



Office use only
Registration number:
Received by:

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?
Safework Act 2009
Q2. Does the definition of ‘ <i>officer</i> ’ clearly capture those individuals who should have ‘ <i>officer</i> ’ duties under the model Act?
Yes – The definition is wide enough to include persons who have influence over OHS matters
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?
Yes - It would be more prudent to define these more specifically
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?
Volunteers in the non-for-profit/government sectors are a critical resource and should be excluded from the act. The Act should only apply to paid workers. Volunteers require different insurance arrangements, rather than workers compensation insurance, which implies that they are quite different.



Office use only
Registration number:
Received by:

Q5. Is the scope of the suppliers' duty appropriate?
Yes
Q6. Is the scope of the ' <i>worker</i> ' definition appropriate? Should it cover students gaining work experience?
The definition is appropriate. Students should be covered if they are performing work activities in a workplace with other paid workers.
Q7. Is the definition of ' <i>workplace</i> ' 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 ' <i>reasonably practicable</i> ' appropriate in this context?
The definition is a big improvement on the current NSW legislation provisions, representing a more equitable and practical definition of an employer's responsibilities. This definition is strongly supported.
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?



Office use only
Registration number:
Received by:

No -This definition is adequate. Future unforeseen circumstances should be determined in light of the definition, rather than attempting to be exhaustive and exclusive now.

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 should be "plain English" and information etc should be provided at a level that can be understood by all workers.

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)?

It is not necessary to be so specific, as these issues should be tested in light of what is reasonably practical.

Q14. Is the scope of the duties related to specific activities appropriate?

Yes



Office use only
Registration number:
Received by:

Q15. In determining whether a worker failed to take reasonable care, should regard be had to what the worker knew about the relevant circumstances?
Yes – but in the context of “ought reasonably to have known”.
Q16. Is the treatment of volunteers under the model Act appropriate?
Volunteers should not be covered under the Act unless they are engaged with paid workers performing activities in a workplace.
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?
Most organisations would not be able to pay such penalties at their extremes. The penalties should be realistic for organisations with good safety records.
Q18. What should the maximum penalty be for a contravention of the model regulations?
Each case should be considered on its merits
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?
Not all offences should be criminal, especially those relating to non-duty of care offences.



Office use only
Registration number:
Received by:

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?
Consultation is a critical component for good OHS outcomes but it is only practical to consult with the normal workforce. It is not practical to consult with visitors and contractors, who may be present at a workplace intermittently or on single occasions.
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 – by agreement
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?



Office use only
Registration number:
Received by:

One month seems reasonable
Q25. Elections for HSRs and possibly deputy HSRs must be conducted ' <i>as soon as reasonably practicable</i> ' 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?
There should be a time limit of one month
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?
Training should be arranged within three months but the date of completion should not be prescriptive.
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?
The time limit should be 3 months
Q28. The <i>Fair Work Act 2009</i> (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?
No – "reasonable grounds" seems more appropriate.
Q29. Should a health and safety representative be required to complete approved training before being able to direct that work cease under



Office use only
Registration number:
Received by:

these provisions?
Yes
Q30. Should a health and safety representative be required to complete approved training before being able to issue a PIN under these provisions?
Yes
Q31. A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate?
This time-frame is appropriate for reaching agreement on an action plan for improvement. However, the compliance/improvement may take longer to complete.
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?
Yes
Part 6 – Workplace entry by OHS entry permit holders
Q33. Are the notification requirements appropriate?
OHS permit holders should be required to give more than 24 hours notice of entry, unless there is a potentially serious OHS breach.



Office use only
Registration number:
Received by:

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?
Yes - the OHS entry permit holder should hold appropriate OHS qualifications. At a minimum they should have undertaken the 5 day training that all company OHS representatives must undertake.
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?
Penalties need not be a criminal sanction and could reflect those under the Fair Work Act.
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?
No – OHS issues can potentially pose a serious danger to any or all workers and should be classed differently. Depending on the seriousness of the OHS issue, a union representative should have to give reasonable notice to enter a workplace.
Part 7 – The Regulator
Q37. Should guidelines have any other particular legal status under the Act?
No
Part 10 – Review of Decisions
Q38. Is the list of reviewable decisions appropriate?



Office use only
Registration number:
Received by:

Yes

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

Yes

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?

As there are many different industries and issues involved, a code of practice could assist with flexibility.

Do you have any other comments?

How will the different jurisdictions throughout Australia interpret the “reasonably practical” concept? This concept is not currently required to be addressed by NSW judges.



“ Have your say on workplace safety laws. ”



Office use only
Registration number:
Received by: