



COMMISSIONER FOR
BETTER REGULATION

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16 June 2016

Ms Leanne Hughson
General Counsel
WorkSafe
222 Exhibition Street
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Dear Ms Hughson ~~Leanne~~

I would like to thank the staff of WorkSafe for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed Occupational Health and Safety Regulations 2017 and the Equipment (Public Safety) Regulations 2017. These regulations are being proposed as current arrangements sunset on 19 June 2017.

Under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis presented in all RIS prepared in Victoria. In doing so, my role is to advise on the adequacy or otherwise of the RIS rather than the merits or otherwise of policy or regulatory proposals. To be adequate, the RIS must contain analysis that is logical, draws on relevant evidence, is transparent about assumptions used, and is proportionate to the proposal's expected effects. The RIS must also provide a suitable basis for public consultation, which is an important step in the policy development process.

I am pleased to advise you that the final version of the RIS received by us on 8 June 2016 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

The RIS notes that these regulations are made under the *Occupational Health and Safety Act 2004* (the Act), which places a general duty on all Victorian employers to provide and maintain a working environment that is safe and without risks to health so far as is reasonably practicable. This makes employers liable for the safety of their employees. WorkSafe's view is that, in certain cases, the general duty may be insufficient and therefore regulations for specific hazards are necessary to prevent injuries, illnesses and fatalities in the workplace.

Our assessment of this RIS is based on the *Victorian Guide to Regulation*, which states that preparing a RIS for sunseting regulations involves:

- evaluating the effectiveness and impact of current regulations over the last ten years;
- assessing whether the circumstances in which these regulations operate have changed over the last ten years;
- determining whether, ten years on, there are any new or alternative approaches that could better achieve the Government's objectives; and
- undertaking analysis of a level and quality that is proportionate to the scale of the impacts (with quantification of costs and benefits when the impacts are high).

The proposed regulations developed by WorkSafe will remake the regulations largely as they currently stand, with some minor changes to reduce compliance costs for employers. The estimated cost of the proposed regulations to the Victorian community is around \$26 billion (NPV over ten years). The RIS notes that these estimated costs, along with the estimated safety benefits of the regulations (around \$38 billion NPV over ten years), 'must be regarded as illustrative' given the difficulties encountered in quantifying the costs and benefits. The RIS notes that although WorkSafe considers that the proposed regulations are likely to reduce injuries, illnesses and fatalities, 'it was not possible to estimate the extent of such changes with any degree of accuracy'.

Measuring the safety benefits has been difficult due to the fact that WorkSafe's data on workplace safety (based on injury and illness claims, fatality data, inspections and prosecutions), while informative to a degree, are not sufficient to enable a precise understanding or quantified measure of:

- the extent of compliance with current regulations;
- the effectiveness of these regulations (as distinct from the general duty under the Act) in mitigating these risks; or
- the benefits from regulating specific hazards and the likelihood that they offset the costs.

Notwithstanding these limitations, the RIS provides illustrative estimates of safety benefits from the regulations. Fundamental to these estimates are the assumptions that:

- improvements in workplace safety in the last ten years have been driven primarily by the regulations, rather than to the general duty under the Act; and
- changes in other factors influencing workplace safety (such as technology, business practices, or employer or employee behaviour) have had no impact on workplace safety.

The result is a baseline measure which estimates that over the next ten years, in the absence of regulations, the reduction in workplace safety would be so great as to reverse all the improvements of the last ten years.

The choices made between options identified in this RIS are based on WorkSafe's views that the proposed regulations will result in sufficient safety benefits to ensure that they result in a net benefit for the Victorian community. This reflects WorkSafe's judgement as the Government's expert adviser on workplace safety (informed by substantial consultation with stakeholder groups).

This RIS provides the basis for further consultation and will offer stakeholders an opportunity to contribute to a fuller understanding of the nature of specific risks to workplace safety, and the effectiveness of the proposed regulations in mitigating those risks. Given the challenges faced in understanding the effectiveness of the regulations and the resulting safety benefits, stakeholder feedback regarding assumptions and judgements will be valuable.

In order to improve the understanding of risks and impacts of different approaches in the future, WorkSafe is planning a full evaluation strategy over the next five years and, as the RIS sets out, has committed to:

- conduct community surveys to collect information from employees on their exposure to hazards to improve the understanding of the risk factors (specifically those involving manual handling, falls, plant, hazardous substances and high noise levels);
- commission research to better understand barriers to eliminating manual handling risks in the workplace;
- analyse the factors influencing injuries resulting from falls;
- undertake further research (including surveys) to improve knowledge on compliance and the effectiveness of WorkSafe's interventions; and
- analyse inspections data to evaluate the effectiveness of the regulations.

According to the *Victorian Guide to Regulation*, one of the functions of my office is to support agencies in developing and implementing evaluation plans. We are keen to work with with you and your colleagues at WorkSafe as you develop these plans.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation

