4 General comments

Overall comments

- Feedback from members was that it has a different flow to other Codes and is difficult to read through at present to know exactly what to do to comply with WHS duties.
- SMEs (in general industries) will particularly struggle with reading and interpreting appropriate actions.
- Should be simplified and shortened back to key duties and messages. Additional information can be provided in guidance.

Duties

- Feedback from members was to group relevant duties together in the duties section rather than dispersing throughout the document. This has been track-changed.
- Throughout the Code there are references to non-work-related fatigue risks and intervention behaviours. These should not be included as they are not included in other Codes and go beyond PCBU duties. The only scenario's where this may be appropriate is where PCBU's provide accommodation and workers are travelling for work (e.g. references to access to healthy foods, exercise etc). This could be in an industry specific guide not the Code. By removing this from the Code it would further shorten and simplify the Code so key messages are conveyed.

Identification of fatigue hazards:

- Provides an extensive list of fatigue hazards that:
  - are over-simplified and over-generalised to be of any practical benefit;
  - over-reach to individual and non-work factors which should be removed.

  Suggested edits with further comments in track changes.

- Throughout the Code the cross-reference to psychosocial hazards and HMT is confusing for readers. Should consider another way to draw linkages and explain further what the 'action' should be for this. May be better as a standalone guide or potentially a section at the end of the controls part e.g. once you have done a risk assessment for fatigue specific hazards also consider psychosocial hazards and MHT in finalising appropriate controls. Preference is for a guide to enable enough detailed explanation that doesn't bog down this Code and confuse messages for readers.

- Throughout the document there is a reference to both safety risks and health risks. It then also refers to health benefits. Currently it is confusing to the reader however and this needs to be re-thought and more clearly articulated. Suggestions provided in track-changes.

Controls section and references:

- The majority of the risk controls in the code are designed for businesses that operate at fixed sites.
- Throughout the Code it prescribes certain hours or 'shift lengths' that contradict a flexible risk management approach and other legislative instruments like the NHVL Basic Fatigue Management rules and IR Awards etc. Should remove any prescriptive figures and encourage a risk-based approach explaining what elements should be factored into the assessment and determination of controls and where to go for more information. Information on these elements should be industry specific and potentially provided in supplementary guides.
- The draft Code focuses on risk control mechanisms that may, at best, be considered 'aspirational' in nature for the vast majority of PBCUs who are small businesses (e.g. utilisation of technology leveraging bio-mathematical models). More examples for small businesses in general industries would be useful.

- In recommending that the controls section be reorganised into elimination controls including work re-design and the minimisation of the risk through substitution, isolation, engineering, systems of work and administrative controls (but making clear that the use of the HoC is not mandated but elements can provide guidance on more reliable controls to consider first etc) – **further discussion with SWA representatives is needed on what 'level' controls certain interventions are.** Historically, rostering has been considered a 'system of work' which itself has been considered more often than not an administrative control. The La Trobe Appendix 4 however labels shift rostering a 'substitution' control along with lighting, napping and workload. This should be discussed and agree by regulators through the working group for PCBU clarity and certainty.

  Furthermore, greater emphasis should be on those controls where evidence suggested positive effects through the trialled intervention such as with:

  - Lighting – substitution (10 out of 13 studies showed effectiveness as a control)
  - Shift rostering – substitution (evidence table page 49) mixed results on effectiveness of intervention with 5 out of 12 effective. However, shift rostering with education had higher effectiveness (although note limited studies to base this on).

- Napping – substitution. More effective than not.
- Work time flexibility – administrative. All three studies showed positive effect.

In contrast, adjusting workloads is commonly referenced as a control however only one study showed a positive effect.

- Workload – substitution. Only one study showed positive effect out of four.

The difficulty with interventions like shift rostering, workload, work hours etc is that the effect is highly dependent on the design and implementation of the intervention. This is not necessarily easy to describe in enough detail and nuance in a Code.

As currently drafted, the Code seems to suggest controls that average businesses would go to implement without much planning or thought that could have no effect on safety outcomes. Furthermore, anything relating to hours of work and rostering/shifts also intersects with other legislation and so recommending interventions in these areas should produce greater benefits than costs given the complexity involved.

Case studies

- A transport case study would be useful.
- A construction/ FIFO example would be useful that is focused on engagement of contractors where a PCBU has little control on movements, several subbies may be working at a time etc. What a builder can control.
- Some of these case studies or aspects of them should be used to explain key messages in the body of the document.
- A worker duty case study would be useful.

5 Comments on specific sections

See track-changes to word version of the Code attached.