

# SUBMISSION

## Consultation Regulation Impact Statement:

### Workplace exposure standards framework under the model Work Health and Safety laws

#### Instructions

To complete this online submission:

- Download and save this submission document to your computer.
- Use the saved version to enter your responses under each question below. These questions are from the [consultation regulation impact statement on the workplace exposure standards framework under the model Work Health and Safety laws](#).
- Once you have completed your submission, save it and upload it using the upload your submission link on the [Engage submission form](#).

Submissions will be accepted until **11.59 pm AEDT, 13 September 2018**.

#### Additional documentation

Up to three additional documents can also be uploaded when you submit your response. Relevant documents to upload could include cover letters or reports with data and evidence supporting your views.

#### Help

If you are experiencing difficulties making your submission online, please contact us at [WESconsult@swa.gov.au](mailto:WESconsult@swa.gov.au).

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- submissions containing defamatory material, and
- submissions containing views or information identifying parties involved in hearings or inquests which are currently in progress.

## Your details

*(Please leave blank if you wish to remain anonymous)*

### 1. Name or organisation

Australian Institute of Occupational Hygienists Inc

### 2. Email used to log into Engage

[admin@aioh.org.au](mailto:admin@aioh.org.au)

## Questionnaire

*(Consultation RIS questions)*

### 1. Do the estimated rates of compliance with the workplace exposure standards align with your experience? Please explain. **(Section 2 Pages 24-25)**

We would agree that large businesses have the highest level of perceived compliance with the WESs, although 74% being compliant is perhaps optimistic. In the main, we think the estimated rates of compliance with WESs for small to medium size businesses is a poorer rate than indicated in the Consultation RIS. Within the construction industry, the estimated rates of compliance with WESs certainly don't align with our experience.

Our experience is that while larger businesses have the capacity to engage someone to help them understand and comply with the WESs, smaller businesses are often reluctant to 'comply' (spend money) unless they are directed to do so and more often than not don't actually appreciate that the exposure standards exist.

Regarding "perceived compliance", different stakeholders assess risks using their own perception which is influenced by many factors including: how much control one has over the risk; whether it is familiar; whether the consequences are delayed; who bears the consequence; and whether the hazard is encountered as part of work activities. As instances of chronic diseases such as silicosis for example, are not reported or broadcast to the wider Australian community, it can result in a low risk perception and bias when assessing the risk to health or 'perceived' compliance with a regulatory standard.

As part of a comprehensive review, a key question is raised as to why the State WHS Regulators were not asked to provide such data on compliance rates as a more accurate measure?

### 2. Are there any particular issues that make it difficult for you to comply with the workplace exposure standards? Please provide examples. **(Section 2 Pages 24-25)**

Not applicable in a literal sense to the AIOH, but examples from our experience, are relevant:

- The new in-air WES for inorganic lead would be difficult for some smelters to comply with, even though the lead-in-blood levels of workers meet the amended model regulatory requirements.
- Many businesses we deal with depend upon respiratory protection and other PPE to meet the various WES's and such PPE is often not correctly selected or fitted giving a false sense of compliance with the WESs.

- Particularly for small to medium businesses, there is a lack of education / understanding of the potential impact of health risks on their workers and business, as opposed to safety risks.
- Information provided to small to medium size businesses does not clearly communicate where to get advice, such as from a qualified occupational hygienist.
- There is a significant lack of knowledge by workplace inspectors in this area which translates to lack of awareness in small to medium size businesses and even many larger businesses (e.g. construction).

3. Are there any other costs to your organisation relating to the workplace exposure standards framework not discussed here? **(Section 2 Pages 26-30)**

Not applicable in a practical sense to the AIOH. However, considering the imprecise nature of the costings presented, AIOH suggests that compliance cost data is available and should be collected by a targeted survey of occupational hygienists designed and run by the AIOH. The AIOH further notes that looking at the WES in isolation or with other standards is not necessarily an additional cost as it is absorbed in the measurement / assessment control advice normally provided by an occupational hygienist.

4. If there is not an Australian workplace exposure standard available for a particular chemical, how do you manage the risk of exposure? Please describe. **(Section 2 Pages 29-30)**

AIOH members who work for or consult to businesses will review the international literature and / or published AIOH Position Papers to determine an appropriately protective exposure level (usually conservative) and apply a statistically valid sampling and exposure assessment regime, while also considering the hazards specific to the workplace in question.

(By the way, sulphuric acid mist exposure is classified as a carcinogen due to its effect on the larynx and the lung, but mainly the former).

