Consultation RIS – 2018 Review Recommendations Submission template

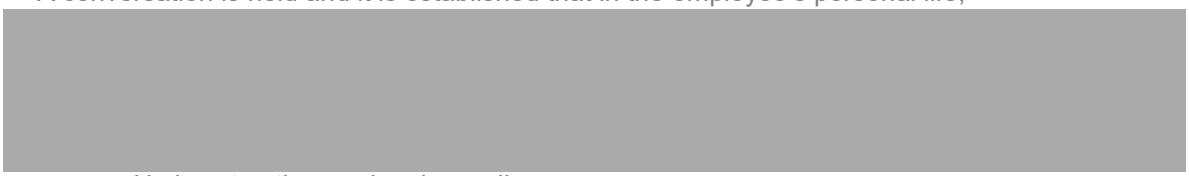
What is your name? Auke Roelink

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?

A significant issue related to psychosocial risk mitigation is the extent to which a person's inherent pre-existing, or emerging psychological state is affected by the workplace. By way of example: The work performance of an employee with in excess of ten years' service starts to deteriorate. The role is a safety critical one where a lapse in procedures may result in serious harm or death to members of the public. See below example:

A conversation is held and it is established that in the employee's personal life;



- He is not eating or sleeping well

He is referred to the Company's Employee Assistance Program for help. His work hours are modified to assist with child care issues. His workmates are supportive. He is given requested time off to attend counselling, lawyers, court.
Over following months his performance does not improve and a serious safety breach is sighted. The manager has a discussion with the employee, who becomes aggressive and leaves the workshop.
The employee later returns with a prescribed medical certificate and lodges a claim for workers' compensation, citing workplace harassment and bullying.
The claim is accepted.

This is a real example of what is being faced by many businesses.

The introduction to the Safework Australia guidance material "Work-related psychological health and safety - A systematic approach to meeting your duties" states "…describes a systematic practical approach to managing work-related psychological health and safety."

What we as an employer are increasingly finding is that non-work related mental health issues are increasingly impacting on the workplace, causing disruption and lost productivity, and eventually being accepted by insurers as caused by the workplace.

Research into the effects of social media on psychological wellbeing indicates a decrease in mental health for high user of social media. Whilst many studies focus on adolescents, we are observing similar behaviours in our predominantly young workforce.

https://www.liebertpub.com/doi/abs/10.1089/cyber.2015.0055
https://academic.oup.com/aje/article/185/3/203/2915143

- 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.

Status Quo will have minimal impact. It is encouraging to see most states introducing practical, simple to use, guidance for employers on how to reduce psychosocial injury risk in the workplace.

Regulations based requirement – Psychosocial risk is one of the many different risks faced by businesses and should be treated the same as other, without specific regulation. Also, the differing triggers cannot be foreseen adequately to be covered in a Regulation. A better approach is to refer to it as a risk and then have supporting guides, Codes of Practice, and regulatory guidance materials.

- 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

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

Option 1 – We treat psychosocial risk the same as all risks; identify, assess, implement controls, review.

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

The non-work factors which influence a person's pre-disposition to having a psychosocial response to workplace incidents is not considered in any of the current materials.

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

No. I do not think it is a workable solution.

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?

Our organisation is a large one with over 600 employees, but has the complication of being made up of multiple small sites of between 6 and 30 employees. There are no current mechanisms in the proposed changes to address our situation. As with small businesses, we have difficulty releasing employees for training and meetings at our smaller sites, but due to our overall size we have no options.

- 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.

We currently have HSRs where sites request them. At our smaller sites we find it difficult to always release HSRs for meetings due to customer service and manning requirements.

- 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

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

Option 2 if the option were changed to: Default arrangements for HSRs and work groups in small ~~businesses~~ sites

- 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?

See above responses

- 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.

N/A

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?

Status Quo is working well for us. However, we are not part of an industry which is prone to militant union behaviour, such as the construction industry is. Repeated trial findings show that some unions utilise HSE as a means to disrupt worksites for non-HSE reasons.
Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (The BKH Contractors Case) (No 2) [2018] FCA 1563 (18 October 2018)
Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union [2018] FCA 42 (7 February 2018)
Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (The Footscray Station Case) [2017] FCA 1555 (21 December 2017)
ABCC v Auimatagi & Ors [2017] FCCA 1772 (28 July 2017)

- 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 examples above may be an indication of what is to come should Option 2 be legislated.

- 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.

External assistance should take place where internal communication between the HSR and employer are not genuinely addressing a genuine HSE concern.
Step 1 should be to invite the state regulator to assist. The regulator may agree that external expert assistance is required. If this first step is unsuccessful then external assistance may be sought.

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

Status Quo. We have worked successfully by educating our managers and HSR and empowering them to work together to resolve workplace issues.

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?

The PIN is a last resort option for the HSR and facilitates involvement of the regulator. The concept is a positive one. The Review findings are not specific enough to understand what has been happening with regard to cancellations.
If the suggested change regarding HSR assistance were adopted, "*External assistance should take place where internal communication between the HSR and employer are not genuinely addressing a genuine HSE concern.*

Step 1 should be to invite the state regulator to assist. The regulator may agree that external expert assistance is required. If this first step is unsuccessful then external assistance may be sought." It is likely that most issues would be successfully resolved prior to the necessity for a PIN arising.

- 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.

We have not experienced PINs as we have focussed on creating an appropriate, bipartisan, safety focussed culture.

- 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.

See first response in this section.

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

Option 1

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?

In previous companies I have worked for there was a clear differentiation between the level of disruptive behaviour exhibited by HSRs who had attended "union sponsored" (high disruption) HSR training courses compared to HSRs which had attended "non-union sponsored" HSR training. (low disruption)

- 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.

Based on previous experience I would suggest more militant union based HSRs would elect to attend union sponsored training. I suggest this may, in some cases, lead to increased cost and loss of productivity for those organisations.

- 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.

Only allow institutions such as TAFE to run HSR courses. No employer or union affiliated bodies should run the training.

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

Option 1 works for us.

- 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?

Unionism concerns. This does not impact our workplace.

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?

We are not

- 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.

Unknown

- 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.

Some WHS issues require the involvement of experts, time to modify the workplace or equipment, or other changes which may take longer than 48 hours.
The regulator should, within 48 hours, develop, in conjunction with the PCBU and HSR/s, an action plan to address the WHS issue.
This plan should then be monitored by the inspector, with expiation notices issued to a party if they are deliberately obstructing progress to resolution.

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

See answer above

- 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.

We would not. It is our duty to provide a safe workplace. Inherent to this is the resolution of WHS issues. We work collaboratively with our employees to ensure they are safe from harm as far as reasonably practicable, and address WHS issues promptly.

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?

We are not

- 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.

For our organisation – nil, for stakeholders – unknown.

- 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.

When used as intended during the drafting of the legislation, notification requirements create an onus to provide details of an issue which needs to be addressed. If the notice is advising of an issue which the PCBU is unaware of, then there is an issue between the PCBU and HSR which needs to be addressed.

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

Maintain Notice Period.

Inspectors' powers (Recommendation 17)

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

We are not impacted and cooperate with inspectors when they visit site.

- 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 only perceived impact would be cost of workplace disruption, lack of clarity regarding what is actually required, legal privilege issues when being repeatedly asked via email to answer different questions, or elaborate on previous answers.

- 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.

The inspector should have 30 days within which to clearly state what information, documents, answers he requires and provide this in writing to the PCBU.
The request should be restricted to the reason he first attended the site.

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

Option 1 works for us. In our case we have, and would continue to, work with inspectors to meet their needs. We have had occasion where we have provided information post a site visit, up to a week later, because it was not on hand at the time of the visit.

- 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 - Absolutely

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?

To date we have not been

- 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.

Introducing Gross Negligence increases the risk of Officers being successfully prosecuted should a fatality occur.

- 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.

Where an investigation finds that an Officer has contributed directly to a fatality causing incident through their gross negligence or a direct action then prosecution should occur.

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

Option 2 – a harmonised approach to a category 1 offence including gross negligence. A life should be worth the same regardless of which state a fatality occurs in.

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

Many Officers, who are doing the best they can, cannot be everywhere, see everything, control the behaviour at all times of all people working for them. The limitation lies in the effect of media on the regulator because we exist in a culture where someone, and never the deceased, must be at fault. An example of this is the fatalities during the construction of the new Royal Adelaide Hospital, where the media was laying blame prior to the completion of any inquest.
https://www.theadvocate.com.au/story/5599757/hospital-site-safety-defended-at-inquest/

- 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.

NA

- 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.

Nil

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?

Our Officers are covered by insurance

- 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.

Jail terms are the incentive for Officers to act with regard to WHS. Further to this, it will become increasingly difficult to attract highly qualified and experienced people to these roles if they are faced with the prospect of huge financial loss.

- 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

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

Option 1

- 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.

Unknown

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

Yes – the possibility of incarceration or financial penalties are a powerful motivator.

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?

The Act specifies reduction of risk. The principles and application of this requirement are freely available through all state and federal regulators, including sample forms, registers, and worked examples. Access is free to all. It just takes a bit of effort and time.

- 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.

Option 1 is sufficient. Option 2 does not address the core issue.

- 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.

Prior to being able to register a company for Workers' Compensation insurance there could be a requirement that the Officers have successfully participated and completed a course in basic WHS management. An additional 5 yearly refresher requirement would reinforce this training.
Once the officers see the benefit of the training they will flow it down through their business.
Safety should be seen as a normal part of business and appropriate training to assist the organisation to fulfil its responsibilities should be mandatory.

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

See above

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?

We regularly provide copies of our Safe Work Procedures to our customers as part of our joint consultation, co-operation and co-ordination process. Where customers have requested further information we have worked with them to clarify what and why and then work towards a satisfactory solution.

- 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.

A prescriptive template will create additional administrative burden.
Further, it is not the tool that is the issue. Rather, it is the content. Poor content in a great template is still a poor SWMS.

- 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.

Effective SWMS are the result of an effective consultation, co-operation and co-ordination process.
I suggest the focus is in the wrong area.

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

Option 1 for our organisation. However I see Option 3 may assist smaller organisations.

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

Yes. All of our Safe Work Procedures are developed in-house.

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

Access on the job site. Low tool flexibility.

- 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.

Type answer here

- 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.

Type answer here