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Public Comment Response Form Exposure Draft for Model Act and Stage 1 Model Regulations

You are invited to answer any and all of the questions listed below which have been taken from the Exposure Draft Discussion Paper:

Questions	
Part 1 – Preliminary Matters	
Q1.	What is the best title for the model Act?
	Work Health and Safety Act
Q2.	Does the definition of ‘ <i>officer</i> ’ clearly capture those individuals who should have ‘ <i>officer</i> ’ duties under the model Act?
	It is too wide. It even includes people who participate in making decisions. Does this mean if someone is outvoted at a meeting that they are still liable for the decisions / actions that eventuate from the meeting?
Q3.	There is some overlap between the definitions of ‘plant’ and ‘structure’, as many types of plant have structural attributes, and vice versa. Should ‘plant’ and ‘structure’ be defined in a way that removes this overlap?
	Either term should be defined to cover both plant and structure.
Q4.	Are there any other types of activities or undertakings that should be specifically included or excluded from application of the model Act? For example, should residential strata title body corporates be excluded?
	No comment.



“ Have your say on workplace safety laws. ”



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Q5. Is the scope of the suppliers' duty appropriate?

Yes.

Q6. Is the scope of the 'worker' definition appropriate? Should it cover students gaining work experience?

It is appropriate and should cover students.

Q7. Is the definition of 'workplace' appropriate?

Yes.

Part 2 – Safety Duties

Q8. Do the principles that apply to the duties of care give clear guidance on what is expected?

Yes.

Q9. Is the definition of 'reasonably practicable' appropriate in this context?

Yes.

Q10. Should the definition of 'reasonably practicable' be exhaustive i.e. so only matters listed may be considered in determining compliance with the duty?



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The matters listed are sufficient.
Q11. Is the proposed scope of the primary duty appropriate?
Yes.
Q12. The model Act requires the provision of, so far as is reasonably practicable, any information, training and instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work (Clause 18(4)(f)). Should this requirement expressly require that the information etc. be provided in an appropriate language or languages, or provided at a level that can be understood by the workers?
The language of communication should be English. If the employee/s request an alternative and the employer agrees to offer the communication in this format then that should be permitted. Smaller companies may not have the resources to supply alternative arrangements.
Q13. The model Act requires, so far as is reasonably practicable, the provision of adequate facilities for the welfare of workers at work (Clause 18(4)(e)). Should this provision be drafted to require 'access to' such facilities (e.g. to take account of requirements for mobile workplaces)?
18 (4) (e) is fine as it is.
Q14. Is the scope of the duties related to specific activities appropriate?
Yes.
Q15. In determining whether a worker failed to take reasonable care, should regard be had to what the worker knew about the relevant



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circumstances?
Yes, provided that this exemption does not immediately pass the breach on to the next level within the organisation, creating a finger pointing climate within a business.
Q16. Is the treatment of volunteers under the model Act appropriate?
Yes, provided that the contravention of a duty of care is not a deliberate act.
Q17. Are the range and levels of penalties proposed above appropriate, taking account of the levels set for breaches of duties of care by the WRMC?
Penalties are appropriate for corporations. Penalties appear harsh rather than create an environment of improvement for small businesses and individuals. The Consultation Regulatory Impact Statement even says that small businesses have lack of resources and OH & S management expertise.
Q18. What should the maximum penalty be for a contravention of the model regulations?
Corporate levels are fine. Individuals and small businesses should be a maximum of \$10,000.00 with no imprisonment unless deliberate negligence was involved.
Q19. The intention is that all contraventions of the model Act be criminal offences. Is this appropriate or should some non-duty of care offences be subject to civil sanctions e.g. failure to display a list of HSRs at the workplace, offences relating to right of entry?



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Some should definitely be just civil sanctions.

Part 3 – Other Obligations

Q20. Is the list of notifiable incidents sufficiently clear and objective, so duty holders easily understand their obligations?

Yes.

Part 4 – Consultation, participation and representation

Q21. Is the proposed scope of duty to consult workers appropriate?

Yes.

Q22. Should the model Act include a procedure to follow if agreement on a consultation procedure cannot be reached?

Yes.

Q23. Clause 49 allows work groups to be determined for workers engaged in 2 or more businesses or undertakings. Should such arrangements be by agreement only, i.e. with no prescribed procedure if negotiations fail?

Yes, with no work stoppages while negotiations are in progress or scheduled for discussion.

Q24. Negotiations for work groups must be commenced within a 'reasonable time'. Should a time limit be prescribed e.g. 14, 21 or 28 days?



