



**Australian Government**

**Department of Defence**  
Defence People Group

**Mr Michael Howell**  
**Assistant Secretary Work Health and Safety**  
**Department of Defence**

DPG-WHS/OUT/2019/Objective ID:BN8146867

Safe Work Australia  
[2018Review@swa.gov.au](mailto:2018Review@swa.gov.au)

To whom it may concern,

**DEFENCE SUBMISSION – SAFE WORK AUSTRALIA’S CONSULTATION REGULATION IMPACT STATEMENT**

Please find enclosed the Department of Defence submission to Safe Work Australia’s Consultation Regulation Impact Statement for consideration in response to the 2018 Review of the model Work Health and Safety laws. The submission is unclassified and can be made available to the public if required.

Should you require any further information about Defence’s submission, please contact me on

Yours sincerely,

**Michael Howell**  
Assistant Secretary Work Health and Safety

16 August 2019

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# Consultation Regulation Impact Statement – 2018 Review Recommendations - Submission template

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What is your name? Department of Defence

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## 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 impact of the problems identified in the 2018 review findings regarding recommendation 2 are similar for Defence and the broader Australian community through higher costs as well as hidden costs such as lost productivity, impact on others, absenteeism and loss of personnel. The risk factors identified in the review are pertinent to ADF and APS personnel. Existing Safe Work Australia and Comcare resources provide useful tools for managing the risks associated with psychosocial hazards and Defence has management strategies, programs and support mechanisms in place to address these risks.

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- 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.

Maintaining the status quo would have little impact upon Defence due to various levels of policy addressing psychosocial factors including the prevention, management and rehabilitation of psychosocial injuries. Defence also provides access to assistance programs which extend to employees and their families. These programs can be accessed anonymously and are intended to support the health of employees.

In 2018, Safe Work Australia released national guidance on managing risks to psychological health and safety. Defence notes that this guide was not available at the time the initial review was conducted and will not have been fully embedded in organisations yet.

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- 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.

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

Option 1 – Status Quo is Defence's preferred option as it allows for flexibility and acknowledges the considerable investment and work undertaken by Defence in this area. Due to the diverse employee and workplace composition of Defence, maintaining the flexibility of the current legislation allows for the continued implementation of controls that work for the organisation at different levels. Option 1 allows Safe Work Australia's recently released guidance material to be better utilised. Guidance material is Defence's preference.

While Option 2 may raise the profile of psychosocial risks, the *Work Health and Safety Act 2011* already requires the management of psychosocial hazards. It is also difficult to properly consider Option 2 without further information about its scope and details about the proposed regulations.

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

Defence's state of knowledge on psychosocial hazards, risks and control measures is generally widely accepted and well established as evidenced by the inclusion of support services and discussion about the effects of psychosocial issues across every level of the organisation. However, shifting cultures takes time and elements of this are still developing and permeating

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throughout the organisation. There are a variety of programs, policies, procedures, documentation and training that contributes to this and continuous improvement is sought through Pathway to Change. Pathway to Change is an enterprise level strategy to evolve Defence's culture. This strategy includes creating a safe workplace, both physically and psychologically.

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

Defence does not favour prescriptive regulations as they would make laws inflexible and quickly outdated. Guidance built upon principle and outcome based legislation is preferred to allow flexibility.

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### **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?

The impact of the problems identified in the 2018 review findings regarding recommendation 7a are minimal for Defence due to its size. While this may be relevant in some Defence work areas, work group formation and HSR election within the Defence environment has more restricting and complicated factors such as ADF personnel's exclusion from being HSRs.

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- 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 impact from Option 1. Option 2 may complicate work group formation further by adding another layer and it does not substantially address the issue as there are still ways to ignore the default arrangements if the person conducting the business or undertaking and the workers agree to another arrangement. Default arrangements may also lead to less analysis of a work area's risks and reduce the representation of those risks. Option 3's impact would be beneficial as it imposes no impost on organisations, but instead provides clarity.

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- 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.

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

Defence's preference is for Option 3 as it allows flexibility and provides more clarity. The scope of this option should be broader to include examples of various business types and settings.

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- 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?

This is not applicable to Defence.

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- 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.

This is not applicable to Defence.

