Australasian Meat Industry Employees Union

Submission to: **The Hon Tim Holding**
Minister for WorkCover

Comment on: **Proposed Occupational Health & Safety Regulations 2007**

February 2007

The Australasian Meat Industry Employees Union appreciates the opportunity to make comment on the proposed consolidated Occupational Health & Safety Regulations 2007.

Background

The meat industry has been built over many years and has continued from generation to generation. Work in meatworks and associated workplaces has always been physically hard, dangerous and skilful. Without the strength of organized labour, the AMIEU, it would undoubtedly be more dangerous.

According to WorkSafe the Victorian meat industry has one of the worst health and safety performance records compared with other industry sectors.
Highest claims frequency rate – 3.65 claims per $1m remuneration;
Second highest claims cost rate - $101,593 per $1m remuneration;
Meat is 1.8% of the manufacturing industry, yet accounts for 7.5% of all compensation claims and 8.5% of all costs.

As this data suggests, current and potential consequences of poor OH&S performance is a threat to the health of workers in the industry.

AMIEU Commitment to Health and Safety

Occupational health and safety (OH&S) is a fundamental and longstanding pursuit of the AMIEU on behalf of its members. For example:

- There has been a full time health and safety/compensation officer for more than 30 years.
- The Victorian Branch of the AMIEU established a medical centre in the 1960s because of the need for medical practitioners who were capable of recognising and providing proper treatment for zoonotic infections and other work related conditions suffered by workers in the meat industry.
- The AMIEU was actively involved in debating and developing the legislation for health and safety, that is the 1983 Bill, the 1985 OHS Act and the 2004 OHS Act.
- The AMIEU has been actively involved in the working groups that have made comment on the development of the consolidated regulations.
- The AMIEU was pleased when, in 1990, the Victorian Occupational Health and Safety Commission (VOHSC) initiated work on the development of industry based Codes of Practice, particularly a Code for the Meat Industry.
- When, in 1992 the Kennett Government abolished VOHSC and scrapped the work that had been done on industry based Codes of Practice, the AMIEU continued working on industry specific guidelines and eventually negotiated guidelines with the industry employer association.
- The AMIEU has provided training on health and safety in our industry for representatives since 1986. Our training is WorkSafe approved.

- Representatives of the AMIEU are regular participants in tripartite and government bodies associated with workers' compensation and health and safety.

The AMIEU has distributed the proposed regulations and the RIS to our members and consulted with Health and Safety Representatives from abattoirs, boning rooms, smallgoods manufacture, meat rooms and retail butchers.

These comments are based, therefore, on decades of experience and the current experience of the health and safety representatives in the meat industry.

In our comments on the Proposed Regulations we recognise that the principles of the Compliance Framework which aim to:

- Give effect to the principles of health and safety protection in the Act;
- Progressively improve health and safety in Victoria;
- Clearly articulate duties and rights and provide clear information and advice to facilitate compliance;
- Achieve consistency, where appropriate, with other Australian jurisdictions; and
- Provides the highest level of protection for workers and the general public against risks to their health and safety that is reasonably practicable.

Consistency with National Standards and Regulations in other States

The AMIEU supports the policy and principles of the Compliance Framework, which guided the translation of current OHS Regulations into the proposed consolidated regulation.

In August 2005 it established that existing regulations would be replaced using current regulations and National Standards as the scope ***to ensure that Victoria provided the highest level of protection***.

In February 2006, the *Taskforce on Reducing Regulatory Burden* made further commitments achieve greater uniformity of their state OHS regulatory frameworks directing their regulators to pursue 'harmonisation' opportunities. In May 2006, COAG made the commitment that in 'harmonisation' they must: (d) ensure existing protections are not reduced.

We believed that both the compliance framework policy and these commitments provided the opportunity to remove inconsistencies with the National Standards, particularly for those standards adopted during the Kennett era. There is no rationale for these inconsistencies to continue.

Although we believe that the consolidation of the Regulations has achieved a number of improvements**, *the proposed regulations have not delivered adequate consistency with National Standards and other jurisdictions in a number of significant areas***. Several current divergences of Victorian

requirements from those of the National framework have been maintained. The rationale for maintaining many of these Victorian peculiarities is generally unconvincing and inconsistent. ***The result leaves Victorian workers with lesser protections than workers in other states*.**

MAIN ISSUES/CONCERNS

1. Proposed changes to the risk assessment process

The removal of risk assessment provisions does not deliver the overarching policy of consistency with other jurisdictions and will create additional and unnecessary impediments to Victoria's adoption of future National OHS Standards.