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One could be stipulated but it would have to be quite generous, like 90 days. This would ensure that the owner / manager is available for the negotiations.

Q25. Elections for HSRs and possibly deputy HSRs must be conducted '*as soon as reasonably practicable*' after the relevant work groups are established, or after a request for an election is received if work groups are already established. Should a time limit be prescribed?

Yes, provided generous as per my answer to Q24.

Q26. The model Act requires that the HSR training must take place within a reasonable time, to accommodate a range of circumstances. For example, it may take longer for HSRs working in rural or remote regions to attend an approved course that may not be available in their area. Should a time limit be specified within which the training must be provided?

Yes, within six months.

Q27. The model Act requires that a health and safety committee be established within 2 months of the request being made. Six of the current OHS Acts include such a timeframe, which varies across jurisdictions from 3 weeks to 3 months. Is the proposed time limit of 2 months appropriate?

No, six months is more reasonable. Many small businesses would not even know of such a requirement and would need time to investigate this and understand the process.

Q28. The *Fair Work Act 2009* (Cth) (Fair Work Act) refers to ceasing work on the basis of a 'reasonable concern' of the employee about an imminent risk to his or her health and safety, while the model Act refers to 'reasonable grounds'. Should the terminology in clauses 75 and 76 be aligned with the Fair Work Act?

Yes.



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<p>Q29. Should a health and safety representative be required to complete approved training before being able to direct that work cease under these provisions?</p>
<p>No, provided that there is no obvious abuse of the role when making decisions prior to being trained.</p>
<p>Q30. Should a health and safety representative be required to complete approved training before being able to issue a PIN under these provisions?</p>
<p>Yes.</p>
<p>Q31. A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate?</p>
<p>No. Some issues may take longer than 7 days to rectify or resolve. It depends on the severity of the issue that the PIN was raised for.</p>
<p>Part 5 – Protection from Discrimination</p>
<p>Q32. Should the model Act expressly protect persons from being coerced or induced to exercise their powers in a particular way?</p>
<p>Yes, but I do not understand the need to protect prospective employees. This could lead to unfounded claims that someone was not given a job based on their previous OH & S involvement elsewhere. Small businesses would not have the resource to adequately defend such an unfound accusation.</p>
<p>Part 6 – Workplace entry by OHS entry permit holders</p>
<p>Q33. Are the notification requirements appropriate?</p>



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14 days is reasonable but 24 hours is not sufficient in every instance.

Q34. Should the model Act contain a specific authorisation process for an OHS entry permit or can it rely on authorisation obtained under other Acts such as the Fair Work Act?

If it has to be anywhere then probably just in this Act and nowhere else. It doesn't need to be repeated in every Act.

Q35. Should contraventions of this Part attract criminal or civil sanctions? If civil sanctions are considered appropriate, should penalty levels reflect those that apply under the Fair Work Act?

Civil sanctions would be more appropriate unless there was a deliberate attempt to defy the obligations of the entry permit. It would be easier if penalties were aligned with the Fair Work Act but make them reasonable.

Q36. The right of entry provisions have been drafted to be generally consistent with the Fair Work Act. Do these provisions appropriately apply to the role of a union representative when entering the workplace in relation to OHS, rather than in relation to workplace relations?

Ideally unions and employers would work together constructively to improve the health and safety of all employees at a workplace. There seems to be a significant amount of legislation to try and overcome something that should just be a cooperative approach. Legislation for both Acts should be a last resort solution.

Part 7 – The Regulator

Q37. Should guidelines have any other particular legal status under the Act?

No.



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Part 10 – Review of Decisions

Q38. Is the list of reviewable decisions appropriate?

Yes.

Q39. Are the processes and timeframes prescribed for the internal review of decisions appropriate?

No. 14 days is not long enough in some instances.

Q40. Are stay arrangements appropriate in relation to the issue of a prohibition or nondisturbance notices, having regard to the purposes of those notices?

Yes.

Exposure Draft of Key Administrative Regulations

Q41. Should the list of matters to be considered in negotiations for work groups be provided for in a Code of Practice rather than prescribed in regulation?

Yes, provided it is an easy to read and practical document.

Do you have any other comments?

The role of a HSR should not be required where elected Health and Safety Committees are in place. They appear to be a more interim step or more suited to smaller workplaces.



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Employers should have the final say in where HSR training is carried out. This would ensure that where multiple HSR's are employed at a site that the employer would have a preferred trainer to secure the best training price and have an objective source of information for all parties to refer to when a disagreement on site occurred and could not be resolved.