



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**

# Submission to- Work Health and Safety Regulations for Western Australia

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# WHS Regulations submission coversheet

## Section 1: Submission details

Full name	Pamela Gunn	
Organisation and position (if applicable)		
Email	[REDACTED]	
Telephone		
Employment status (if applicable)	<input type="checkbox"/> Worker <input type="checkbox"/> Employer <input type="checkbox"/> Self-employed  <input type="checkbox"/> Other (enter details)	<input type="checkbox"/> Principal contractor <input type="checkbox"/> Contractor X OSH professional
Size of workplace	<input type="checkbox"/> Small (0-9)	<input type="checkbox"/> Medium (20-199) <input type="checkbox"/> Large (200+)
Please indicate in what capacity you are making this submission (select one of the following categories)	<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Community organisation <input type="checkbox"/> Employer organisation  <input type="checkbox"/> Other (enter details)	<input type="checkbox"/> Industry representative <input type="checkbox"/> Academic <input type="checkbox"/> Government representative X Professional
Which industry sector do you operate in?	I operated in Consultancy and Government Regulation	
Your type of job or business (if applicable)	I am a recently retired Occupational Noise Control Specialist with over 40 years' experience in regulation, Standards development and education in this area. I was made a Fellow of the Australian Acoustical Society in recognition of my expertise in this area.	

## Section 1: Permission details

### Internet publication

Public submissions may be published in full on the website, including any personal information of authors and/or other third parties **contained in the submission**.

Please tick this box if you wish for your input to remain confidential (that is, you **do not consent** to having your input published on the internet)

### Anonymity

Please tick this box if you wish for your input to be treated as anonymous (that is, you **do not consent** to having your name, or the name of your organisation, published on the internet with your input)

### Third party personal information

Please tick this box **if your input contains personal information of third party individuals**, and strike out the statement that is not applicable in the following sentence:

The third party **consents / does not consent** to the publication of their information.

## WHS Regulations submission comments

Enter your comments on specific regulations in the table below. You may add new rows at the end of the table if you wish to include comments on other aspects of the national model WHS regulations.

When making your submission, please consider providing specific responses to the following issue:

1. What is the benefit to workplace participants of a proposal?
2. What is the likely cost for you, your business and the Regulator to implement a specific proposal?
3. Is a specific recommendation likely to be effective in achieving healthier and safer workplaces?
4. Are there any unintended consequences of adopting individual regulations in the model WHS regulations?
5. If a new requirement is proposed by the model WHS regulations, what are the costs and benefits?

This template can be used for providing your views concerning:

- National Model Work Health and Safety Regulations
- Demolition licensing under the OSH regulations
- Commercial driver fatigue under the OSH regulations
- Protection from tobacco smoke under the OSH regulations
- Proposed deletions in Western Australia to remove overlap with the *Dangerous Goods Safety Act 2004*

### Section 2: Feedback

#### Track-changed document submission

Which consultation document(s) are you providing feedback on?	<input checked="" type="checkbox"/> Differences between the national model WHS regulations and the OSH regulations 1996 <input type="checkbox"/> Consultation document WHS (Mines) Regulations for WA <input type="checkbox"/> Consultation document WHS (Petroleum and Geothermal Energy Operations) Regulations for WA <input type="checkbox"/> <i>Proposed deletions in WA to remove overlap with the Dangerous Goods Safety Act 2004</i> <input type="checkbox"/> Commercial vehicle drivers: Hours of work – Work Health and Safety Regulations for WA <input type="checkbox"/> Protection from tobacco smoke – Work Health and Safety Regulations for WA <input type="checkbox"/> Demolition work: Licence – Work Health and Safety Regulations for WA
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Number of pages in  
your submission

Does this submission contain a **track-changed version** of the  
draft proposal?

Yes

No

*If yes, submit as a Microsoft Word compatible document (\*.docx)*

### General comments

I am only submitting comments on the regulations relating to noise.

## Detailed comments

If commenting on specific content, you may wish to use the table below.