5. Are there any other options that could be considered to achieve the government's objectives? Please provide details. **(Section 3 & 4 Pages 31-38)**

The AIOH suggests that mandatory WESs apply to priority health hazard substances, defined as those with a health effect other than irritation alone. WESs applicable to irritants could be advisory only. At the very least, if considering reducing the number of mandatory WESs, there should still be a mandatory WES for substances considered to be carcinogens, mutagens, teratogens, reproductive toxins or sensitizers, or where there is a requirement for health surveillance.

An alternative to having WESs is to focus more on the implementation of mandatory control measures for certain hazardous chemicals, per industry, which are more easily understood, available to implement, and with a regulator able to check on the presence / absence of such. This should certainly be the approach if WESs were not mandatory.

6. Are there any practical issues to consider in relation to any of the proposed options? Please provide examples. **(Section 4 Pages 32-38)**

The AIOH believes that it will be very important to have an expert working group to review proposed changes under the streamlined methodology, particularly where there is conflicting evidence from 'trusted' bodies, as can occur. How will such a group be constituted?

Option 3 is anticipated to result in the highest number of practical issues.

7. Would making the workplace exposure standards advisory (rather than mandatory) lead to changes in the level of compliance in your industry? Please explain. **(Section 4 Page 37-38)**

In the long experience of many of our members, very few small to medium size organisations trouble themselves with the WESs unless it is a compliance issue, and even then they would consider it a poor use of their time. If the WESs are not mandatory, it is unlikely that small to medium size businesses will recognise or appreciate hence act upon potential health risks in their workplace.

8. Beyond these options, what else could be done to help your business understand and comply with the workplace exposure standards? **(Section 4 Pages 32-38)**

A key initiative to help businesses understand and comply with the WESs would be to involve the AIOH in providing practical information on hazards, risks and practicable controls through fact sheets and seminars. This could be done in consultation with targeted industry sectors to provide best practices for controlling or mitigating hazardous exposures. An example of the latter would be the UK HSE "Guidance on working with 2-pack isocyanate paints" work. Regular state / territory government subsidised information sessions on health hazards plus additions to TAFE curriculums with a particular focus on small to medium size businesses would be useful. In addition, more education of workplace inspectors in this area would be helpful.

9. What impact, if any, would the proposed name change from 'workplace exposure standard' to 'workplace exposure limit' have on your organisation? **(Section 4 Page 38)**

The AIOH believes that there should be little if any impact for businesses in changing the name to WELs, but wonders why the need for change. It is unlikely to advance the cause of occupational health and hygiene. There may be some minor editing required for company health management plan documentation.

10. Please provide details of the types of costs that are incurred by your organisation when a WES value is updated. For example, do you update any policies or procedures to reflect changes in the WES value? **(Section 5 Page 39-40)**

AIOH member experience is that larger companies will incur some ongoing costs for updating procedures and guidance documents to reflect action limits for those workplace exposures determined by risk assessment to be a significant hazard. This usually also involves a communication strategy, which may be a part of regular training. Nevertheless, these costs are usually a part of normal operating costs, being the responsibility of an employed health person.

Outside of specific industries with targeted regulatory responsibilities and a relatively high historical exposure to the Authorities and WESs (e.g. lead processes, monumental masons), this is unlikely to be the case for small to medium businesses. Such businesses usually don't have a dedicated OH&S person and are not aware of changes to a WES or its significance to their operations.

Key costs for large organisations are related to the need for new controls and training because a change to the WES has changed the exposure risk profile for a group of workers.

11. Survey respondents indicated that, on average, a quarter of their control costs are directly attributable to the current workplace exposure standards framework. Is this consistent with your experience? Please provide details. **(Section 5 Pages 39-40)**

AIOH experience with large companies with international operations is that exposure risks requiring controls are driven not so much by the Australian WESs but more by international standards, as they influence reputation and sustainability index ratings, hence share value.

Also, the estimation of 25% cost for health controls seems to be excessive, as the focus of most organisations is safety risks. There may be some high costs associated with ventilation systems, chemical storage and handling systems etc but we doubt that 25% of all control costs are related to WES compliance in all businesses.

12. Are there any other significant regulatory costs that you incur because of the workplace exposure standards that have not been included in the consultation RIS? **(Section 5 Pages 39-40)**

Not another regulatory cost, but we note that as far as costs of an occupational hygienist is concerned, a competent AIOH occupational hygienist will be able to maximise monitoring effectiveness using professional judgement to target monitoring or enable an assessment with the use of previous measurement data, thus reducing compliance assessment costs.

13. Do you think awareness of the workplace exposure standards will improve if they are updated more frequently? Please explain. **(Section 5 Pages 40-46)**

Yes, but only if there is a specific and targeted communication strategy accompanying the changes.

