



Advocate for the Consumer, Cosmetic,
Hygiene and Specialty Products Industry

Mr Robin Stewart-Crompton
Chair
National OHS Review
c/- National OHS Review Secretariat
Department of Education, Employment and Workplace Relations
64N1 GPO Box 9880
CANBERRA ACT 2600

Email: publicsubmissions@nationalohsreview.gov.au

Dear Robin

ACCORD is pleased to provide the following comments in relation to the National OHS Review. ACCORD welcomes the signing of the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety by COAG. This marks a significant step forward towards the ultimate goal of a national OHS system which is fully integrated into a seamless national economy.

I apologise for the lateness of the ACCORD submission.

ACCORD Australasia is the peak national industry association representing the manufacturers and marketers of formulated consumer, cosmetic, hygiene and specialty products, their raw material suppliers, and service providers. ACCORD members market fast-moving consumer and commercial goods primarily in Australia and New Zealand.

Our industry's products play a vital role in:

- keeping our households, workplaces, schools and institutions clean, hygienic and comfortable;
- personal hygiene, grooming and beauty treatments to help us look and feel our best;
- specialised uses that assist production and manufacturing to keep the wheels of commerce and industry turning; and
- maintaining the hygienic and sanitary conditions essential for our food and hospitality industries and our hospitals, medical institutions and public places.

These benefits are essential to safe, healthy living and maintaining the quality lifestyle we all too often take for granted.

With an estimated annual retail product sales in the vicinity of \$10 billion, the formulated consumer, cosmetic, hygiene and specialty products industry is a significant part of a prosperous Australian economy. We are a dynamic and growing industry, employing Australians and - through our industrial and institutional sector - supplying products essential for Australian

businesses, manufacturing firms, government enterprises, public institutions, farmers and consumers.

Our industry has more than 50 manufacturing operations throughout Australia and member companies include large global consumer product manufacturers as well as small dynamic Australian-owned businesses. A current list of ACCORD member companies is provided at *Attachment 1*.

ACCORD has a specific and direct interest in the national OHS Review. ACCORD members have identified the burden attributable to overly complex and inconsistent OHS legislation applied by nine jurisdictions as a significant feature of the already complex nature of regulations which affect the chemicals and plastics industry.

The products manufactured and marketed by the Australian formulated products industry are – for the most part – downstream products of the chemical raw materials industry. Our industry's products, and the ingredients which comprise them, are subject to significant and specific regulatory regimes and requirements within Australia.

The primary thrust of chemicals regulation is the protection of public health and the environment. ACCORD supports these important objectives. We endorse the need for efficient regulation that is set at the minimum effective level of intervention necessary to manage risks while at the same time promoting innovation and business activity.

COAG has targeted chemicals and plastic regulation as a regulatory hotspot for which a Productivity Commission research study has commenced and a special ministerial taskforce established.

While ACCORD remains hopeful that these national initiatives will restart stalled reforms to simplify chemicals regulation and eliminate inconsistencies across Australia's jurisdictions, companies operating in our sector are also subject to the 'standard' regulatory burdens which currently impact on all Australian-based business operations. It is essential in any reform process that elements of the reform agenda do not end up competing with each resulting in little overall progress being made. The burden of OHS regulation is a critical element of the overall burden faced by our sector. Any reform to the OHS regime must complement the suite of reforms currently under consideration by COAG.

Case study - OHS requirements, NSW vs Victoria Requirements

Of the multitude of regulation that impacts on manufacturers, perhaps the most significant, in terms of its fundamental impacts on operations, is OHS regulation.

Protection of Australian workers from occupational hazards is a number one priority for all responsible businesses. To best achieve this businesses need clear, consistent guidance in the form of sensible, risk-based OHS regulation.

Despite ongoing recognition of the need for national uniformity in this important area, manufacturers still encounter significant differences in state-based approaches. This not only imposes an additional compliance burden on businesses, especially those operating sites in a number of states, but presents a barrier to clear understanding of requirements, thereby running counter to the overarching policy goal of strengthening compliance to make Australian workplaces safer.

Differences in the currently in-force regulatory instruments for NSW and Victoria provide an example of this:

- Victorian *Occupational Health and Safety Regulations 2007*
- NSW *Occupational Health and Safety Regulation 2001*

Attachment 2 provides a comparison of the content of each of these regulations

Even at the potentially superficial level of information presentation, there are major differences in these two regulations that make it very difficult for businesses to even cross-check that the requirements for their plant or operations in NSW would be the same as in Victoria.

