

Consultation RIS – 2018 Review Recommendations

Submission template

What is your name? Anthony Bate (COHSProf; CPMSIA; HFESA)

Psychosocial risks (Recommendation 2)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

The ambiguity in the regulations as interpreted by SafeWork NSW lead to 3 Improvement Notices for a potential breach of prescribed duty without objective quantification or investigation. The Improvement Notices were vague and confusing and made references to a lack of a psychosocial risk management systems (Not an industry standard or largely adopted structure). When seeking further clarification, it became apparent that the SafeWork NSW Inspector was unsure as to what they were expecting and how they would measure its implementation or success. The organisation was threatened with on the spot fines for not having a specific types of psychosocial risk assessment or words the Inspector deemed necessary in their interpretation of the Regulations. The organisation was exposed to unreasonable pressure to engage the regulatory agency in a trial of their “culture survey” to meet the requirements of the Improvement Notices.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

There would be minimal impact to the SWSLHD Mental Health Services due to the organisation being a service providing immediate and continued psychological care to persons in crisis; and those with acute and chronic mentally ill health. The service has been taking measures to review and implement a program focused on mental health in the workplace as part of their health and wellbeing program. The greatest impact of Option 2 would be the potential cost of stipulated controls that may be expected in short timeframes by the regulatory authority following complaint.

- Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

As psychosocial risk is still new in the WHS climate, understanding of the complex and largely individual nature of the risk profile, the understanding of psychosocial risk requires further time to mature. I would suggest an objective regulatory framework for Inspectors during inspection and in response to complaints to provide for improved assessment and therefore decisions for action based on the organisational context and strategies in place to address these that may not be understood from a non-clinical or experienced viewpoint.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 1 is the preferred option as it remains flexible to adapt to the organisational context and needs of all stakeholders. Option 1 allows for organisationally owned and informed decisions based on quantitative and qualitative data analysis that can be better integrated into broader health and wellbeing programs rather than be seen as; and ultimately becoming an isolated part of work.

- Is the state of knowledge on psychosocial hazards, risks and control measures widely accepted and well established? Please support your answer with evidence.

The current climate is primarily focused on demonstrating compliance without considered understanding and impact on psychosocial risk. From my experience, the simpler aspects of work organisation and design receive greater focus as the ultimate means to an end as they are more tangible and demonstrate intervention without necessarily addressing these risks. While it is encouraging to see more organisations developing mental health strategic plans, their aims are

often to reduce stigma, identify persons who may be experiencing ill mental health and providing some level of organisational support. Due consideration is required around individual and trauma experience which is harder to gauge i.e. effective assessment and tailored interventions to address burnout, intergenerational and vicarious trauma.

- Do you have suggestions for what prescriptive psychosocial regulations might look like?

I disagree with prescriptive psychosocial regulation given its individualistic nature. However, it would be beneficial to include information related to the nature of information collected during critical incident or trauma response, and the sort of information an organisation can obtain from third party crisis and counselling service providers.

Work Groups and HSRs in small businesses (Recommendation 7a)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

No impact due to the size of the organisation and its stakeholders.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

No impact due to the size of the organisation and its stakeholders.

- Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

Option 2 introduces the potential for underrepresentation in small businesses that are located across different sites which may or may not have identical risk profiles. While a Deputy HSR could be nominated for this site, it effectively becomes a second work group. With consideration to this, perhaps the default arrangements should include the number and dispersion characteristics of the workforce to ensure interpretation by the regulatory authority does not disadvantage small business with multiple sites of operation.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 3 addresses the requirement effectively.

- If you are part of a business with 15 or fewer workers, are workers in that business represented by HSRs? If so, how many workgroups, HSRs and deputy HSRs are there?

Not applicable.

- If you are part of business or undertaking with 15 or fewer workers, would a default position of one work group, an HSR and a deputy HSR suit your workplace? Please provide evidence of the costs and benefits of the default position at your workplace.

Not applicable.

Workplace entry by HSR assistants (Recommendation 8)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

This has not been an issue at organisations I have worked with as HSR contingency has always been relatively low.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

Minimal to no impact to note.

- Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 2. While my experience of HSR's engaging union officials as an assistant, union activity and the sensationalising of misunderstood WHS rights and risk has instigated unrest particularly in the public service. Option 2 looks to balance the right of entry for genuine support with the potential risk of a misuse of the clause for union gain.

Cancelling a Provisional Improvement Notice (Recommendation 9)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

This has not been an issue at organisations I have worked with as HSR contingency has always been relatively low.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

Minimal to no impact to note.

- Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 2 as it merely highlights the general provisions of the regulations HSR's should be aware of to ensure effective intervention for outstanding WHS issues in the workplace.

Choice of HSR training course (Recommendation 10)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings? What do you consider to be the cause and extent of disagreement over HSR training?

This has had minimal impact as HSRs and management were encouraged and managed to work cooperatively to identify appropriate training from an approved RTO.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

Minimal to no impact to note.

- Do you have suggestions for other options to address the problems identified in the 2018 Review? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 1, as the role of the HSR involves a higher degree of interaction with management and negotiation, it is reasonable both parties can review and decide on training arrangements amicably.

- What do you consider as the main cause of disagreements over HSR training? How often do these disagreements occur, and to what extent do they affect you, your workplace or your stakeholders?

The main cause of disagreement often arises from an organisation prescribing one vendor for approved HSR training. The independence of the vendor may be questioned leading to concerns regarding the nature of content and the degree of influence from the organisation. I have rarely encountered this throughout my career.

Referral of disputes (Recommendation 13)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

Minimal to no impact based on the current capacity to adequately address WHS issues.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

Minimal to no impact based on the current number of disputes.

- Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 2. As indicated by the Consultation RIS, delays incur operational delays which have broader implications on an organisation in addition to the potential continued exposure of workers and others. Without agreed timeframes for contact, review and remediation by the regulatory authority an escalation point is logical, particularly when ascertaining clearer advice around what might be reasonably practicable for that organisation.

- If Option 2 is adopted, would you seek to refer issues that are not resolved under s 82 or 89 of the model WHS Act to a court or tribunal? Please explain why.

I have not encountered a dispute that could not be resolved within the organisation.

WHS entry permit holders – prior notice of entry (Recommendation 15)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent? In your experience, is the extent of the problem different across industry sectors?
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Minimal to no impact due to the organisation's ongoing engagement arrangements with unions.

- What practical impact, including the costs and benefits, would requiring or not requiring a WHS entry permit holder to provide prior notice of entry have on you, your organisation or your stakeholders? Do you think the impacts would be different across industry sectors? Please provide evidence of the impacts wherever possible.

Minimal impact. The greatest impact will be experienced without the notice period for organisations that have isolated or remote sites without permanent management representation. The notice period enables deployment of a suitable representative that understands the site, business and who is capable of making or acting on operational or functional decisions; or allocating and assigning resources.

- Do you have suggestions for other options to address the problems identified in the 2018 Review? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 1 enables a period to identify and allocate resources and support to controllers of workplaces an entry permit holder seeks entry to and the preparation of evidence that may be asked for in relation to a suspected contravention.

Inspectors' powers (Recommendation 17)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings outlined above?

Re-entry to the workplace had minimal impact to the general operation of the business unit. However the cost of removing senior managers or myself from existing work demands to attend site for the purpose of interview or potential interview was costly and impacted higher level operational management decisions that underpinned the admission and movement of unwell patients.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

The organisation would benefit from the options set out in the Consultation RIS as it reduces unnecessary movement and the loss of productive time as a result. Without the need to coordinate a formal visitation the organisation will see minimal impact to productivity and continued service to its work groups as there is no longer a need to book or negotiate the use of meeting rooms; or reschedule senior management for what is largely an uncertain need of information.

- Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 2 as this would ensure in the event of an investigation or other activity that the organisation can continue to provide its services without the impact felt by having to remove critical roles in operation. This would also enable all requested information can be effectively sought and collated as it will be unconstrained by the pressure of an inspector onsite for a defined period.

- If Option 2 is adopted, should exercise of the power within 30-days after entry by an inspector be limited to only obtaining information that is related to the reason that inspector first entered the workplace?