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### **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?
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Due to security requirements, entry onto Defence sites needs to be tightly controlled. Any changes to entry arrangements could have serious implications in the Defence environment, including increased risk or interference in operational capability.

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- 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.

More frequent access to Defence sites by non-Defence personnel could increase risk or impact operational capability.

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- 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.

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

Defence's preference is for Option 1 – Status Quo as the impact of the problems identified in the 2018 Review findings are minimal within Defence due to security requirements.

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### **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 impact of the problems identified in the 2018 review findings regarding recommendation 9 are minimal for Defence. Defence maintains regular communication with its regulators to address safety issues.

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- 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 impacts of both Option 1 and Option 2 on non-regulator organisations is minimal and appears to be a positive change to achieve safety outcomes. However, confusion may arise around the definition or determination of a technical issue.

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- 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.

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

Option 2 as it provides a better understanding of the work health and safety issue, more timely rectification and further defines the role of the regulator.

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### **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?

The impact of the problems identified in the 2018 Review findings regarding recommendation 10 are minimal for Defence.

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- 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 is no additional cost or benefit to Defence with either option.

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- 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.

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

Option 1 – Status Quo, as the person conducting the business or undertaking can ensure obligations to achieve value for money are met.

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- 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?

While not prevalent in Defence, a lack of consultation between the HSR and the organisation may cause disagreements over HSR training.

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### 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?

The impact of the problems identified in the 2018 review findings regarding recommendation 13 are minimal for Defence.

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- 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.

This may increase costs for businesses and regulators, but unresolved safety matters may increase risks to health and safety or incur costs through administration and going back and forth between the business and the regulator.

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- 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.

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

Option 1 – Status Quo. The problems identified are not an issue for Defence and implementing Option 2 may increase the administrative burden and financial cost of resolving safety issues.

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- 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.

Work health and safety risks should be proactively managed in the workplace, but the use of this option may be minimal due to existing systems and processes that resolve work health and safety issues.

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### **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?

The impact of the problems identified in the 2018 review findings regarding recommendation 15 are minimal for Defence.

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- 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.

The security requirements of Defence generally preclude any entry permit holders without notice. Removing the notice period does not allow the person conducting the business or undertaking to manage their business in a planned, professional and safe manner. If the notice period is removed, the required personnel or time to accommodate the permit holder may not be available.

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- 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.

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

Option 1 – Status Quo. While security and escorting requirements remain extant, removing the notice period is likely to cause issues for businesses in lost time and managing their business.

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### **Inspectors' powers (Recommendation 17)**

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

The impact of the problems identified in the 2018 review findings regarding recommendation 17 are minimal for Defence.

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- 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's impacts are minimal as the problem does not currently impact upon Defence significantly, but Option 2 may impact on productivity by diverting personnel away from business to repeatedly reply to information and document requests.

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- 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.

Improved training of inspectors may assist with more efficient information and document acquisition.

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

Defence does not have a preference for either option. The costs and benefits of Option 2 should be considered in more detail.

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- 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, further identified issues should be investigated to prevent protracted investigations and quicker resolution of work health and safety problems.

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

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

The impact of the problems identified in the 2018 review findings regarding recommendation 23a and 23b are minimal for Defence.

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- 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 feedback provided.

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- 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 feedback provided.

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

Defence gives support to Option 4 so long as it is implemented in conjunction with recommendations 21 – Review of National Compliance and Enforcement Policy, 22 – Increase penalty levels and 25 – Consistent approach to sentencing. However, Option 1 is also supported as the penalties for a Category 1 offence are substantial.

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

Outside of the model work health and safety laws, inconsistent application across the various jurisdictions and minimal publicity surrounding enforcement outcomes can impact the effectiveness of the work health and safety laws.

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- 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.

No response.

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- 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.

Additional offences and penalties, such as an offence for industrial manslaughter, may result in unintended productivity impacts and disproportionate cost imposts for businesses that operate in high-risk industries or environments. These risks are managed through the hierarchy of controls, existing industry practice and regulations, but the proposed changes may result in managed high-risk operational activities having to cease or be significantly modified due to the risk profile changing with the addition of offences. More time should be allowed for case law to develop further to inform discussion around this topic.

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## **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?

