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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? “Occupational Health & Safety Act” is probably a well-known title.
Q2. Does the definition of ‘ <i>officer</i> ’ clearly capture those individuals who should have ‘ <i>officer</i> ’ duties under the model 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?
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? I believe that any private bodies should be excluded, unless they are registered companies.



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<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>Q7. Is the definition of 'workplace' appropriate?</p> <p>No – I believe that if a person is no longer at work, then it should not be considered a place of work. Risks can still be covered by the fact that the person no longer at work is a "visitor".</p>
<p>Part 2 – Safety Duties</p>
<p>Q8. Do the principles that apply to the duties of care give clear guidance on what is expected?</p>
<p>Q9. Is the definition of 'reasonably practicable' appropriate in this context?</p>
<p>Q10. Should the definition of 'reasonably practicable' be exhaustive i.e. so only matters listed may be considered in determining compliance with the duty?</p>



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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?
It should be provided in “plain English”. Where a workforce has employees who do not understand English (some non-Govt organisations may have this, but all Govt require employees to be able to communicate effectively – which clearly means in English) it would be appropriate to communicate in the languages understood by the workers. But this should NOT be required where the organisation expects literacy in the English language.
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)?
“access to” or “reasonable access to” makes far more sense – it would be ridiculous to expect portable facilities to be provided to a site that was, for example, a few minutes from such facilities. Economic efficiency is essential.
Q14. Is the scope of the duties related to specific activities appropriate?



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<p>Q15. In determining whether a worker failed to take reasonable care, should regard be had to what the worker knew about the relevant circumstances?</p>
<p> </p>
<p>Q16. Is the treatment of volunteers under the model Act appropriate?</p>
<p>Volunteers should be excluded. They are more like domestic duties. Otherwise, Australian volunteers will dry up as people realise that the run compliance risks where there is no potential rewards.</p>
<p>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?</p>
<p>The penalties for individuals are RIDICULOUS – for the average person they would cause bankruptcy. The jail terms are also far too high – I get fed up of paying taxes that are just going to provide more jails and more expenses to courts and lawyers because the Govt (State & Federal) keeps making new laws with new penalties. Again, I re-emphasise – look at the penalties – they are ABSURD. They should, for the highest level, not exceed 6 months salary, after tax, for the average worker.</p>
<p>Q18. What should the maximum penalty be for a contravention of the model regulations?</p>
<p>Maximum \$20,000 for individuals and/or 12 months jail (and the latter only in very extreme cases).</p>
<p>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?</p>



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NO – more and more things are being made criminal offences. Wake up – who thought of this stupidity ??

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?



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<p>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?</p>
<p>Provide a guide – but make it flexible. There are already too many Govt laws (do you know how many Acts and regulations were passed in the last year in Australia and NSW (the answer would be No – so how do you expect the community to know).</p>
<p>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?</p>
<p>A reasonable limit should be prescribed – but no penalties, That signals that they are required, bit allows flexibility.</p>
<p>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?</p>
<p></p>
<p>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?</p>
<p>2 or 3 months seems reasonable</p>
<p>Q28. The <i>Fair Work Act 2009</i> (Cth) (Fair Work Act) refers to ceasing work on the basis of a <i>'reasonable concern'</i> of the employee about an imminent risk to his or her health and safety, while the model Act refers to <i>'reasonable grounds'</i>. Should the terminology in clauses 75 and 76 be aligned with the Fair Work Act?</p>



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Reasonable grounds appears more appropriate – a deluded person may have a reasonable concern, but there might be no reasonable grounds.

Q29. Should a health and safety representative be required to complete approved training before being able to direct that work cease under these provisions?

They should have sufficient knowledge to be able to decide – but approved training may not be necessary. For example, a qualified engineer can determine if a bridge is unsafe – why expect him/her to get extra training. Unnecessary training just raises costs and make Australia more uncompetitive against other countries,

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

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

It should not be less than 7 days. Maybe a longer time would be required. It should depend on the risk.

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 – but the proposed penalties (Category 3) are **FAR too high**.



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Part 6 – Workplace entry by OHS entry permit holders	
Q33. Are the notification requirements appropriate?	
	Not really – Union representatives should only be able to enter if they have members on site. Otherwise they are trespassing. If a real concern, the SafeWork Officer could investigate.
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?	
	Specific authorisation
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?	
	If the persons are looking to enter with the aim of taking criminal action, and they act illegal, then their actions should be criminal. If they are acting in relation to civil actions, then the penalties should be non-criminal.
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?	
	Ahh – the usual Federal style of convoluted legislation – refer to another Act without including the details. You should adopt the “plain English” approach of NSW legislation (though not their stupidity re penalties). I don’t know what the Fair Work Act says, or its penalties, but I generally believe such penalties should be civil and about 10% of the levels proposed in this OH&S legislation. As one might say “Get Real” – most people are <u>not</u> millionaires.



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Part 7 – The Regulator

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

I have always thought that a “guideline” is a “guide”. So why should it have a legal status. Check the dictionary!

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?

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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?

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Do you have any other comments?

The Act should be subject to endorsement at the next Federal election – I believe that this is a democratic essential and will enable citizens to decide whether or not the Act is appropriate. If it fails to pass, it should immediately be scrapped and a new (but different) Act should be drawn up.