Yes.

The Category 1 offence and industrial manslaughter (Recommendation 23a & b)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

Minimal to no impact.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

Minimal to no impact.

- Do you have suggestions for other options to address the problems identified in the 2018 Review? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 2 as it provides for a more consistent harmonised model in the absence or confusion by jurisdiction-based law regarding the definition for recklessness. This option better addresses contribution without limiting convictions due to an awareness of risk given the Model Act sets out the balance of reasonably practicable includes consideration to risk and control that ought be known to any other duty holder in the same or similar industry, task or situation.

- What do you see as the main limitations of the model WHS laws in deterring breaches of the health and safety duties?

The availability of insurance for WHS offences and the availability of case law that highlights a low percentage of successful tier 1 and 2 offences prosecutions or cases in which substantial penalties were applied.

- What benefits and costs are associated with Category 1 offence including two alternative fault elements? If available, please provide evidence of these costs and benefits.

Not able to comment on this question due to limited experience with building cases for prosecution.

- What do you consider the practical impacts of industrial manslaughter to be for you, your business and your stakeholders? What need, if any, would they address? Please provide evidence of how an industrial manslaughter offence would address this need.

Not able to comment on this question due to limited experience with building cases for prosecution.

Prohibit insurance for WHS fines (Recommendation 26)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

Minimal to no impact as the organisation does not hold indemnity insurance that covers WHS offences.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

Minimal to no impact.

- Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 2. One of the greatest challenge for integrated and sustainable WHS compliance and positive WHS climate change is accountability from senior management. From my experience across a number of organisations within the last five years, this component is at a low point with senior managers discharging duties they believe to be transferring their legal obligations.

- In your experience, how common are insurance policies or arrangements that provide indemnity for breach of the WHS laws? Please support your answer with evidence.

Not common. Over the last seven years I have only worked with one organisation that had an Officer with indemnity insurance.

- Do you consider that health and safety is affected by the availability of these arrangements? How?

Yes, in my opinion the availability of indemnity insurance dilutes the perception and inherent accountability of duty holder in instilling and maintaining a safe workplace with a positive organisational culture to meet competing and prioritised organisational outputs.

The risk management process (Recommendation 27)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

Minimal to no impact as the risk management framework effectively includes hierarchy of control considerations and justification for potential new risk.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

Minimal to no impact as the organisation is large and has professional support to understand the duties and responsibilities as outlined by statutory law in relation to its business, undertakings and activities.

- Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

Amend case studies in How to Manage Work Health and Safety Risk Code of Practice to provide a breakdown of hierarchy of control considerations that may be of benefit to small business.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?
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Option 1 provides for the flexibility for an organisation in identifying and managing its risk relative to its function and operations without the increased demand for evidentiary documentation that would hinder all organisations.

Safe Work Method Statements (Recommendation 29a & b)

- How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

No impact as the organisation does not manage or undertake high risk construction work.

- What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

No impact.

- Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.

- What is your preferred option and why will it be best for you, your organisation and your stakeholders?

Option 1, there is sufficient support in the Construction Work Code of Practice including a SWMS template and sample.

- Do you already have systems in place for developing customised (workplace specific) SWMS?

Yes.

- What barriers may prevent you using an online SWMS tool in your workplace?

Availability of network coverage in remote or rural areas and the potential for workplaces to rely on already registered SWMS to cover their work despite variation taking away an important aspect of consultation, cooperation and coordination between stakeholders.

- Does your business derive an income from developing SWMS? If so, do you expect to incur a financial loss if Safe Work Australia develop an on-line interactive tool to assist in developing SWMS? Can you predict the extent of this loss?

No.

Appendix A – Recommendations likely to have nil or minor impacts

- If you do not agree that one or more of recommendations in Appendix A will have minor or no impacts, please provide your assessment of the impacts for each, supported with evidence if possible.

No disagreement.

- Do you have suggestions for other options to address the problems identified in the 2018 Review for recommendations in Appendix A? Please provide information or evidence on the impacts of your suggested option, if possible, including how it would improve the WHS outcomes or reduce compliance costs.

No further suggestions.