The impact of the problems identified in the 2018 review findings regarding recommendation 26 are minimal for Defence as insurance for work health and safety fines are not applicable to Defence.

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- 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 impact of the options set out are minimal for Defence.

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- 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 suggestions.

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

No preferred option, however Option 2 closes this loophole in the current regulations.

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- 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.

No response.

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

No response.

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## **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 impact of the problems identified in the 2018 review findings regarding recommendation 27 are minimal for Defence as Defence has numerous systems to manage risk that use the hierarchy of controls and provides training in safety risk management.

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- 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.

While the impact of either option would be minimal, it is possible that an inflexible approach to managing risk in a highly complex risk environment like Defence is problematic as in some circumstances a certain level of control may not be more effective at managing risk. For example, an engineering control may not be more effective at managing a risk than isolation or even an administrative control, especially for plant where an engineering or substitution control is not possible.

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- 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.
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No suggestions.

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

Option 1 – Status Quo as there is currently sufficient guidance available externally and internally and it provides more flexibility.

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### **Safe Work Method Statements (Recommendation 29a and b)**

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

The impact of the problems identified in the 2018 review findings regarding recommendation 29a and b are minimal for Defence. Defence produces specifically adapted and crafted safe work method statements for a variety of activities and no broad issues have been identified with these. Additionally, when Defence engages contractors, they often provide well established safe work method statements,

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- 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.

Providing guidance and tools to assist organisations can be helpful, but mandating a template would impact Defence through the need to standardise and bring existing safe work method statements into line with the template. While this may increase administrative costs, it may also cause tension with regulators if they are not familiar with the business practices of the organisation but request changes to safe work method statements. This could create additional risks through regulator enforced changes which may cause confusion and a training impost for the maintenance of multiple safe work method statement formats and types.

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- 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.

Maintain an example safe work method statement template as a guide and highlight that it is an example only.

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

Defence's preference is for non-binding guidance material containing a fit-for-purpose template to be implemented. This allows for a standardised framework for safe work method statements and may assist in reducing variance in industry.

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

Yes, Defence has online processes as well as specific guidance and policy on the development and management of practices and procedures.

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

The ability to share safe work method statements with multiple organisations and workers as well as accessibility in remote areas and maritime environments.

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- 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?
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## General Comment

In addition to the feedback provided in the above recommendations, Defence would like to provide the following general comment for your consideration.

Defence provides additional comments in that continuing harmonisation (to the greatest extent possible) of Commonwealth and state/territory WHS legislation is preferable.

## 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.

Recommendation 34a relates to amending the model work health and safety regulations to '*require that asbestos registers are created by a competent person*'. The detail provided in relation to this recommendation is limited and does not provide enough information to determine the potential impact on Defence operations. The Defence Asbestos Register is updated and maintained using asbestos data which has been provided by a 'competent' person. The 'competent' person is not necessarily the individual physically creating or entering the data. Further clarification about this recommendation to accurately determine the impact would be beneficial.

Until further detail is provided about the other changes listed in Appendix A, it is not possible to comment on the degree of impact. Defence is particularly interested in the outcomes of further work on:

- Industrial advancements
- A person as a person conducting a business or undertaking and worker
- Code of practice for duties
- Practical examples of how to consult with workers
- Cross border information sharing
- Incident notification provisions
- Photographic ID on white cards
- References to standards
- Review of major hazard facility regulations
- Improving quality for asbestos registers
- Competent persons in relation to asbestos

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- 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.

Psychosocial factors are complex to manage. If the definition is aligned to bullying and harassment then Defence already has a robust policy framework to manage this. However, if the definitions are broadened too much, the distinction between home life and work may be blurred. Psychosocial factors are often generated from causal factors stemming from outside of the workplace and are imported on a daily basis into the workplace during duty periods. In this case, legislative frameworks will be particularly complex for the person conducting the business or undertaking to develop, implement and monitor effectively and might be intrusive to the worker.

Further clarification of the regulations for construction work would be beneficial where the traditional construction site does not fit. For example, the term "construction work" may not adequately address ships that have personnel living on-board during "construction work" within a facility that has multiple overlapping sites with different contractors and Defence. The framework surrounding this should cover a wider application of construction work.

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