



“Have your say on workplace safety laws.”



Submission: Exposure Draft Model Act for Occupational Health and Safety

To whom it may concern,

Thank you for the opportunity to comment on this draft Act. As I couldn't download the PDF version from the website, the RTF worked well, but makes it difficult to cross reference as pagination does not seem to function.

Therefore I have taken questions of note from the Discussion Paper where relevant. My work as an marine team leader / supervisor in the offshore gas industry, I have several specific comments and notes to make.

Q1. Is the definition of 'workplace' appropriate?

1) Workplace: Does the Act specify vessels, barges or broadly, sea-going platforms as a workplace? This is perhaps a question of scope or jurisdiction but is very important when considering work in ports either alongside or at anchor where unsafe work practices are unchallenged and jurisdictions unclear.

Example is where a vessel is mobilising in alongside with many varied tasks going on. The Capt. (foreign or Australian) will not be supervising or perhaps even familiar with project related work onboard, clearly not responsible. Probably all contract project personnel will be Australian covered under various state workers compensation. In cases like this there are several HSE stakeholders clouding responsibilities yet these short periods constitute some of the most risky operations in terms of injury.

This Act could remove confusion here by regulating overall control

2)

Q2. Is the proposed scope of the primary duty appropriate?

Q3. 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?

This is interesting as we have a great variety of workers offshore from varied disciplines and countries. For some years now there has been good consistency to recognised HSE mechanisms courses etc to provide safety onsite.

The overall safety net has always seen to be experienced probably licensed or certified supervision at all levels of ongoing work. Normally at least one person in a supervisory capacity onsite will have recognised training. Not withstanding some situations (ports), this leads to my last point;



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3)

Q4. Should a health and safety representative be required to complete approved training before having the power majority of the time, to direct that work cease under these provisions?

The draft Act is “lite” regarding regulating supervisory or site management. The industry has moved away from HSE site representation back to site supervisory responsibility. Our contracts usually contain a line “...it remains at all times the responsibility of the contractor to appoint supervisory personnel of the highest relevant training standards to work onsite...” I imagine in this case you would swap the word contractor with owner / operator.

1.1 RIGHT TO CEASE OR DIRECT CESSATION OF UNSAFE WORK

My experience is that the best trained worker will often remain subservient to poor onsite management decisions or lack thereof. Strongly worded controls at the supervisory, managing stage of work place regulation hopefully relieves the pressure on workers to be in these (1.1) situations. Situations that effectively may well see them out of work.

Kind regards,
Peter Barr
Director Barmarine PL



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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
<p>Q1. What is the best title for the model Act? Containing Health Safety and Environmental</p>
<p>Q2. Does the definition of ‘<i>officer</i>’ clearly capture those individuals who should have ‘<i>officer</i>’ duties under the model Act? Can’t answer</p>
<p>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? I’m more familiar with plant meaning anything that is fixed and audited, maintained on a regular basis as part of a whole premises or vessel ie: generator. Structure static or unpowered - not necessarily permanent ie: crane</p>
<p>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? Included: Work within a port, at on or close to the coastline or any floating platforms vessels, rigs boats etc within those areas.</p>



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Q5. Is the scope of the suppliers' duty appropriate?
n/a
Q6. Is the scope of the ' <i>worker</i> ' definition appropriate? Should it cover students gaining work experience?
n/a
Q7. Is the definition of ' <i>workplace</i> ' appropriate?
(Commented in submission) Should include any floating platforms vessels, rigs boats etc within port, at or close to coast
Part 2 – Safety Duties
Q8. Do the principles that apply to the duties of care give clear guidance on what is expected?
(Commented in submission)
Q9. Is the definition of ' <i>reasonably practicable</i> ' appropriate in this context?
-
Q10. Should the definition of ' <i>reasonably practicable</i> ' be exhaustive i.e. so only matters listed may be considered in determining compliance with the duty?
no



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Q11. Is the proposed scope of the primary duty appropriate?
(Commented in submission) No, could be clearer regarding experience / training and best industry practice licensing / certifications
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?
(Commented in submission) not necessarily
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)?
-
Q14. Is the scope of the duties related to specific activities appropriate?
-
Q15. In determining whether a worker failed to take reasonable care, should regard be had to what the worker knew about the relevant circumstances?



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(Commented in submission) minimal

Q16. Is the treatment of volunteers under the model Act appropriate?

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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?

-

Q18. What should the maximum penalty be for a contravention of the model regulations?

-

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?

(Commented in submission) comes back to site supervisory control

Part 3 – Other Obligations

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



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Part 4 – Consultation, participation and representation

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

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

Yes, strongly agree

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?

-

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?

In the offshore scenario, any time over 48hrs would be unworkable

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?



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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?
-
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?
-
Q28. The <i>Fair Work Act 2009</i> (Cth) (<i>Fair Work Act</i>) 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 <i>Fair Work Act</i> ?
Now I'm confused – a "Fair Work Act" not familiar with this.. Is their an unfair work act?
Q29. Should a health and safety representative be required to complete approved training before being able to direct that work cease under these provisions?
(Commented in submission) No



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Q30. Should a health and safety representative be required to complete approved training before being able to issue a PIN under these provisions?

(Commented in submission) No

Q31. A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate?

Sounds like a recipe for failure. What about a 12hr time frame, ie: one full shift?

Part 5 – Protection from Discrimination

Q32. Should the model Act expressly protect persons from being coerced or induced to exercise their powers in a particular way?

-

Part 6 – Workplace entry by OHS entry permit holders

Q33. Are the notification requirements appropriate?

-

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?

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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?

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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?

-

Part 7 – The Regulator

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

-

Part 10 – Review of Decisions

Q38. Is the list of reviewable decisions appropriate?

-

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

-



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

-

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?

-

Do you have any other comments?

(Commented in submission)

Please consider strengthening the regulatory requirements for site supervisory and management personnel. These should be well above considerations for HSE officers, or committee representatives. There will always be work site HSE & committee representatives that are above and below standards and expectations for work related training / experience. Regulation of the effective control of site risk should be clearest at site supervisory / management level.