Reference to specific model WHS / OSH reg no.	Comment
WHS reg no. 56 to 59	<p>Proposed changes to these regulations are highlighted in red in the text below. This is then followed by a rationale statement.</p> <p><b>56 Meaning of <i>exposure standard for noise</i> in relation to noise-induced hearing loss</b></p> <p>(1) In these Regulations, <b><i>exposure standard for noise</i></b>, in relation to a person, means:</p> <p>(a) <math>L_{Aeq,8h}</math> of 85 dB(A); or</p> <p>(b) <math>L_{C,peak}</math> of 140 dB(C)</p> <p><b>determined without taking into account any protection that may be provided to the person by the use of personal hearing protectors.</b></p> <p>(2) In this regulation:</p> <p><b><math>L_{Aeq,8h}</math></b> means the eight-hour equivalent continuous A-weighted sound pressure level in decibels (dB(A)) referenced to 20 micropascals, determined in accordance with AS/NZS 1269.1:2005 (Occupational noise management—Measurement and assessment of noise immission and exposure).</p> <p><b><math>L_{C,peak}</math></b> means the C-weighted peak sound pressure level in decibels (dB(C)) referenced to 20 micropascals, determined in accordance with AS/NZS 1269.1:2005 (Occupational noise management—Measurement and assessment of noise immission and exposure).</p> <p><b><i>personal hearing protectors</i></b> means a device, or pair of devices, worn by a person or inserted in the ears of a person to protect the person's hearing.</p> <p><b>57 Managing risks to health and safety of hearing loss from noise</b></p> <p>(1) A person conducting a business or undertaking at a workplace must manage, in accordance with Part 3.1, risks to health and safety <del>relating to hearing loss</del> associated with noise.</p> <p><b>Note</b> WHS Act—section 19 (see regulation 9).</p> <p>(2) <b>Without limiting sub-regulation (1), to minimise hearing loss due to noise, a person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that no person at the workplace is exposed to noise that exceeds the exposure standard for noise. <del>the noise that a worker is exposed to at the workplace does not exceed the exposure standard for</del></b></p>

noise-

(3) If complying with sub-regulation (2) does not reduce noise to which a person is exposed so that it does not exceed the exposure standard for noise, the person conducting a business or undertaking must -

- (a) ensure the person is provided with suitable personal hearing protectors; and
- (b) if the person is a worker, ensure the personal hearing protectors are correctly used; and
- (c) if the person is not a worker, ensure so far as is reasonably practicable that the personal hearing protectors are correctly used; and
- (d) if the person is a worker, arrange for the worker's hearing to be monitored regularly by a competent person and take appropriate follow-up action when hearing decrements are found.

Delete Reg 58.

## **Rationale for proposed changes to Part 4.1 Noise**

### **1. Clarity on risk management for all health and safety effects of noise (Regs 56 and 57)**

It needs to be made clear that the exposure standard for noise is only in relation to preventing hearing loss and not to other harmful effects of noise, some of which can take place at lower noise levels (See National Model *Code of Practice for Managing noise and preventing hearing loss at work*.) I have had many conversations and queries over the years that indicate that many people (including managers, OSH professionals and workers) do not understand that noise can be a risk to health and safety below the exposure standard and that the Act and Part 3.1 of the model regulations require that these risks be actively managed.

This clarity can be achieved by adding "in relation to noise-induced hearing loss" to the title of regulation 56; by replacing "of hearing loss" with "to health and safety" in the title of regulation 57; and deleting "relating to hearing loss" in regulation 57(1).

### **2. Adding "so far as reasonably practicable" and definition of "exposure to noise" (Regs 57(2) and 56)**

Making the duty in 57(2) absolute is unworkable. Unfortunately we have not yet advanced technologically to a situation where all workplace noise can be controlled so that no workers are above the exposure standard. (e.g. metal working factories, firearms use). This needs to be reflected in the way regulation 57 is written by including "so far as is reasonably practicable" in sub-regulation 57(2) and adding a new sub-regulation (3) about the provision of personal hearing protectors and hearing monitoring to cover situations where it has not been practicable to achieve the exposure standard. If this is not done there would be many applications for exemptions from this regulation for the Department to deal with.