Looking further into these two regulations and choosing an example that should not in any way be subject to geographical region variability, namely the important issue of managing manually handling hazards, risks and incidents; there are differences in approaches and requirements that would cause confusion for businesses trying to interpret these requirements and develop a management regime that they could apply uniformly across their operations. The two sets of regulation on manual handling are presented in Attachment 3.

Manual handling occurs in virtually all Australian manufacturing businesses. If this level of difference is extrapolated across all Australian jurisdictions (and also occurring for other OHS aspects) then clearly manufacturers operating in a number of state locations are facing a compliance burden that needs to be addressed.

In the main, ACCORD supports the detailed submission provided by the Australian Chamber of Commerce and Industry (ACCI) which addresses the key issues of the National OHS Review regarding particulars in relation to the elements of the model legislative OHS framework. As a member of ACCI, ACCORD contributed to the development of this submission.

The point of difference between our two association positions is that ACCORD supports a national OHS system administered by the Commonwealth Government. As history has shown, despite best efforts, model and template approaches have failed to deliver. This is evidenced by the increasing number of areas for which the Commonwealth is taking control that were previously subject to inter-jurisdictional agreement for harmonisation and/or cooperative efforts. Areas such as trade measurement, product safety, consumer policy and financial services including national controls for the management of consumer credit are all coming under the control of the Commonwealth Government.

The Productivity Commission (PC) in its draft research report on chemicals and plastics regulation made a number of observations and recommendation regarding the future arrangements for OHS management in Australia. It worth repeating the key recommendation and ACCORD's response to that recommendation:

PC Draft Recommendation 6.4

In light of the agreement by the Workplace Relations Ministers' Council (the Council) to replace the Australian Safety and Compensation Council with a new and independent national body, the Commission recommends:

- *the new body be statutorily independent and made up of five to nine members appointed by the Commonwealth Minister on the basis of their qualifications and experience, and be constituted to reflect the broader public interest, rather than represent the interests of particular stakeholders*
- *the appointments by the Commonwealth Minister be approved by the Council*
- *the new body have the ability to appoint advisory bodies, noting the importance of consulting with employers, unions and all jurisdictions*
- *the Council be required to formally approve national standards and codes of practice prepared by the independent national body*

- *agreement by all jurisdictions to adopt, without variation, the standards and codes approved by the Council.*

ACCORD supports Draft Recommendation 6.4

Further ACCORD notes that the Government has initiated a review of OHS legislation with a view to achieving harmonisation within the next five years.

ACCORD supports the introduction of a national OHS system over a harmonised system as experience has shown model or template legislation does not achieved the desired outcome of adopting national consistency in a timely manner. However the work of the review team to develop a national model OHS regulatory system will be of enormous benefit in moving towards a national OHS system in the longer term.

While it is outside the terms of reference for the National OHS Review Committee, ACCORD believes there is value in the Committee giving consideration as to how jurisdictions may be made liable for failure to adhere to the inter-governmental agreement regarding implementation of the model legislation. Should there be incentives of punitive measures to achieve compliance? ACCORD would value the Committee's views on this matter.

Please do not hesitate to contact me should you require further elaboration on the points raised in this submission.

Yours sincerely

A handwritten signature in black ink that reads "Dusanka Sabic". The signature is written in a cursive, slightly slanted style.

Dusanka Sabic
Director, Regulatory Reform

17 July 2008

Members

Consumer, Cosmetic and Personal Care:

Advanced Skin Technology Pty Ltd
Alberto Culver Australia
Amway of Australia Pty Ltd
Apisant Pty Ltd
Aroma Science
AVON Products Pty Limited
Baylor Limited
Beiersdorf Australia Ltd
Chanel Australia
Clorox Australia Pty Ltd
Colgate-Palmolive Pty Ltd
Combe International Ltd
Cosmax Prestige Brands Australia Pty Ltd
Coty Australia Pty Limited
Creative Brands Pty Ltd
De Lorenzo Hair & Cosmetic Research Pty Ltd
Dermalogica Pty Ltd
Elizabeth Arden Australia
Emeis Cosmetics Pty Ltd
Estée Lauder Australia
Frostbland Pty Ltd
GlaxoSmithKline Consumer Healthcare
Helios Health & Beauty Pty Ltd
Incolabs Pty Ltd
Johnson & Johnson Pacific
Kao (Australia) Marketing Pty Ltd
Keune Australia
KPSS Australia Pty Ltd
Kimberly Clark Australia
La Biosthetique Australia
La Prairie Group
L'Oreal Australia Pty Ltd
LVMH Perfumes and Cosmetics
Mary Kay Australia Pty Ltd
Nutrimetics Australia
NYX Pty Ltd
Procter & Gamble Australia Pty Ltd
PZ Cussons Australia Pty Ltd
Reckitt Benckiser
Revlon Australia
Scental Pacific Pty Ltd
Schwarzkopf
Shiseido (Australia) Pty Ltd
Thalgo Australia
The Heat Group Pty Ltd
The Purist Company Pty Ltd
Three Six Five Pty Ltd
Tigi Australia Pty Ltd
Trimex Pty Ltd
Ultraceuticals
Unilever Australasia
YSL Beaute

Hygiene and Specialty Products

Albright & Wilson (Aust) Ltd
Applied Australia Pty Ltd
BP Castrol Australia Pty Ltd
Callington Haven Pty Ltd
Campbell Brothers Limited
Castle Chemicals Pty Ltd
Chemetall (Australasia) Pty Ltd
Chemform
Ciba (Australia) Pty Limited
Clariant (Australia) Pty Ltd
Cleveland Chemical Co Pty Ltd
Deb Australia Pty Ltd
Dominant (Australia) Pty Ltd
Ecolab Pty Limited
Henkel Australia Pty Limited
Huntsman Corporation Australia Pty Ltd
Jalco Group Pty Limited
Lab 6 Pty Ltd
Milestone Chemicals Pty Ltd
Novozymes Australia Pty Ltd
Nowra Chemical Manufacturers Pty Ltd
Peerless JAL Pty Ltd
Recochem Inc
Rohm and Haas Australia Pty Ltd
Solvay Interlox Pty Ltd
Sonitron Australasia Pty Ltd
Sopura Australia Pty Ltd
Tasman Chemicals Pty Ltd
Thor Specialties Pty Limited
True Blue Chemicals Pty Ltd
Whiteley Corporation Pty Ltd

Associate Members

Specialist Laboratories and Testing

ams Laboratories

Dermatest Pty Ltd

Equipment and Packaging Suppliers

EquipNet Inc.

HydroNova Australia NZ Pty Ltd

SCHÜTZ DSL (Australia) Pty Ltd

Logistics

Star Track Express Pty Ltd

Legal and Business Management

FCB Lawyers

Middletons Lawyers

PricewaterhouseCoopers

TressCox Lawyers

Recruitment

Chemskill

Regulatory and Technical Consultants

Archer Emery & Associates

Cintox Australia Pty Ltd

Competitive Advantage

Engel Hellyer & Partners Pty Ltd

Robert Forbes & Associates

Sue Akeroyd & Associates

Toxikos Pty Ltd

May 2008

<p>NSW Regulation – Occupational Health and Safety Regulation 2001 (last update 2 November 2007)</p> <p>Regulation Contents</p> <p><u>Related information</u></p> <p><u>Chapter 1 Preliminary</u></p> <p><u>1 Name of Regulation</u></p> <p><u>2 Commencement</u></p> <p><u>3 Definitions</u></p> <p><u>4 Application of Regulation</u></p> <p><u>5 Meaning of "control" of risks</u></p> <p><u>6 Application of provisions providing for alternative duties if primary duty not reasonably practicable</u></p> <p><u>7 Application of provisions of Part 2 of the Act (relating to general duties of certain persons) to persons having duties under this Regulation</u></p> <p><u>8 Responsibilities held by more than one responsible person</u></p> <p><u>Chapter 2 Places of work—risk management and other matters</u></p> <p><u>Note</u></p> <p><u>9 Employer to identify hazards</u></p> <p><u>10 Employer to assess risks</u></p> <p><u>11 Employer to eliminate or control risks</u></p> <p><u>12 Employer to review risk assessments and control measures</u></p> <p><u>13 Employer to provide instruction, training and information</u></p> <p><u>14 Employer to provide supervision</u></p> <p><u>15 Provision by an employer of personal protective equipment</u></p> <p><u>16 Employer to obtain information</u></p> <p><u>17 Employer to provide for emergencies</u></p> <p><u>18 Employer to provide amenities</u></p> <p><u>19 Maintenance of amenities and accommodation</u></p> <p><u>20 Employer to provide first aid facilities and personnel</u></p> <p><u>Chapter 3 Workplace consultation</u></p> <p><u>Note</u></p> <p><u>21 Definitions</u></p> <p><u>22 Setting up consultation arrangements (section 15 (f) of the Act)</u></p> <p><u>23 Workgroups represented by OHS committees or OHS representatives</u></p> <p><u>24 Minimum requirements for OHS committees</u></p>	<p>Vic Regulation – Occupational Health and Safety Regulations 2007</p> <p>Regulation Contents</p> <p>CHAPTER 1—PRELIMINARY</p> <p>Part 1.1—Introductory Matters</p> <p>1.1.1 Objectives</p> <p>1.1.2 Authorising provisions</p> <p>1.1.3 Commencement</p> <p>1.1.4 Revocation of existing Regulations</p> <p>1.1.5 Definitions</p> <p>1.1.6 Determinations of Authority</p> <p>1.1.7 Act compliance notes</p> <p>1.1.8 Independent contractors</p> <p>1.1.9 Health and safety representatives</p> <p>1.1.10 Designers, manufacturers and suppliers</p> <p>1.1.11 References to Parts</p> <p>PART 1.2—INCORPORATED DOCUMENTS</p> <p>1.2.1 Documents incorporated as in force from time to time</p> <p>1.2.2 Publication date of amendments to certain incorporated documents</p> <p>1.2.3 Date of effect of amendments to incorporated documents</p> <p>1.2.4 Inconsistencies between provisions</p> <p>CHAPTER 2—GENERAL DUTIES AND ISSUE RESOLUTION</p> <p>PART 2.1—GENERAL DUTIES</p> <p>2.1.1 Proper installation, use and maintenance of risk control measures</p> <p>2.1.2 Provision of information, instruction and training</p> <p>2.1.3 Medical examinations and health surveillance</p> <p>2.1.4 Reports of health surveillance to be confidential</p> <p>2.1.5 How to involve health and safety representatives in consultation</p> <p>PART 2.2—ISSUE RESOLUTION PROCEDURES</p> <p>2.2.1 Application of Part</p> <p>2.2.2 Parties to the resolution of issues</p> <p>2.2.3 Procedure for reporting issues</p> <p>2.2.4 Procedure for resolving issues</p> <p>CHAPTER 3—PHYSICAL HAZARDS</p> <p>PART 3.1—MANUAL HANDLING</p> <p>3.1.1 Hazard identification</p> <p>3.1.2 Control of risk</p> <p>3.1.3 Review of risk control measures</p> <p>PART 3.2—NOISE</p> <p>Division 1—Duties of designers, manufacturers and suppliers of plant</p> <p>3.2.1 Designers</p> <p>3.2.2 Manufacturers</p> <p>3.2.3 Suppliers</p> <p>Division 2—Duties of employers</p>
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	9.1.3 Injury or property damage to be reported	Erro
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332 Demolition work or friable asbestos removal work not to be done without a permit	GOODS (STORAGE AND HANDLING) REGULATIONS 2000	ERROR! BO
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334 Determination of applications	9.2.4 Major hazard facilities to be licensed	Err
335 Term of permits	SCHEDULES	ERROR! BO
336 Amendment of conditions of permits	SCHEDULE 1—Revocation of Regulations	E
337 Permits to be displayed	SCHEDULE 2—Plant	E
338 Suspension and cancellation of permits	Plant Designs and Items of Plant to be Registered	E
339 Cancelled permits to be returned to WorkCover	PART 1—PLANT REQUIRING REGISTRATION OF DESIGN	ERROR! BO
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341A How notice of incidents is to be given	2 Basic scaffolding licence	Err
342 Variation of obligations under section 86 of the Act—employers to notify WorkCover of incidents	3 Intermediate scaffolding licence	Err
343 Retention of records of notice acknowledgement	4 Advanced scaffolding licence	Err
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344 Non-disturbance of places and plant involved in serious incidents—additional serious incidents	6 Basic rigging licence	Err
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345 Proposed work in respect of which notice to WorkCover is required	8 Advanced rigging licence	Err
346 WorkCover to be notified of any reviews of risk assessments	PART 2—LICENCE CLASSES FOR CRANE, HOIST AND FORK LIFT TRUCK OPERATION	ERROR! BO
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347 Exemptions for particular persons on application	10 Tower crane operation licence	Err
348 Exemptions for classes of persons or things	11 Self-erecting tower crane operation licence	Err
349 Register of exemptions	12 Derrick crane operation licence	Err
350 Phasing out of former exemptions	13 Portal boom crane operation licence	Err
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352 Definitions	17 Slewing mobile crane operation licence (up to 20 tonnes)	Err
353 Penalty notice offences and penalties	18 Slewing mobile crane operation licence (up to 60 tonnes)	Err
354 Authorised officers	19 Slewing mobile crane operation licence (up to 100 tonnes)	Err
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	21 Boom-type elevating work platform operation licence	Err
	22 Materials hoist (cantilever platform) operation licence	Err
	23 Hoist (personnel and materials) operation licence	Err
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	28 Definitions	Err
	29 Basic boiler operation licence	Err
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<u>Part 12.7 Other miscellaneous provisions</u>	31	Advanced boiler operation licence	Erro
<u>356 False or misleading information in applications</u>	32	Turbine operation licence	Erro
<u>357 Additional officers authorised to consent to the institution of proceedings for offences</u>	33	Reciprocating steam engine operation licence	Erro
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<u>361 Transitional application of sentencing guideline provisions</u>		SCHEDULE 5—Hazardous Substances	E
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<u>Schedule 7 Information to be contained in a manifest</u>		Materials at Major Hazard Facilities (and their Threshold Quantity)	E
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	2	Relevant materials	Erro
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	6	Unauthorised persons and control of access	Err
	7	Safety and reliability of plant	Err
	8	Major incident history	Err
		SCHEDULE 13—Entry Permit Statement	E
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		ENDNOTES	ERROR! BO
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	2.	Table of Amendments	Err
	3.	Explanatory Details	Err

