AUSTRALIAN INSTITUTE OF OCCUPATIONAL HYGIENISTS ®

Safe Work Australia Review of Model WHS Laws

AIOH Member Submissions

Association number: A0017462L

ABN: 50 423 289 752

Approved by AIOH Secretary: 13 April 2018

Collated by: (John) Charles Steer

1. Authorisation

AIOH welcomes the opportunity to contribute to the Safe Work Australia Review of Model WHS Laws. This submission, authorised by the AIOH Secretary, comprises submissions from AIOH members with specialised experience, knowledge and training in the identification and assessment of chemical and physical work health risks. Due to the tight time frame and absence of office bearers at this particular time, AIOH was unable to prepare an AIOH position. We would be happy to contribute to future public discussions on the issue should such an opportunity become available.

2. Australian Institute of Occupational Hygienists Inc (AIOH)

The Australian Institute of Occupational Hygienists Inc. (AIOH) is the association that represents professional occupational hygienists in Australia. Occupational hygiene is the science and art of anticipation, recognition, evaluation and control of hazards in the workplace and the environment. Occupational hygienists specialise in the assessment and control of:

- Chemical hazards (including dusts such as silica, carcinogens such as arsenic, fibrous dusts such as asbestos, gases such as chlorine, irritants such as ammonia and organic vapours such as petroleum hydrocarbons);
- Physical hazards (heat and cold, noise, vibration, ionising radiation, lasers, microwave radiation, radiofrequency radiation, ultra-violet light, visible light); and
- Biological hazards (bacteria, endotoxins, fungi, viruses, zoonoses).

Therefore the AIOH has a keen interest in the potential for workplace exposures to hazardous chemicals, as its members are the professionals most likely to be asked to identify associated hazards and assess any exposure risks.

The Institute was formed in 1979 and incorporated in 1988. An elected governing Council, comprising the President, President Elect, Secretary, Treasurer and three Councillors, manages the affairs of the Institute. The AIOH is a member of the International Occupational Hygiene Association (IOHA).

The overall objective of the Institute is to help ensure that workplace health hazards are eliminated or controlled. It seeks to achieve this by:

- Promoting the profession of occupational hygiene in industry, government and the general community.

- Improving the practice of occupational hygiene and the knowledge, competence and standing of its practitioners. To this end, the Institute has developed a certification scheme, which was approved by IOHA in May 2006.
- Providing a forum for the exchange of occupational hygiene information and ideas.
- Promoting the application of occupational hygiene principles to improve and maintain a safe and healthy working environment for all.
- Representing the profession nationally and internationally.

More information is available at our website – http://www.aioh.org.au.

3. Thirty-eighth AIOH Council

President:	Brian Eva (VIC)
President Elect:	Julia Norris (WA)
Secretary:	Simon Worland (QLD)
Treasurer:	Jeremy Trotman (VIC)
Councillors:	Tracey Bence (WA), Gillian Felton (WA), Andrew Orfanos (NSW)

4. Consultation with AIOH Members

AIOH activities are managed through committees and working groups drawn from member hygienists. This submission has been prepared at late notice through AIOH Council from comment offered by AIOH members generally and from active consultation with particular members selected for their known interest and expertise in this area. Due to time constraints this submission has not been considered by Council.

Submission One

Asbestos Analysis [redacted]

Summary

The Asbestos Regulations (s423(2)) include a clause to include the option for the Regulator to approve a non-NATA laboratory. However there are no Guidelines, and no plan to draft them hence no mechanism for approval.

Context

s423 (2) states: If a person with management or control of a workplace arranges for an analysis, the person must ensure that the sample is analysed only by—

(a) an NATA-accredited laboratory accredited for the relevant test method; or

(b) a laboratory approved by the regulator in accordance with guidelines published by Safe Work Australia; or

(c) a laboratory operated by the regulator.

The AIOH Member contacted SWA in late 2016 for a copy of the guidelines referred to in section (b) as her workplace considered it had a legitimate case to apply for this approval. SWA responded by saying there are no guidelines written for this clause and when prompted further, they said the clause was only put in the legislation in case "they need them one day". When asked if such guidelines could be drafted and sent to the member as their workplace would like to pursue this option, the response was no.

The member concluded that the Regulations were incomplete in this regard in providing an option that was not able to be satisfied.

Synthetic Mineral Fibre Identification

Summary - The Regulations don't make reference to SMF identification.

Context

Advice was sought from the local and state (QLD) WHS Regulators and SWA on interpretation of the WHS Act and Regulations in regard to analysis identification of synthetic mineral fibre (SMF). The legislation covers asbestos well but makes no reference to SMF. The AIOH member's company laboratory (run by competent personnel) can identify samples for SMF. However all Regulators & SWA suggested that a NATA lab was required to confirm whether substances were not asbestos. This is inconsistent with the legislation as the main purpose for the analysis is confirmation of positive SMF not a negative test for asbestos.

Personal Monitoring for Gas Exposure (WHS Regulation S50)

Summary

The Regulations provide insufficient guidance regarding general standards for personal airborne monitoring.

Other issues include clarity in maintaining confined space personal monitoring records and what constitutes a notifiable incident for gas exposure.

Context

WHS Regulation s50 - Personal Monitoring for Gas Exposure

(1) A person conducting a business or undertaking at a workplace must ensure that air monitoring is carried out to determine the airborne concentration of a substance or mixture at the workplace to which an exposure standard applies if—

(a) the person is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard; or

(b) monitoring is necessary to determine whether there is a risk to health.

(2) A person conducting a business or undertaking at a workplace must ensure that the results of air monitoring carried out under subsection (1) are—

(a) recorded, and kept for 30 years after the date the record is made; and

(b) readily accessible to persons at the workplace who may be exposed to the substance or mixture.

The Regulations don't provide guidance on how to comply with personal monitoring for gas exposure. Interpretation of the Act and Regs was sought from Regulators with inconsistent feedback and the lack of ability to give advice. There is no recognised standard for how to monitor for personal exposure to gas and no current monitoring device that provides accurate information on exposure. Current devices have many issues with sensor cross sensitivity so cannot be used to accurately determine compliance to exposure standards. They are more used as an indicative tool.

Retention of records is another issue. Confined space monitoring requires records are to be kept until the task is complete, however s50 (2)(a) states they need to be kept for 30 years.

There is also no clear guidance in the Regulations on what constitutes a notifiable incident when it comes to gas exposure.

Submission Two

Dick Manuell

Dick Manuell has made a submission already.

He considers that the Regulations should recognise professional organisations, such as the AIOH, as being reputable organisations for advice on occupational health.

Submission Three

Debbie Dare-faekk

Ms Dare-faekk has already made a submission to SWA.

The following summarises the points made:

- What is working and why

WHS legislation is well written, and for the layman, is easy to understand.
PCBU's or "the man or woman on the street" can easily locate any area of WHS legislation they wish to view, and it's important that everyone can access the legislation.

- Will it continue to work in the future

There seems to be ongoing compliance issues. Unless further stringent measures are taken to ensure compliance, workers will be at risk. Writing of legislation does not ensure compliance to regulations or legislation.

- What doesn't work and why,

Fear is an obstacle for workers. The ability for companies to "cover up" safety issues and not report incidents is a big problem. Ms Dare-faekk provided an example of a suspected carbon monoxide overexposure that was not reported.

- What we could do to make it work

Put further measures in place to protect staff who report incidents.
Additional measures to ensure compliance.

Submission Four

(John) Charles Steer COH, FAIOH – Brief Comments

Competency

1. It would be beneficial to recognise specific professional competencies for professionals in specific areas of occupational health and safety – it is understand this is included in NZ WHS legislation e.g.:

    - AIOH certified occupational hygienists (e.g. for exposure assessment, and control);
    - NPER engineers (in place for design but not for engineering controls);
    - Occupational physicians (AFEOM);
    - Certified occupational health and safety practitioner and professional;

2. Asbestos WHS Regulations Clause 482 requires that a competent person carries out air monitoring. In the members opinion a certified occupational hygienist would be competent to carry out this work.

3. Section 5 'Definitions' include competent person, but there is only a general statement (g) "for any other case" which would presumably include occupational hygiene work. It would be beneficial to include occupational hygiene in this section.

Health Monitoring

This term appears to be used in preference to health surveillance and can be confusing.

Submission Five

Ian Charles Firth COH, FAIOH – Brief Comments

Workplace Exposure Standards (WESs)

'Exposure standard', except in Part 4.1 of the WHS Regulations, means an exposure standard in the "Workplace Exposure Standard for Airborne Contaminants". Sections 17 and 19 of the WHS Act together require that exposure to substances in the workplace is kept as low as is reasonably practicable. Section 49 of the WHS Regulations requires that a PCBU at a workplace "must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture", with penalties applying. We are still in the position of having WESs that are not consistent with the hazard that they present to the health of workers, as they have not been reviewed for many years. It is recognised that Safe Work Australia is still in the process of reviewing the WESs, but it appears to be taking a long time.

Additionally, it is stated in the "Workplace Exposure Standards for Airborne Contaminants" document that the information contained in it and the accompanying *Guidance on the Interpretation of Workplace Exposure Standard for Airborne Contaminants* should allow PCBUs to meet their duty to comply with the Act and the Regulations as noted above. However, the detail for compliance with a WES is essentially only in the guidance document.