It appears that the drafters of the model regulations were of the **erroneous** view that a person's "exposure to noise" can be considered to be reduced so that it does not exceed the exposure standard for noise by the use of personal hearing protectors. However, this is inconsistent with the definitions for  $L_{Aeq,8h}$  and  $L_{C,peak}$  given in regulation 56(2) and AS/NZS 1269.1 The latter clearly states that "Exposure to noise is determined at the person's ear position without taking into account any protection that may be afforded by personal hearing protectors".

Although there are methods for estimating the level of noise under the protector ("effective level" given in AS/NZS 1269.3) these are only valid at a statistical level – i.e. it is not possible from these methods to say what exposure to noise an individual wearing hearing protectors will actually receive. There is the added problem that achieving the calculated level is dependent on the person wearing the protector absolutely all the time they are in the noise (which in many work situations is an unrealistic expectation.). Due to the logarithmic nature of noise levels, even very short periods of not wearing the protector in high noise levels can mean that the worker is still over-exposed. This is a point of differentiation between noise and chemical exposure situations and has probably led to occupational hygienists having more confidence about the ability of respirators to reduce workers' chemical exposures than noise control specialists have about the efficacy of personal hearing protectors.

In addition, there are several important actions, described in the Code, that we need PCBUs to take when the exposure standard for noise is likely to be exceeded – assessments, information and training, hearing assessments and an ongoing review of what is practicable in engineering control. If the PCBU is able to claim that the exposure standard can be achieved by wearing personal hearing protectors, then none of these actions would be enforceable if hearing protectors were being used. It would also lead to a very confused situation with regard to forming a data base of noise exposure level information for Australia as some results would be with and some without taking hearing protectors into account.

### **3. Person instead of Worker (Reg 57(2))**

In looking at consistency across regulations, it is noted that the airborne contaminants and hazardous chemicals regulations apply to "persons" whereas the noise regulations only refer to "workers". The present WA noise regulations are written in terms of "persons" and it would also be mirroring the duties in the Model Act that PCBUs have to people at the workplace who are not their workers if "worker" is changed to "person" in reg 57(2).

### **4. Personal hearing protectors (Proposed sub-reg 57(3a))**

It is advised that "suitable" is used in the regulations, rather than reference to Australian Standards (as in the present OSH regulations) The detail of what is regarded as "suitable" personal

hearing protectors can be included in the Approved Code of Practice. This will allow the use of more up-to-date and evolving equipment and methods.

**5. Monitoring of hearing** (Proposed sub-reg 57(3)(d) to replace reg 58)

It is recommended that the term “hearing monitoring” is used instead of “audiometric testing”. This is because another type of monitoring test, “evoked otoacoustic emission testing (EOAE)” may soon be standardised for use in workplaces. (See clause 10 of AS/NZS 1269.4:2014) and any regulation should allow for both types of testing. EOAE testing has several advantages including being quicker, objective and needing less stringent ambient noise levels, all of which should make the tests less costly.

**6. Deletion of reg 58**

With the addition of proposed sub-reg 57(3)(d), reg 58 is no longer needed. This regulation was not well-written. People have had concerns about what “frequently required” means and also pointed out that if a PCBU did not bother to require the use of PPE (even when it was needed) then they would not be legally required to provide audiometric testing either. Also it requires a specific hearing monitoring method, namely “audiometric testing” to be used which is restrictive (see above).

**7.Reg 59 Duties of designers etc.**

I agree with the inclusion of this regulation. It does not just replicate the duties in the Act. It states that “adequate information” about testing that has to be given to relevant people must include using a particular metric, the “noise emission value”; the operating conditions of the plant when noise emission is measured; and the method used to measure the noise emission. All these are important to be clarified so that people in the workplace can confidently compare the noise output of different makes of plant as part of their Buy Quiet program. Duty holders will more readily realize their responsibilities if these are clearly stated in a regulation.

**8. Referencing of Australian Standards in WHS regulations**

I see that this issue has been raised again in the National review. The regulations need to reference AS/NZS 1269.1 in the technical definitions of  $L_{Aeq,8h}$  and  $L_{C,peak}$  due to there being other ways of measuring and calculating noise exposure used in other countries (in particular the USA) that are not so protective of hearing.

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