The AMIEU remains unconvinced that the proposed approach to remove risk assessment from most Regulations will deliver better compliance and health and safety outcomes.

In our view the proposed Regulations:

- create inconsistency across the provisions,
- place Victoria at odds with other jurisdictions and National Standards,
- create potential confusion about how to make decisions about the implementation of risk control measures, and
- de-regulate and confuse current provisions for atmospheric monitoring

The proposed OHS Regulations remove risk assessment duties from all Regulations that apply to the meat industry (after all we do not work in mines etc).

Existing hazard identification duties will be translated into the subject–specific chapters.

For those hazards which have an exposure standard - noise, hazardous substances, asbestos and lead - the requirement to measure exposure levels by atmospheric monitoring will be standardised so that monitoring is required *when there is uncertainty as to whether the exposure standard has been exceeded and that uncertainty is based on reasonable grounds.*

WorkSafe also proposed to support the changes in the Regulations by

- issuing a section 12 guideline to clarify that the general duties requires duty holders to look proactively for all hazards and risks in the workplace;
- developing a Compliance Code on risk assessment; and
- providing further advice on risk management.

We consider this totally insufficient.

All hazard based regulations made under the *Occupational Health and Safety Act 1985* require employers to identify hazards, assess risk and control risks. This is a well-established and well-understood process in National Standards,

hazard control provisions in other jurisdictions and in WorkSafe Codes and non-statutory guidance.

In the discussion of the regulations Unions have agreed with WorkSafe that the focus of risk management is to ensure that employers take action to eliminate or control hazards. The increased focus on risk control is supported. We strongly agree that an approach, which focuses on eliminating risk at the source is the most effective means of achieving safer and healthier workplaces. ***However the AMIEU does not consider that eliminating risk assessment will improve controls***.

Specific concerns with the proposed removal of risk assessment duty
We believe that WorkSafe's policy to remove risk assessment duty for hazards is based on flawed assumptions about the nature of risk assessments in determining how identified hazards should be controlled.

WorkSafe's policy assumes that risk assessment is a complicated process by confusing a systematic approach with elaborate, paper based audits 'systems' used in some workplaces.

Complex systems are not mandated by the current requirements to undertake risk assessment. Therefore removing the requirements to assess risk will not necessarily prevent the promotion and use of complex systems

We do not support unnecessary paper based audit systems, however we consider that a systematic and effective risk assessment process is essential.

WorkSafe assumes that risk assessment is unnecessary when there are known control solutions, arguing that these solutions should be implemented without risk assessment. The AMIEU does not agree with this rationale. We believe that even in straightforward cases a risk assessment is being undertaken.

For example: we all recognise that sharpening knives is essential to reduce manual handling injuries and to reduce lacerations, but there are multiple ways that knife sharpening could happen including mechanical aids and training. Sharpening machines could be purchased, but which kind meet the needs in each work area (after all the knives in different areas are different) and what happened to consulting with the workers about these proposed solutions.

Claims that a regulatory duty to carry out risk assessment means that it must be done in every single case to which the regulation applies.

Unions believe that this interpretation is insufficient to warrant the removal of the risk assessment duty. What is needed is clarity about how the provisions will be enforced.

WorkSafe's assumptions on risk assessment are only logical if hazards and related risk control solutions are considered individually.

In reality most workplaces have multiple hazards. When multiple hazards have been identified then a risk assessment is crucial as this is necessary to enable decisions to be made and for priorities to be set for managing these risks.

In addition the risk assessment process is useful as the basis for informing employees and HSRs about the hazards, risks and controls, enables 'safe work' procedures to be developed and can be used to propose, review and monitor the risk control solutions.

The AMIEU does not support the removal of risk assessment duties from the regulations.

Hazard Identification and measuring exposure are also dealt with inconsistently**.** The AMIEU draws your attention to the comments made by the VTHC on these matters.

2. Inconsistencies in scope and definitions

There are a number of regulations where WorkSafe has not adopted the scope and definitions of National Standards. The scope and definitions are crucial to the implementation of subsequent duties in the regulation, for example:

Asbestos

definition of dust - see separate comment

Plant

The new regulation continues to exclude manually powered and powered hand-held plant despite the fact that these are covered in the National Standard and other States' regulations. Some of the most dangerous plant in the meat industry is hand powered or hand held. (Covered in more detail when looking at plant regulation).

