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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** |
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| **Part 1 – Preliminary Matters** |
| **Q1.** What is the best title for the model Act? |
| Safe Work Act 2009 |
| **Q2.** Does the definition of '*officer*' clearly capture those individuals who should have '*officer'* duties under the model Act? |
| No – the definition does not account for instances where no officers are assigned the responsibility. Should a 'body' under the act fail to appoint an official 'officer' for health and safety, the convenor or executive power of that body should inheret those duties and responsibilities. |
| **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? |
| Only if the penalties for failing to provide and maintain safe plant and structures differ. If penalties for a breach of the Act are to be the same, debate on whether an object constitutes plant or structure becomes insignificant. |
| **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? |
| Section 5, subsection 2(b), which states that a person "does not conduct a business or undertaking to the extent that the person conducts an activity of a prescribed kind" should be removed. |

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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? |
| No – further explanation of the circumstances under which a 'volunteer' is considered a worker should be provided when members of 'volunteer organisations' are exempt under Section 5, subsection. |
| **Q7.** Is the definition of '*workplace*' appropriate? |
| No – the definition of an undertaking is ambiguous. |
| **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? |
| No – I believe the requirement under Section 18, subsection 4(g) to "ensure that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness" is overly prescriptive, and I do not consider this reasonably practicable. |
| **Q10.** Should the definition of 'reasonably practicable' be exhaustive i.e. so only matters listed may be considered in determining compliance with the duty? |
| No – as with common law negligence claims, it should be subject to the 'reasonable person' test. |

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| **Q11.** Is the proposed scope of the primary duty appropriate? |
| No – I believe the requirement under Section 18, subsection 4(g) to "ensure that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness" is unreasonable and inappropriate. |
| **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? |
| Yes. |
| **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)? |
| Yes, it is impossible to provide given facilities in certain workplaces. |
| **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 circumstances? |

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| Yes. |
| **Q16.** Is the treatment of volunteers under the model Act appropriate? |
| Yes, volunteers should be afforded the same protection as paid workers. |
| **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? |
| As per WRMC recommendation 73, so long as the Act cites penalty units rather than dollar amounts, increasing the value of penalties through regulatory amendments will allow for future adjustment of end penalty ranges. |
| **Q18.** What should the maximum penalty be for a contravention of the model regulations? |
| If gross negligence causes death the penalties for such should be equivalent to manslaughter. |
| **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? |
| Only acts that harm a person or could harm a person should be criminal offences. |
| **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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| No – the definition of a 'dangerous incident' requires further explanation. |
| **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? |
| It does, if a worker considers a process, task or condition unsafe and is unable to resolve the matter they can request their health and safety representative issue an improvement notice. |
| **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? |
| No. |
| **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? |
| No – as with common law, it should be subject to the 'reasonable person' test. |
| **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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| No – as with common law, it should be subject to the 'reasonable person' test. |
| **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? |
| No – as with common law, it should be subject to the 'reasonable person' test. |
| **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? |
| Yes. |
| **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. |
| **Q29.** Should a health and safety representative be required to complete approved training before being able to direct that work cease under these provisions? |
| Not necessarily, but certainly if the work is a high risk activity the worker would need to have some training. |

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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? |
| Yes. |
| **Q31.** A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate? |
| Yes, so long as workers maintain the right not to operate the structure, plant, etc. or use the substance, equipment, etc. that is the cause of the PIN in that time. |
| **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? |
| Yes. |
| **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? |
| The model Act should specify a separate authorisation process for health and safety related inspections by qualified persons only. |

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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? |
| Intentional misuse should attract a criminal sanction. |
| **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? |
| Firstly, a union representative should not be conducting health and safety inspections unless appropriately qualified. Secondly, any qualified person should not be entering a workplace unnecessarily, and should only do so where warranted under specific provisions. |
| **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? |
| Yes. |
| **Q39.** Are the processes and timeframes prescribed for the internal review of decisions appropriate? |
| Yes. |

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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? |
| No – If a reviewer has not made a decision in accordance with Section 224, subsection 2, the reviewer should be said to have made a decision not to grant a stay in the interim. |
| **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. |
| **Do you have any other comments?** |
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