SUBMISSION

Consultation Regulation Impact Statement:

Workplace exposure standards framework under the model Work Health and Safety laws

Instructions

To complete this online submission:

- Download and save this submission document to your computer.
- Use the saved version to enter your responses under each question below. These questions are from the consultation regulation impact statement on the workplace exposure standards framework under the model Work Health and Safety laws.
- Once you have completed your submission, save it and upload it using the upload your submission link on the Engage submission form.

Submissions will be accepted until **11.59 pm AEDT, 13 September 2018**.

Additional documentation

Up to three additional documents can also be uploaded when you submit your response. Relevant documents to upload could include cover letters or reports with data and evidence supporting your views.

Help

If you are experiencing difficulties making your submission online, please contact us at WESconsult@swa.gov.au.

Respondents may choose how their submission is published on the Safe Work Australia website by choosing from the following options:

- submission published
- submission published anonymously
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For further information on the publication of submissions on Engage, please refer to the Safe Work Australia Privacy Policy and the Engagement HQ privacy policy.

Please note the following are unlikely to be published:

- submissions containing defamatory material, and
- submissions containing views or information identifying parties involved in hearings or inquests which are currently in progress.

Your details

(Please leave blank if you wish to remain anonymous)

1. Name or organisation : [redacted]

   The following submission is provided by [redacted] for consideration by Safe Work Australia (SWA). [redacted]

   This submission relates to the proposed changes to Workplace Exposure Standards (WES) setting and review process.

2. Email used to log into Engage:

   [redacted]

3. Introduction

   The following comments are of the greatest concern to [redacted] and primarily relate to the proposed process for review of the current WES limits as well as the updating process to be used in the future.

4. Summary of Concerns

   Our concerns can be summarised as follows:

   - No Australian sources are cited as primary sources.
   - The primary sources are not all regulatory bodies.
   - The time allocation for each review of a chemical seems to be limited.
   - The stakeholder engagement is only after the WES is recommended.
   - No details are provided for reviewers.

5. Recommendations

   - Ensure local sources are included as primary sources and that regulatory bodies are the primary sources of information used in the review process.
   - Allow adequate time for the gathering and review of data.
   - Include a period prior to the WES review for stakeholder submissions and continue to include the stakeholder comment period after the WES is recommended.
   - Develop a list of reviewers with appropriate skills to carry out the WES and peer reviews.

6. Detailed comments on each concern

   6.1. No Australian sources are cited as primary sources

[redacted] is of the belief that each jurisdiction will make decisions about the suitability of any particular WES limit based on a number of factors including health concerns but also other geo-political issues and local concerns held by the authorities as well as impacts that may affect the operability of the WES such as technical feasibility, cost etc .

The process that is proposed by SWA is concerning because there are no local authorities used as primary sources in the development of the WES and the potential for local impact is therefore not considered. It is concerning that NICNAS is not considered as a primary reference.

It would also seem that the local impact of each compulsory limit value will not be considered as the primary reference organisations have no links to Australian circumstances.

6.2. The primary sources are not all regulatory bodies.

Our second concern is somewhat linked to the first. We are disturbed that some primary references are not regulatory bodies and simply using them and adopted their recommendations is an unsatisfactory approach.

In particular ACGIH are very clear that their Threshold Limit Values (TLV) should not be used for regulation. They comment as follows:

"The Threshold Limit Values (TLVs®) and Biological Exposure Indices (BEIs®) are developed as guidelines to assist in the control of health hazards. These recommendations or guidelines are intended for use in the practice of industrial hygiene, to be interpreted and applied only by a person trained in this discipline. They are not developed for use as legal standards and ACGIH® does not advocate their use as such. However, it is recognized that in certain circumstances individuals or organizations may wish to make use of these recommendations or guidelines as a supplement to their occupational safety and health program. ACGIH® will not oppose their use in this manner, if the use of TLVs® and BEIs® in these instances will contribute to the overall improvement in worker protection. However, the user must recognize the constraints and limitations subject to their proper use and bear the responsibility for such use.[1]"

Because ACGIH is not a regulatory body they do not consider other impacts as mentioned in our previous comment.

6.3. The time allocation for each review of a chemical seems to be limited.

We are concerned that the current process as outlined by SWA limits the time for review of each chemical to three days.

We believe that any considered review will take more time than that. Many of the source documents that are relied on as references have large documents supporting any decisions. To understand the current state of knowledge and make informed decision on a

[1] http://www.acgih.org/tlv-bei-guidelines/policies-procedures-presentations/tlv-bei-policy-statement viewed 15/08/18

WES will require time. In our opinion the time for review should not be limited. This approach will allow experts to consider the WES carefully and reach suitable conclusions.