14. What impact would more frequent updating of the workplace exposure standards have on your organisation? In your response, please consider the possible addition of the chemicals listed in Appendix C. **(Section 5 Pages 40-46)**

For the AIOH, it would likely lead to more emphasis on its Position Paper process, which is currently dependent on voluntary input by the Exposure Standards Committee.

If well communicated, businesses would be made more aware of potential health risks and hopefully take appropriate actions sooner.

15. To understand and implement option 2, what would this cost your business or organisation? **(Section 5 Pages 40-46)**

Not applicable in a practical sense to the AIOH. It would be very dependent on the risk profile of the business. However, we believe that the benefits in reduced ill health should outweigh any costs in implementation or improvement of controls.

16. What benefits would option 2 provide for your business or organisation, and community? **(Section 5 Pages 40-46)**

Updating the WESs and emphasising their mandatory nature is likely to raise AIOH's profile. This aligns with Safe Work Australia's mission given one of the key AIOH objectives is to promote the application of occupational hygiene principles to improve and maintain a safe and healthy working environment for all. For businesses, it should enable them to better understand

the level of risk posed from exposure to key health hazards, thus leading to the implementation of suitable control measures.

17. To understand and implement option 3, what would this cost your business or organisation?  
**(Section 5 Pages 46-52)**

Not applicable in a practical sense to the AIOH. It is likely that this option will cost Australian businesses less money, but will increase the burden of ill health. In addition, the many years of effort put into trying to protect worker health through improving understand of and implementation of various controls to reduce or eliminate the risk of hazardous exposure to any number of hazardous substances would potentially be lost.

18. What benefits would option 3 provide for your business or organisation, and community?  
**(Section 5 Pages 46-52)**

The AIOH believes that this option would be detrimental to its objectives and is more likely to ensure that we will not improve occupational health performance in the workplace.

19. If workplace exposure standards were advisory (rather than mandatory), would your business continue to seek information or guidance from a WHS regulator? **(Section 5 Pages 46-52)**

In the experience of AIOH members, this would be unlikely. From a wider community perspective this could create a “race to the bottom”. Abolishing the “non-negotiable” WES benchmark could shift the assessment of what is considered “practicable” in terms of exposure resulting in a higher tolerance to hazardous substances exposures in organisations under pressure to reduce costs. By selecting this option, it would demonstrate that the WHS Regulator does not see this area of OH&S as being a priority, hence businesses are less likely to seek information or guidance from them – why ask for information on something not perceived to be important?

20. For each option are there any other costs, benefits, and/or unintended impacts which have not been considered in this consultation RIS? Please provide details.

AIOH lack the resources to provide a well-researched, response to this question. Our preliminary review suggests that the supporting analysis:

- has over estimated some costs,
- potentially missed some of the practical implications of the three options; and
- would be better informed with more quantitative data and detailed practical narrative from the occupational hygiene community addressing the implications for small and large businesses.

AIOH would be happy to address this issue should SWA see the benefit in supplementing the existing analysis with more grounded research based on actual workplace data and worker and employer experience in small and large business moderated by professionals with the most detailed and comprehensive understanding and experience in the subject matter.

21. Do you have anything further you would like to add as part of this process?

The AIOH agrees with the overall objective of the proposed government action to reduce the risk of harm to workers, in particular to protect them from exposure to potentially harmful airborne hazardous chemicals or substances. Further, given the ever changing nature of scientific knowledge and the escalating rate of change, the application of the exposure standards by trained occupational hygienists (as specified in the ACGIH documentation) is critical to achieving this objective. The lack of any regulatory requirement for this could represent a breach of Government's duty of care.

On another note, the AIOH believe that there needs to be a wider discussion about the rationale behind the chemicals listed in Schedule 14. Is it still relevant to specify health monitoring for thallium, vinyl chloride, cadmium, pentachlorophenol, creosote etc, when we have no health monitoring requirements for exposure to welding fumes (now IARC Group 1), manganese, coal dust, flour and grain dust, wood dust, subtilins, etc, which probably have a much wider health impact than many of those listed in the existing Schedule.

A specific note is made regarding inorganic lead. Given that there are relatively few people employed in lead industries these days, it is hard to see why SWA and other jurisdictions continue to write specific regulation covering lead rather than incorporating it into the Hazardous Chemicals requirements (with associated guidance documentation). There are probably more people across Australia exposed to crystalline silica and isocyanates than to lead, yet we don't have specific regulations for these chemicals; they are adequately dealt with by the general Hazardous Chemicals legislative provisions.