Confined Spaces

The new regulation continues to exclude stored liquids from the definition. To quote a Health and Safety Representative:

> The 'confined space' definition (d)(iii) that excludes 'liquid' is not appropriate. Drowning in a tank of water is dieing just as much as inhalation of fumes or suffocation due to inhalation of grains. Many others can cause death or disablement even if not particularly dangerous in their own right – by simple fact that they don't belong in one's lungs and that is where they will end up if one becomes submerged and cannot extract oneself from the container/confined space and there is nobody present to organise rescue.

We believe that the definition should be in line with the National Standard.

Hazardous Substances

The new regulation addresses a serious shortcoming of the previous Regulation by including hazardous substances created from non-hazardous substances, and is consistent with the National Standard**. This change is strongly supported.**

- However the new Regulation maintains a number of Victorian inconsistencies, which must be addressed. The 'rules' that regulate hazardous substances are influenced by international and national arrangements more so than other standards, including through:
- the United Nations development of a Globally Harmonised System (GHS) which Australia is to adopt in 2008,
- the European Union (EU) and Australia's National Industrial Notification and Assessment Scheme (NICNAS) for assessment of chemicals and the setting of exposure standards,
- the Rotterdam Convention,
- the Australian Dangerous Goods Code (ADG)
- Mutual recognition arrangements with New Zealand (TTMRA), and
- other transport and trade arrangements.

As Australia is a participant in the development of standards which seek to adopt international consistency, Victoria's regulations must in this case adopt the National Standard without deviation

The AMIEU considers that the provisions of National Standards must be adopted unless our Regulations provide a higher level of protection. This was the commitment given at the outset of the process.

3. Work Environment

During the consolidation exercise current *Codes of Practice for Workplaces, Workplaces in Construction and First Aid* were considered for translation into regulation. WorkSafe decided not to include working environment provisions in the proposed Consolidated Regulations preferring to deal with the issues via Compliance Codes**.**

The AMIEU does not support this decision*.*

In our view workers have a right to be provided with basic amenities and facilities eg dining facilities, toilets and drinking water.

In the working groups Unions strongly argued that a number of the provisions could and should become regulation. Other jurisdictions regulate these provisions as the indicative list provided by the VTHC shows.

The Codes of Practice have not provided certainty to workers, and issues concerning amenities and first aid are often the cause of serious dispute and dissatisfaction in many workplaces. For example:

- At the Garfield Abattoir the ‘dining facilities’ were cramped, had no potable water and seating consisted of a small number of rickety chairs so that the workers had to overturn rubbish bins to sit on. The HSR was abused and discriminated against for raising this issue.
- In the Box Room in the abattoir in Seymour there was no drinking water provided. As a result the worker, who needed a drink and went downstairs to the nearest drink fountain, was abused in racist terms by

the supervisor, physically manhandled and marched off the floor. The worker was seriously injured by the treatment that he received for needing a drink of water, which was not available in his work area.

Victorian workers deserve better. ***We need regulations to ensure that facilities must be provided.***

Similarly the work environment is covered in the Act but there is no regulation proposed to deal with detail.

- In summer, temperatures on kill floors and gut rooms regularly reach well into the 40's and higher and the work is physically demanding. But there are a number of workplaces where no fans or drinking fountains are provided.

When the HSRs try to consult with management it is put into the 'too hard' or 'low priority' box. If regulated it would be possible to get the work environment addressed, not ignored.

- Workstation space (or lack thereof) is one of the major issues that contributes to a major risk associated with working with knives.

Because WorkSafe opposes the regulation of work environment such as workstation space and opposes the regulation of hand powered or powered hand held plant - it is a recipe for disaster in the meat industry.

This combination of deregulation seriously contributes to the meat industry having one of the worst health and safety performance records compared with other industry sectors.

The AMIEU considers that to achieve consistency Victoria should adopt regulatory provisions on work environment and workplace facilities (including first aid) coinciding with regulation in other States.

4. The Role of Health and Safety Representatives (HSRs) in the consolidated Regulations

Some employer associations have opposed the inclusion of the proposed consultation provisions in the new Regulation and have begun a scare campaign on the new provisions. In recent media, employer associations claim that the proposed provisions are an 'extra' requirement which place 'more onerous' requirements for consultation on employers.[1]

This is clearly a misrepresentation of the legislative provisions.
The intention of the consultation provisions in the OHS Act (OHSA) 2004 is not to alter these rights, but to extend the consultation duty to ensure that where there are no HSRs employers consult directly with their employees, as recommended in the Maxwell report.