NSW manual handling regs:-

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Part 4.4 Manual handling

Note. Employer, for the purposes of this Part, includes self-employed persons (see clause 3).

79 Definition

In this Part:

manual handling means any activity requiring the use of force exerted by a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any animate or inanimate object.

80 Employer to control risks

- (1) An employer must ensure that:
 - (a) all objects are, where appropriate and as far as reasonably practicable, designed, constructed and maintained so as to eliminate risks arising from the manual handling of the objects, and
 - (b) work practices used in a place of work are designed so as to eliminate risks arising from manual handling, and
 - (c) the working environment is designed to be, as far as reasonably practicable and to the extent that it is within the employer's control, consistent with the safe handling of objects.
- (2) If it is not reasonably practicable to eliminate a risk arising from manual handling, an employer must design the work activity involving manual handling to control the risk and, if necessary, must:
 - (a) modify the design of the objects to be handled or the work environment (to the extent that it is under the employer's control), taking into account work design and work practices, and
 - (b) provide mechanical aids or, subject to subclause (3), make arrangements for team lifting, or both, and
 - (c) ensure that the persons carrying out the activity are trained in manual handling techniques, correct use of mechanical aids and team lifting procedures appropriate to the activity.
- (3) An employer must, as far as reasonably practicable, achieve risk control by means other than team lifting.

Maximum penalty: Level 4.

81 Assessment of risks

An employer, in carrying out a risk assessment in accordance with Chapter 2 in relation to manual handling, must take into consideration (where relevant) the following factors:

- (a) actions and movements (including repetitive actions and movements),
- (b) workplace and workstation layout,
- (c) working posture and position,
- (d) duration and frequency of manual handling,
- (e) location of loads and distances moved,
- (f) weights and forces,
- (g) characteristics of loads and equipment,
- (h) work organisation,
- (i) work environment,
- (j) skills and experience,
- (k) age,
- (l) clothing,
- (m) special needs (temporary or permanent),
- (n) any other factors considered relevant by the employer, the employees or their representatives on health and safety issues.

