reform and the implementation of new regulations.

The Victorian Chamber considers that if additional time is required for WorkSafe to develop more substantive cost saving reforms, the current regulations should be extended for 12 months to allow this to occur.

⁴ Deloitte Access Economics, p. 54.