[1] Australian Financial Review article 30 Jan 2007

The role of HSRs in representing their co-workers and consulting and negotiating with employers on OHS has been an integral feature of Victorian OHS law since 1985. Their role in consultation has also been a requirement of current hazard specific Regulations and throughout codes and guidance developed by the VWA over the last 21 years.

HSRs rights in the current Regulations range from the general – to be consulted when employers identify, assess or control hazards - to specific requirements in some Regulations where HSRs must be informed or where HSRs can require that the employer take certain actions (See the VTHC submission for a summary of current provisions).

As most of these individual provisions to consult with the HSRs have been removed in the interests of reducing duplication, it is vital that the consolidated regulation still has a clear provision to ensure that this crucial consultation is maintained in an effective manner.

The provisions are not new or 'extra' and do not impose any additional duty or obligations on employers. The provisions reflect current provisions and achieve the desired outcomes from the consolidation by:

- removing repetitive requirements across regulations, and
- providing clarity to duty holders and others about **how** current duties are to be performed.

We believe, however, that the only alternative to the proposed clause on consultation with HSRs in the general section would be to incorporate consultation in detail in each Chapter as these requirements are in the current regulations. This was strongly argued by the meat industry Health and Safety Representatives when we consulted with them. At the least we suggest that each of the hazard specific chapters could be cross-referenced with clause 2.1.5.

***The AMIEU strongly supports the inclusion of a provision that prescribes how to 'involve' HSRs in the consultation process*.** The inclusion of the proposed provision supports the historical role of HSRs and confirmed in the OHSA 2004 – viz the right of HSRs to be involved in consultation processes and carry out their role as representatives of designated work groups.

We believe that the provision is essential to ensure that HSRs are not impeded in their ability to adequately represent their designated working groups during consultation.

Since the introduction of the 2004 Act many HSRs have reported that their employers are using interpretations of the consultation duty to undermine their right to represent their DWG, and be consulted by the employer in a timely manner.

Specific concerns with the proposed Regulation:

While the AMIEU supports the inclusion of such a provision in the consolidated regs, we have some concerns with the current wording. We want the provision amended as follows:

- the provision should not be qualified by 'reasonably practicable', and
- the provision should include a requirement at (e) that HSRs have a reasonable opportunity to consult with their DWG

Our position is that with these amendments the regulations would better reflect the provisions of OHSA 2004.

Removal of reasonably practicable. The duties imposed by the regulations only arise in circumstances where an employer "is required under the Act to consult with employees…". An employer will only be "required" to consult where it is reasonably practicable. It is therefore unnecessary to repeat this in the regulation.[2]

2(e) to be amended to read "giving the health and safety representative a reasonable opportunity to express his or her views about the matter **including a reasonable opportunity to consult with their DWG".**

This requires no more than what is assumed by Part 7 of the OHSA 2004 and gives effect to s4(5) of the OHSA which provides the right for employees to be represented in relation to health and safety issues. This supports the purpose of regulation 'to explain how a duty is to be performed' [Section 58 (1)(c)][3]

In addition to our general comments on the removal of risk assessment and the need for greater consistency with the National Standard, the following are specific comments on the proposed regulations:

5. Plant Safety Chapter

Exclusion of manually powered and powered hand-held plant.

The new regulation continues to exclude manually powered and powered hand-held plant from the scope. The rationale for this decision is based on: the 1995 Regulatory Impact Statement (RIS) which concluded that there was little/no benefit to include this group as a whole and an expectation that the scope of the current National Standard may change.

Manually powered plant
In the meat industry a large proportion of the dangerous plant is either hand powered or hand held. 27% of the serious injuries in the meat industry are lacerations associated with knives. Hand knife accidents are common in the meat industry. We acknowledge that hand powered tools are in part

[2] This is supported by legal advice provided to the VTHC by Peter Rozen
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addressed by the manual handling chapter, however lacerations and amputations are not covered by manual handling regulation.

The majority of accidents involve cuts and stabs to the "non-knife" hand and forearm. Accidents to the body, in particular to the groin, thigh or abdomen region, are small in number but may have fatal consequences.

In 2004/5 lacerations in the meat industry cost WorkCover almost $700,000. This is not all of the costs as it does not include the costs of minor claims or the threshold payments (10 days wages and $506 medical and like expenses)

Powered hand-held plant
We note that the Regulatory Impact statement refers to "*plant primarily designed to be supported by hand*" and suggests that "*the costs of regulating would outweigh the benefits*".
As the benefit would be preventing serious lacerations, amputations and possible death we find it impossible to agree with the statement that the cost of regulating outweighs such benefits.