Victorian manual handling regs:-

PART 3.1—MANUAL HANDLING

3.1.1 Hazard identification

- (1) An employer must, so far as is reasonably practicable, identify any task undertaken, or to be undertaken, by an employee involving hazardous manual handling.

Notes

- 1 Act compliance—section 21 (see regulation 1.1.7).
- 2 Hazardous manual handling is defined in regulation 1.1.5).

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- (2) An employer may carry out a hazard identification under subregulation (1) for a class of tasks rather than for individual tasks if—
- (a) all the tasks in the class are similar; and
 - (b) the identification carried out for the class of tasks does not result in any person being subject to any greater, additional or different risk to health and safety than if the identification were carried out for each individual task.

3.1.2 Control of risk

- (1) An employer must ensure that the risk of a musculoskeletal disorder associated with a hazardous manual handling task affecting an employee is eliminated so far as is reasonably practicable.

Note

Act compliance—section 21 (see regulation 1.1.7).

- (2) If it is not reasonably practicable to eliminate the risk of a musculoskeletal disorder associated with a hazardous manual handling task affecting an employee, an employer must reduce that risk so far as is reasonably practicable by—
- (a) altering—
 - (i) the workplace layout; or
 - (ii) the workplace environment, including heat, cold and vibration, where the task involving manual handling is undertaken; or
 - (iii) the systems of work used to undertake the task; or
 - (b) changing the objects used in the task involving manual handling; or
 - (c) using mechanical aids; or
 - (d) any combination of paragraphs (a) to (c).

Notes

- 1 Act compliance—section 21 (see regulation 1.1.7).
 - 2 Under sections 27 to 30 of the Act, designers of plant, buildings or structures (or parts of buildings or structures) and manufacturers and suppliers of plant or substances must ensure, so far as is reasonably practicable, that the plant, substance, building or structure (or part) is designed, manufactured or supplied (as the case may be) to be safe and without risks to health, including the risk of musculoskeletal disorder.
- (3) If it is not reasonably practicable for an employer to reduce the risk of a musculoskeletal disorder associated with a hazardous manual handling task in accordance with subregulation (2), the employer may control that risk by the use of information, instruction or training.

Notes

- 1 Act compliance—section 21 (see regulation 1.1.7).
 - 2 An employer may only rely solely or primarily on the use of information, instruction or training to control a risk if none of the measures set out in subregulation (2) is reasonably practicable.
- (4) Without affecting the generality of subregulations (1), (2) and (3), an employer, when determining any measure to control any risk of musculoskeletal disorder, must address the following factors—
- (a) postures; and
 - (b) movements; and
 - (c) forces; and
 - (d) duration and frequency of the task; and
 - (e) environmental conditions including heat, cold and vibration that act directly on a person undertaking the task.

Notes

- 1 Act compliance—section 21 (see regulation 1.1.7).
- 2 Sections 35 and 36 of the Act set out the duty of the employer to consult with employees, including involving the health and safety representative (if any). (See also regulation 2.1.5).

3.1.3 Review of risk control measures

- (1) An employer must ensure that any measures implemented to control risks in relation to musculoskeletal disorders are reviewed and, if necessary, revised—

- (a) before any alteration is made to objects used in a workplace or to systems of work that include a task involving hazardous manual handling, including a change in the place where that task is undertaken; or
- (b) before an object is used for another purpose than that for which it was designed if that other purpose may result in an employee carrying out hazardous manual handling; or
- (c) if new or additional information about hazardous manual handling being associated with a task becomes available to the employer; or
- (d) if an occurrence of a musculoskeletal disorder in a workplace is reported by or on behalf of an employee; or
- (e) after any incident occurs to which Part 5 of the Act applies that involves hazardous manual handling; or
- (f) if, for any other reason, the risk control measures do not adequately control the risks; or
- (g) after receiving a request from a health and safety representative.

Note

Act compliance—section 21 (see regulation 1.1.7).

- (2) A health and safety representative may make a request under subregulation (1)(g) if the health and safety representative believes on reasonable grounds that—
 - (a) any of the circumstances referred to in subregulations (1)(a) to (1)(f) exists; or
 - (b) the employer has failed—
 - (i) to properly review the risk control measures; or
 - (ii) to take account of any of the circumstances referred to in subregulations (1)(a) to (1)(f) in conducting a review of, or revising, the risk control measures.