



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?
Safe Work Act
Q2. Does the definition of ‘ <i>officer</i> ’ clearly capture those individuals who should have ‘ <i>officer</i> ’ duties under the model Act?
I find the term ‘Officer’ to be very confusing. In the Northern Territory a regulatory inspector is called a Workplace Safety Officer. People tend to think of the term officer as an authoritative agent with powers under the Act.
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?
There should be clear and separate definitions for plant, structure, and substance. Points of law are often determined based on being able to clearly interpret the meaning of terminology used in the Act. Too often interpretations are misconstrued due to unclear definitions that leave too much scope for subjective application.
Q4. Are there any other types of activities or undertakings that should be specifically included or excluded from application of the model



Office use only
Registration number:
Received by:

<p>Act? For example, should residential strata title body corporates be excluded?</p> <p>What type of business is not conducted for profit or gain of some sort. If there were to be nothing gained by the operation of a business then why would the business be operating. I agree wholeheartedly that it is important that consideration be given to ensure that the Act does not place inappropriate duties on volunteers.</p>
<p>Q5. Is the scope of the suppliers' duty appropriate?</p>
<p>Q6. Is the scope of the 'worker' definition appropriate? Should it cover students gaining work experience?</p> <p>There was an incident in the NT recently where NT WorkSafe's classification of a worker resulted in the death of a person being of no consequence because the person was a caretaker. It is deplorable that this could happen. If a person is appointed as a caretaker where they are rewarded for their work by the provision of accommodation rather than a wage/salary – then the person appointed as a caretaker investigates a noise on the property for which they are caretaking and subsequently the caretaker is killed by intruders he disturbed – why is the caretaker not classified as a worker? He was lone worker with no provisions put in place for his safety and the people who appointed him have no responsibilities for his health, safety and welfare whilst he is caretaking their property. Please take these circumstances into careful consideration when defining a worker.</p>
<p>Q7. Is the definition of 'workplace' appropriate?</p> <p>This has historically been a grey area. Is a truck a workplace for a truck driver? Is a taxi a workplace for a taxi driver? Is a train a workplace for a train driver? Is a school workshop a workplace – where students are subjected to workplace risks such as electrical hazards, machinery hazards, manual handling risks? These grey areas need to be clearly defined to avoid confusion.</p>



Office use only
Registration number:
Received by:

Part 2 – Safety Duties	
Q8.	Do the principles that apply to the duties of care give clear guidance on what is expected?
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?
Q11.	Is the proposed scope of the primary duty appropriate?
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?
Workers must have a reasonable grasp of the English language. Australia is an English speaking country. The majority of safety signage is in English and workers must be able to read and understand safety directions in the workplace. The inability to communicate in English is a	



Office use only
Registration number:
Received by:

serious risk – not only to the workers with language problems, but also to other Australian workers on site who may be affected by others' inability to understand safety directions, signs and rules.

We should be concentrating on providing employment for Australians first. Then when we have no unemployed people looking for work, and only then, should we consider bringing in outsiders. This is not a racist comment, but more a commitment to looking after our own responsibilities first before solving the unemployment problems of the rest of the world.

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. Consider this from the perspective of the Northern Territory. There are some extremely remote workplaces in the NT with vast distances separating them from civilised areas. All workers should be provided with access to welfare facilities, regardless of where their workplace may be.

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?

All circumstances should be taken into consideration – to be fair

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



Office use only
Registration number:
Received by:

Hypothetical question – Is the location where a volunteer is working considered a workplace? Would a regulatory inspector issue a notice to a volunteer in relation to the work they are performing? If the volunteer organisation was using electrical leads that had no evidence of routine inspection and testing, would an improvement notice be issued? If so who to, if the volunteer has no duty under the 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?

Certainly appropriate for larger organisations. There needs to be more support and assistance for smaller companies to achieve compliance so that workers are able to work safely, rather than just concentrating on prosecuting and fining non-compliance. The ultimate aim is to improve safety and reduce accidents – not to seek out non-compliance and apply punishment. The focus should be on positive outcomes – help workplaces to be safe. Prescriptive approaches were updated by Robens many years ago. We should not lose sight of what we are hoping to achieve.

I notice that NT WorkSafe have been moving away from the performance based model. They used to provide information sessions and advice to industry. They used to be focussed on helping industry to achieve safe outcomes through working with industry to achieve positive health & safety outcomes. Now they refuse to provide advice, assistance, awareness education. There is no media coverage such as newspaper advertising or TV and radio advertising to promote workplace safety. NT WorkSafe are very much prescriptive in their application of their new Act.

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?



Office use only
Registration number:
Received by:

Perhaps we should build some new jails for such corporate criminals so that they are not unduly influenced by other types of criminals whilst serving time. We don't have enough jail space to incarcerate real criminals in the NT. There are some cases where an employer should be jailed for serious and reckless management where a worker has been seriously injured or killed – particularly young workers. However jail is probably not the appropriate place to remedy many of the non-compliances.

Part 3 – Other Obligations

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

Part 4 – Consultation, participation and representation

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

Q22. Should the model Act include a procedure to follow if agreement on a consultation procedure 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?



Office use only
Registration number:
Received by:

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?
Yes a time limit should be imposed. Otherwise various jurisdictions will be creating their own rules again creating the risk of moving away from harmonisation.
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
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. However in creating this requirement, jurisdictions must ensure that training is accessible to all workers elected as HSRs.
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



Office use only
Registration number:
Received by:

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?
Yes – Training is evidence of a person’s competence to undertake a task. It provides the HSR with some credibility.
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 depends on the breach and the status of reasonable practicability.
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?



Office use only
Registration number:
Received by:

Yes
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?
There is no guarantee that a union official will be safe if they enter a construction site without warning and with no requirement to undergo a site specific safety induction. Many union reps are not construction workers and I would be very concerned if an uninducted union official were to start wandering around my worksite with no idea of the emergency evacuation procedures, site specific hazards and rules. As a principle contractor we have a duty of care for the health, safety for persons on site. If we do not know they are on site – how do we account for them in an emergency evacuation and how do we know that they will not do anything unsafe which inducted workers are aware of?
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?
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?



Office use only
Registration number:
Received by:

Part 7 – The Regulator
Q37. Should guidelines have any other particular legal status under the Act?
Guidelines should be uniform across all jurisdictions – otherwise what is the point of harmonisation?
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?
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



Office use only
Registration number:
Received by:

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?

Why?

Do you have any other comments?

I note that the Act proposes duties in respect of providing for workers' health, safety and welfare and that it shall include the provision of requirements or duties in respect of psychological health. How is this going to be regulated? What training will be given to inspectors in relation to psychological welfare given that mental health is a medical discipline which requires trained professionals to deal with it. Will these inspectors be undertaking mental health diagnostics training? What guidance material will be nominated to support this area – for example which Australian Standards, Codes of Practice, Industry Standards and/or other guidance material shall be used as a basis for psychological health?

Will the Act impose a requirement for persons working with minors to undergo police checks? This should be a requirement.