In the meat industry there are numerous forms of powered hand-held plant, which pose high risks because of their purpose. Some examples are:

Knocking gun, designed to knock the animal

This involves a bolt that goes into the animal brain. There have been injuries to abattoir workers who have been shot when the design and manufacture of the plant could have prevented these injuries. Some can repeatedly fire, others are single fire. [4]

Hock Cutter

Fingers, hands and arms can be amputated in 1.5 seconds with a hock-cutter, a machine with twin curved steel blades designed to chop through the animals' joints or bones. It is possible to apply guarding and some can be operated one handed, others two handed, but exclusion from the regulations means that these issues do not have to be addressed.

Other examples of powered hand-held plant include brisket saws, splitting saws, reciprocating saws, de-horners, de-hiders and circular breaking saws.

[4] See Western Australia Safety and Health Alert. Two meat workers shot by cattle stun guns.

The AMIEU does not accept that powered hand-held plant that are designed to cause brain damage or for dismemberment of animals should be excluded from the plant regulations.

It is essential to have regulations about design, manufacture, guarding, emergency stops and maintenance on such plant.

The AMIEU strongly opposes this blanket divergence from the National standard. The 1995 RIS is too old to be relied upon and had serious shortcomings at the time it was conducted. The provisions of the National standard should be implemented.

Independent verification of design
Clause 69 of the National Standard calls for an independent third party to prepare compliance statements testifying that the plant complies with the specifications for the design plant that were set out by the designer. Victoria's current Plant Regulations departs from the National Standard by calling for independence from the design process. This means that the design and its verification can be provided by the same organisation. ***The AMIEU does not support this deviation from the National Standard. The provisions of the National Standard should be implemented***.

Review of risk control
The AMIEU supports this proposal. However the risk control provisions need to be consistent across the regulations and all must include a specific requirement similar to the Manual Handling regulations that risk control provisions are reviewed when an incident or injury occurs. In our view this is an obvious indication that the risk control/s are not working and so they should be reviewed. This would also be consistent with section 159 of the Accident Compensation Act.

6. Issue resolution Regulations

The proposed Issue resolution regulations contain minor amendments, which the AMIEU supports, namely:

- Clarification of the intent of the procedure for resolving issues and measures to be taken while an issue is being resolved; and
- Provisions to ensure consistency with the OHS Act 2004
    - Including role for deputy HSR when the HSR is absent.

However, the amendment made to reg 2.2.3(3) which alters wording of the current provision from may take ‘all steps that are necessary’ to report an issue to may take all steps to 'report an issue if the steps are reasonable in the circumstances’ is not supported. No matter how serious the risk there are some employers in the meat industry who consider that a worker in a designated work group can only ‘reasonably’ speak to their Health and Safety Representative during lunch breaks.

What is reasonable at one workplace might be seen as unreasonable at another workplace. Employees need to know where they stand. ***In our view***

the current wording that an employee may take 'all the steps that are necessary' to report an issue has worked well for 21 years and should remain.

7. Asbestos Chapter

The AMIEU is extremely disappointed with the proposed provisions of the Asbestos chapter of the regulations, and alarmed at the possible consequences for not only our members but also the broader community.
The proposed regulations:

- fall well short of the objective of achieving more nationally uniform standards;
- fail to take proper account of the first principle of the OHSA 2004: that 'employees, other persons at work and members of the public be given the highest level of protection against risks to their health and safety';
- lack the clear objective of achieving workplaces free of asbestos containing materials;
- will provide a lower level of protection to workers than the current 2003 regulations; and
- will increase the risk of exposure to asbestos to workers and others.

Unlike most of the other chapters in the consolidated regulation dealing with existing regulations, the Asbestos Chapter is not simply a 'translation' of the current Asbestos regulations (introduced in 2003). Rather, it is an integration of the current regulations and a December 2003 Dangerous Goods Order.

When the current Regulation were introduced unions identified that they had a serious shortcoming in that they did not cover *dust and debris.* Consequently, a Dangerous Goods Order was made in December 2003, as an 'interim measure', to capture the removal of dust and debris.
The Order:
Allowed for the removal of asbestos contaminated dust by an unlicensed person where the dust is 'minor contamination'. Removal considered to be greater than 'minor contamination' is required to be removed by a Class A licensed removalist. 'Minor contamination' is not defined.
Permitted a Class B license holder to removed unfixed or uninstalled asbestos (including asbestos contaminated dust) that is derived from or associated with the removal of fixed or installed non friable asbestos containing material
The DG Order was an interim measure pending a review of the Regulations – delayed again pending review of the OHS Act.

The main issues of concern to the unions in the proposed chapter are due to what we consider was a error in the drafting of the Dangerous Goods Order, and a subsequent misinterpretation and misapplication of it, resulting in an increase of risk to both workers and members of the public (detail below).
The Dangerous Goods Order was only ever intended to be an interim measure to reflect what was industry practice.

The other issue of concern is that unlike several jurisdictions, the Victorian definition of 'friable' specifically EXCLUDES dust/powder.

Limited asbestos removal work without a licence (4.3.45)
The current (2003) regulations contain a provision for limited asbestos removal work without a license. This is a total of up to 10m² of non-friable asbestos material that is fixed to or installed in a building, structure, ship or plant at a workplace – for no more than one hour in any 7 day period. The proposed regulations allow for:

- the removal of a total of up to 10m² of non-friable asbestos material that is fixed to or installed in a building, structure, ship or plant at a workplace - for no more than a total of one hour in any 7 day period AND
- asbestos that is not fixed to or installed in a building, structure, ship or plant at a workplace (ie dust and debris), ***'if the asbestos does not constitute more than a minor contamination'***.

The problem is that, again, there is **no definition** of what constitutes 'minor contamination'. **In addition, the limitation that the removal activity must not exceed 1 hour in any period of 7 days, does not apply to the removal of dust and debris.**

We believe this potentially represents a huge increase in unlicensed removal activity, and a considerable departure from what is currently industry practice – ie that in general only Class A asbestos removalists remove dust.

Our concern is that there would be little/no control over whether workers being asked to undertake clean up of asbestos dust and/or debris had received proper training or that the requirements under this part are in fact in place. The result could be that not only these unlicensed workers but also other workers and members of the public would be exposed to toxic asbestos fibres.

The lack of a time limit will potentially lead to the situation where unlicensed workers (eg cleaners) could be cleaning up this material for long and repeated periods of time. These issues have already raised their ugly heads.

Of further concern is how hygienists are already interpreting what constitutes a 'minor contamination'. While WorkSafe has stated that it will develop a section 12 guideline on how it will interpret 'minor contamination', we do not have confidence in the contents/effectiveness of such a guideline.

Removal of asbestos contaminated dust by a Class B licensed asbestos removalist - the definition of 'Class B Licence' has been amended to allow for the removal of asbestos–contaminated dust originating from a removal of a non–friable ACM that was fixed or installed
Under the current (2003) regulations, Class B removalists, who are licensed to undertake removal of non-friable asbestos only, are able to clean up any dust/debris created by their removal of a non-friable asbestos job at the time of removal.
The DG Order permits Class B to remove uninstalled/unfixed asbestos 'which is associated with or derived from the removal of non-friable asbestos-containing material' – it is silent on when/how much. It is our position that this

provision was meant to reflect the current industry practice at the time – ie removal of any dust associated with or derived from that removal job. At no time was the DG Order intended to extend the Class B license to allow removal of any amount of asbestos dust/debris. This would have been a *change in policy.*

However, the proposed regulation in fact does this: *the definition of 'Class B Licence' has been amended to allow for the removal of asbestos–contaminated dust originating from a removal of a non–friable ACM that was fixed or installed*
The effect is that this will change what is current practice in the industry – that is that most asbestos contaminated dust is removed by Class A licence holders. Potentially it means that Class B licence holders will be able to undertake unlimited removal of asbestos contaminated dust – created at any time in the past. To attempt to differentiate the dust/debris as having been associated to either friable or non-friable asbestos is a nonsense. Once the material is in dust/debris form, it is not possible to differentiate where it came from, *unless it was created at the time it is being cleaned up.*

Definition of friable asbestos
The proposed regulations retain the current definition:
"Friable" means, when dry, may be crumbled, pulverised or reduced to powder by hand pressure, or as a result of a work process such that it may be crumbled, pulverised or reduced by hand pressure
Our position remains that the definition of 'friable' be amended as follows to ensure that dust, which is already in a powder form and therefore cannot be further 'reduced', should be classified as 'friable':
Friable asbestos material means any material that contains asbestos ***and is in the form of a powder*** *or can be crumbled, pulverised or reduced to powder by hand pressure when dry.*
(note that the NSW regulations apply to all asbestos containing material)
The union position is that amending the definition would bring the Victorian definition in line with the National, NSW and SA one by including the words. We do not accept the VWA position that while these definitions already include 'dust' the outcome would be no different to that in Victoria.

