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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?
I agree that “Safe Work Act 2009” is an appropriate title as it is succinct and appropriately covers a range of work.
Q2. Does the definition of ‘ <i>officer</i> ’ clearly capture those individuals who should have ‘ <i>officer</i> ’ duties under the model Act?
I agree that “Officer” is an appropriate term.
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 agree that there should be a clearer definition of what constitutes plant and how this is distinguished from structures.
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?
N/A
Q5. Is the scope of the suppliers’ duty appropriate?
Yes, it appropriately covers a range of different forms of business and suppliers.



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Q6. Is the scope of the <i>'worker'</i> definition appropriate? Should it cover students gaining work experience?
The scope of <i>'worker'</i> is very comprehensive. I agree that it should somehow cover workplace experience students and what they and their Supervisors are liable for.
Q7. Is the definition of <i>'workplace'</i> appropriate?
The scope for <i>'workplace'</i> is appropriate and also covers commuting to and from work.
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?
Yes,
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?
I do not believe that there should be an exhaustive list because there are too many variables to consider under individual circumstances.
Q11. Is the proposed scope of the primary duty appropriate?
Yes.



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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 – I believe that it should also be specified that any training or qualifications obtained must be done so through an RTO.
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 – adequate facilities should extend to access and egress into the facility.
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?
Absolutely – some of the onus needs to be placed on the worker in that regard, especially if they had been notified of any potential or existing hazards.
Q16. Is the treatment of volunteers under the model Act appropriate?
I think that volunteers do need to be protected by the <i>Act</i> as individuals. However, if a volunteering individual or a volunteer organisation knowingly puts another person in danger, they should be just as liable as a worker or company under the <i>Act</i> .



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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?

Yes, I believe that the penalties do need to be harsh to make sure that the *Act* is taken seriously.

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

The maximum penalty for a contravention should be a Category 4 offence – not serious enough to go to prison but enough to make certain that they won't do it again.

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?

All breaches of the *Act* should be considered criminal offences, but with different levels of what is considered to be a serious contravention or a minor one.

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



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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?
There should definitely be a set out procedure if there is a situation where a consultative agreement cannot be reached.
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?
I think there needs to be set procedures to be followed in the event of failed negotiations.
Q24. Negotiations for work groups must be commenced within a ' <i>reasonable time</i> '. Should a time limit be prescribed e.g. 14, 21 or 28 days?
A prescribed time limit is a good idea and I think 14 days is an appropriate time frame.
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?
Yes – I believe that a 14 day period to nominate HSRs and conduct and election is more than enough time.
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



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area. Should a time limit be specified within which the training must be provided?
There needs to be a specification of what is considered minimum training for HSRs. A time limit to complete training is a good idea. My suggestion would be up to three months to conduct training if you are a remote HSR, and one month if you are in the metropolitan area.
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, it should be consistent with the existing <i>Acts</i> to avoid confusion.
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?
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?
Absolutely. A minimum qualification for HSRs should be stipulated before they have the authority to direct the cessation of work.
Q30. Should a health and safety representative be required to complete approved training before being able to issue a PIN under these provisions?
Yes. Refer answer to Q29.
Q31. A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate?



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I would give 10 working days from the issue of the PIN to rectify the issues.

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?

It should be illegal and perhaps even a criminal offence.

Part 6 – Workplace entry by OHS entry permit holders

Q33. Are the notification requirements appropriate?

If there is suspicion of a contravention, there should be a time frame in place for the union representative to notify the company/body, i.e. 2 days? Should the advice of inspection and subsequent report be provided in writing?
Provision of employee records to the representative needs to be in line with the *Freedom of Information Act (1992)*.

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?

I agree that this should be in line with the *Fair Work 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?

Contraventions should attract criminal prosecution if they are repeat offences, which should be in line with the *Fair Work Act* to ensure consistency.

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?



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Yes.

Part 7 – The Regulator

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

If they are annexing the Act then there needs to be specifics on what can and can't be overwritten by a Regulator.

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.

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

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in regulation?
Yes.
Do you have any other comments?