6.4. Stakeholders only input is to comment on WES decision

The proposed process for review of WES limit values enables stakeholders to comment on the proposed change to WES limits. Whilst this is welcomed we believe that many stakeholders will have unique and up to the minute knowledge on health issues associated with handling products that they produce. Therefore we believe that this knowledge should be utilised in reaching a decision on the WES limit values. The current proposed process only allows comment after a decision is made. We strongly suggest that prior to review of any WES limit calls are made for submissions from stakeholders so they can share their knowledge with reviewers and these submissions can be considered before a decision is made. The process of submissions should not interrupt the process as long as reviews are co-ordinated and strict timing is adhered to and multiple submissions can be called for at the same time. In this way the submissions can be collected prior to the time of review. We still support the opportunity to comment after recommendation are made but believe that obtaining submissions upfront will smooth the comments phase.

6.5. Reviewers

In the WES review process there is no mention of who the reviewers are. We believe that appropriately skilled reviewers should be nominated and that they may vary depending on the nature of the chemical under review. The review process does include a peer review which we support but again peer reviewers should be nominated to ensure transparency.

7. Specific Comments on SWA questions

Below are further comments from [redacted] on specific questions asked by SWA.

Questionnaire

(Consultation RIS questions)

1. Do the estimated rates of compliance with the workplace exposure standards align with your experience? Please explain. **(Section 2 Pages 24-25)**
   No Comment.

2. Are there any particular issues that make it difficult for you to comply with the workplace exposure standards? Please provide examples. **(Section 2 Pages 24-25)**
   No Comment.

3. Are there any other costs to your organisation relating to the workplace exposure standards framework not discussed here? **(Section 2 Pages 26-30)**
   No Comment.

4. If there is not an Australian workplace exposure standard available for a particular chemical, how do you manage the risk of exposure? Please describe. **(Section 2 Pages 29-30)**
   No Comment.

5. Are there any other options that could be considered to achieve the government's objectives? Please provide details. **(Section 3 & 4 Pages 31-38)**
   No Comment.

6. Are there any practical issues to consider in relation to any of the proposed options? Please provide examples. **(Section 4 Pages 32-38)**
   No Comment.

7. Would making the workplace exposure standards advisory (rather than mandatory) lead to changes in the level of compliance in your industry? Please explain. **(Section 4 Page 37-38)**

   [redacted] does not believe that exposure standards should be mandatory.

   Currently the regulations add to the confusion by having mandatory standards but also requiring the exposure to be reduced to the lowest level practicable in other parts of the regulation. The mandatory nature of the exposure standards reinforces the conclusion that this level is safe for all and no further action is required.

   Additionally by making the standards mandatory the regulatory requirements for the setting of these standards are further complicated. We believe that advisory standards can be implemented without the need for such detailed rigor with some caveats.

   Use of advisory standards would make little difference to the management of risk. In reality the fact that the limits are advisory could be used to reinforce the need to reduce exposures to the lowest level practicable.

8. Beyond these options, what else could be done to help your business understand and comply with the workplace exposure standards? **(Section 4 Pages 32-38)**
   No Comment.

9. What impact, if any, would the proposed name change from 'workplace exposure standard' to 'workplace exposure limit' have on your organisation? **(Section 4 Page 38)**

   The proposed name change will have no material effect on organisations and we support the view that the adoption of the term "workplace exposure limit" stresses the mandatory nature of the exposure values.

10. Please provide details of the types of costs that are incurred by your organisation when a WES value is updated. For example, do you update any policies or procedures to reflect changes in the WES value? **(Section 5 Page 39-40)**
    No Comment.

11. Survey respondents indicated that, on average, a quarter of their control costs are directly attributable to the current workplace exposure standards framework. Is this consistent with your experience? Please provide details. **(Section 5 Pages 39-40)**
    No Comment.

12. Are there any other significant regulatory costs that you incur because of the workplace exposure standards that have not been included in the consultation RIS? **(Section 5 Pages 39-40)**
    No Comment.

13. Do you think awareness of the workplace exposure standards will improve if they are updated more frequently? Please explain. **(Section 5 Pages 40-46)**
    No Comment.

14. What impact would more frequent updating of the workplace exposure standards have on your organisation? In your response, please consider the possible addition of the chemicals listed in Appendix C. **(Section 5 Pages 40-46)**
    No Comment.

15. To understand and implement option 2, what would this cost your business or organisation? **(Section 5 Pages 40-46)**
    No Comment.

16. What benefits would option 2 provide for your business or organisation, and community? **(Section 5 Pages 40-46)**
    No Comment.

17. To understand and implement option 3, what would this cost your business or organisation? **(Section 5 Pages 46-52)**
    No Comment.

18. What benefits would option 3 provide for your business or organisation, and community? **(Section 5 Pages 46-52)**
    No Comment.

19. If workplace exposure standards were advisory (rather than mandatory), would your business continue to seek information or guidance from a WHS regulator? **(Section 5 Pages 46-52)**
    No Comment.

20. For each option are there any other costs, benefits, and/or unintended impacts which have not been considered in this consultation RIS? Please provide details.
    No Comment.

21. Do you have anything further you would like to add as part of this process?
    No Comment.