Definition of 'asbestos contaminated dust'
The Union position remains that any dust containing any more than 'trace elements' be considered 'asbestos contaminated dust' and therefore only be removed by Class A removalists (except under current industry practice whereby Class B can remove any dust/debris created immediately during the non-friable removal job currently completed).
While the definition has been removed, it is still referred to in the regs (4.3.54). Definition should be there under the definition for friable asbestos
Once again, it's our position that only non-friable asbestos removal be permitted by an unlicensed removalist – and that non-friable asbestos not include asbestos dust and debris.

Lack of an objective to achieve asbestos-free workplaces

Asbestos is in many workplaces and potentially poses a risk to hundreds of thousands of Victorian workers and their families, including patients in hospitals and children in schools and kindergartens. The unions feel very strongly that the regulations should contain an objective along the lines of that found in the National Code of Practice:
"The ultimate goal is for all workplaces to be free of ACM. Where practicable, consideration should be given to the removal of ACM during renovation, refurbishment, and maintenance, rather than the other control measures such as enclosure, encapsulation or sealing."

Concern regarding both the independence and competency of persons providing clearance certificates and carrying out audits
This issue was of concern to both unions and the employer representatives. WorkSafe has decided that these matters will be dealt with in a Compliance Code.

All removal, whether licensed or unlicensed, will be regulated under the Part that deals with removal of asbestos.
We support this change, as there have been issues in the past in that it has not been clear that these provisions apply to all removal work. However, in order to make absolutely clear that all clauses in this division apply to ALL removal work, including unlicensed removal work, we are requesting that an additional provision be added to 4.3.45 along the lines of: *'all provisions in this section apply to limited removal without a license.'*

There are a number of issues raised by VTHC that we will not repeat. However the AMIEU supports the submission by VTHC. They are:

- Refurbishment has been removed from the definition of 'demolition' to allow for demolition and refurbishment to be dealt with separately.
- Control of risk of exposure – person who manages or controls workplace
- Determination of employee's exposure (4.3.4)
- Overarching issues

There is a low level of compliance with the current regulatory requirements in the area of asbestos removal. For example we find:

- Many workplaces have not completed audits, or if they have been done they are not reviewed or made accessible to HSRs;
- HSRs regularly find asbestos removal jobs are being done either without a control plan, or by inappropriately licensed removalists (eg friable asbestos removal done by Class B removalists);
- Asbestos contaminated dust is left for cleaners to remove with a dustpan and brush;
- Asbestos containing material is often 'dumped' illegally – suggesting the removal was illegal;
- and more.

It is our belief that if the proposed regulations are implemented without amendment this will lead to further abuses, increased non-compliance and increased problems.

7. Noise Chapter

The lack of hazard identification and risk assessment confuses the current provisions for noise. The requirement to measure exposure levels by monitoring *when there is uncertainty as to whether the noise exposure standard has been exceeded and that uncertainty is based on reasonable grounds* (3.2.7). How can you decide that 85dB(A) has been exceeded without assessment?

In section 3.2.11 Audiometric tests does not include the requirement in the current regulation that 'An employer must pay for any audiometric test'. Whilst 2.1.3(3) does state that 'The medical examination or other health surveillance is to be undertaken at the employer's expense' we note that *'health surveillance means health monitoring, including medical examination and biological monitoring'* – it does not state that audiological examination and audiometric test is covered by the definition of health surveillance.

Similarly in 3.2.12 the issue of the employer having to pay for the audiological examination has not been translated from the current Noise regulations section 16(2)(b).

The AMIEU wants it to be clear that that the employer must pay for any audiological examination and any audiometric test.

Section 17(1)(a) of the current Noise regulations:
"If an employee is tested under regulation 15 or examined under regulation 16, the employer must –

> provide the employee with a copy of the test results or examination results";

has not been translated into regulation 13.2.14.

Again we do not think that it is clear that this is addressed in the general duties.

We acknowledge that an employer must provide a copy of any report resulting from 'medical examination or other health surveillance' to the employee concerned. However, there is no mention of audiological examination and any audiometric test having to be given to the worker. Again this is because the definition of health surveillance does not include audiological examination or audiometric test results.

The AMIEU wants it to be clear that that the employee must be given a copy of any audiological examination and any audiometric test performed on him/herself.

8. Hazardous Substances Chapter

We note that the part on hazardous substances is largely translated from the current regulations (1999). Whilst they were based on the *National Model*

Regulations for the Control of Hazardous Substances 1995 there were some important deviations. There were a number of significant shortcomings created by these deviations. Despite the aim to achieve consistency with other jurisdictions the proposed regulations on hazardous substance still fall short of this in a number of areas.

One of the areas where the new Regulations address a serious shortcoming of the previous Regulations is the inclusion of hazardous substances created from non-hazardous substances. This is a requirement of the National Standard. As methane and hydrogen sulphide can be created by substances in some of our workplaces that are not classified as hazardous substances ***the AMIEU strongly supports this change***. However the new Regulations maintain a number of Victorian inconsistencies, which must be addressed.

Scope of the employer's duty

As currently drafted in regulation 4.1.14, the scope of an employer's duty is for hazardous substances supplied to the workplace and hazardous substances listed in the HSIS generated at the workplace from non-hazardous substances. Regulation 4.1.14 (4)(a) extends coverage of the 'risk associated with the use of hazardous substances' to cover hazardous substances which are manufactured or produced from other hazardous substances, but the wording of the scope is confusing. In our view the wording of the proposed regulation is tortuous and not does provide necessary clarity. The provision should be re-worded by either

- transferring the note at 4.1.14(a) as a separate dot point at 4.1.14 (1) to make it clear exactly what the employer has to do, or
- more preferably to use a similar form of words as those in the RIS (final para, page 93)
    - 'Whether a hazardous substances is supplied to the workplace, generated in the workplace from another hazardous substance or generated from a non-hazardous substance, an employer will be required to control risks to workers' health arising from that substance'

Labelling of decanted hazardous substances

Regulation 4.1.19 (3)(a) requires the label for a container into which a hazardous substance is decanted to be labelled (only) with the product name. The National Standard and the regulations of most other jurisdictions require containers into which hazardous substances are decanted to be labelled with the product name and risk and safety phrases. ***The AMIEU believes that the Victorian regulations must come in line with the National Standard on this***.

The label for a hazardous substance container has several functions; to uniquely identify the contents, give a warning that the contents have a hazard and provide basic precautions for safe use.

A label on a decanted hazardous substance with only a product name provides no indication of any hazard associated with its contents. It does not

differentiate between hazardous and non-hazardous substances. The user must know or remember that it is hazardous. ***This is unacceptable***.

In addition to the National Standard, the Victorian Dangerous Goods (Storage and Handling) Regulations 2000 should be used as a guide – this requires class and subsidiary risk labels in addition to the product name as a means of alerting that there is a hazard.

Jurisdictions other than Victoria have adopted the National Standard requirement. It is now appropriate for Victoria to meet this minimum standard.

Register of hazardous substance
Regulation 4.1.23 requires an employer to keep a register of 'all hazardous substances supplied to the employer's workplace'. This is in contrast to the National Standard, which requires a register to be kept for 'all hazardous substances used or produced at the workplace'. Australian jurisdictions, other than Victoria, have adopted the approach of the National Standard – the register is therefore a list of substances that could cause harm to workers irrespective of how they arrived at the workplace.

In our view the consolidated Regulations should require the register to include those substances supplied to and manufactured in the workplace.

Provision of 'other information'
The hazardous substances part does not include a requirement for a manufacturer/supplier to provide additional information on hazardous substances on request. This provision is included in the National Standard and has been adopted by other jurisdictions.

The drafting brief asserts that 'the MSDS/label contains all relevant information. The assertion is demonstrably not correct on a number of accounts. The label is only required to contain specific elements. In the case of MSDS, work by VWA has demonstrated that MSDS are most commonly generic and do not contain information sufficient, or sufficiently specific, for employers to implement appropriate controls. Manufacturers and suppliers have, or have ready access to, specific technical information which can assist employers to implement controls. Other jurisdictions have adopted the NMR provisions and ***a failure by Victoria to follow this approach will continue the situation of inadequate information being provided***.

Atmospheric monitoring and biological monitoring
Regulation 4.1.27 (2) states that an employer is not required to comply with sub-regulation (1) [i.e. to undertake atmospheric monitoring] in relation to a hazardous substance if health surveillance is required under regulation 4.1.30 and the health surveillance includes biological monitoring.

The Victorian approach equates biological monitoring with atmospheric monitoring. This provision is peculiar to Victoria, being part of the Victorian OH&S (Hazardous Substances) Regulations 1999. It is not found in the

National Standard or any other jurisdiction. ***We also consider that it is nonsense. It must be removed from the new regulations***.

Limitations of the RIS

We agree with VTHC when they note that the RIS does not address the cost of Victoria retaining their current deviations from the National Standard. In our view a separate system from the National Standard and the national and international 'rules' for hazardous substances would far outweigh any 'costs' in adopting the National Standard.