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## Public Comment Response Form Exposure Draft for Model Act and Stage 1 Model Regulations

Selected questions only have been addressed which have been taken from the Exposure Draft Discussion Paper:

<b>Questions</b>
<b>Part 1 – Preliminary Matters</b>
<p><u><b>INITIAL COMMENTS</b></u></p> <p>It is disappointing to see that this opportunity to achieve a shift in focus to achieve real improvement in health, welfare and safety of workers has been somewhat squandered. This review was the perfect opportunity to write legislation that focused on encouraging the ability of workers themselves to take back their personal responsibilities in ensuring their own health and safety at work, whilst being properly supported by legislation which clearly defined duties of care for all those who impact on their workplace. This notion is not even alluded to in the OBJECTS section nor at the PRIMARY DUTY OF CARE section of Division 2 of the Act.</p> <p>I note that there are some 10 pages in the Act devoted to the delineation of responsibilities of others who may impact on the workplace, yet less than 10 lines for workers. We all know that any amount of Rights is always accompanied by an equal quantity of Responsibilities. We are taught this from the cradle by our parents and significant others in our lives. The silent majority of Australians would probably tend to agree with this hypothesis. This same silent majority would probably also agree that for many years there has been a tendency to want to protect our fellow humans from every conceivable bad consequence of life. Very applaudable .... but as all parents know, if it is your wish to have those under your protection and control to grow, learn and be empowered to take responsibility for their own actions, then applying the “cotton wool” effect will not necessarily be the best solution.</p> <p>There must be a more collaborative and teamwork-like approach, with <u>all</u> team partners having an equitable share of the rights and responsibilities involved. Legislation should be supportive of this notion of team effort, rather than only taking a punitive approach to those seen as having some form of ‘control’.</p>
<b>Q1. What is the best title for the model Act?</b>
<p>Since this legislation is aimed at providing safety and maintaining health in the workplace, no matter the occupation, perhaps “Workplace Health and Safety” would be a clearer indication of both the intent and the content of the Act.</p>



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<b>Q2.</b> Does the definition of ‘ <i>officer</i> ’ clearly capture those individuals who should have ‘ <i>officer</i> ’ duties under the model Act?
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<b>Q3.</b> 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?
<p><b>Plant and Structures should be dealt with separately.</b>  <b>The testing processes and examinations that Plant is subjected to, before being allowed to be sold or used in Australia, are already quite exhaustive. Just how is a structure that is not yet built, other than the engineering calculations already employed, meant to be tested? How does a designer of a structure (building) inform people using the structure of its proper use? What if the use of the building changes during its life?</b></p>
<b>Q4.</b> 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?
<p><b>I believe that the design of Class 1a buildings should be exempt from this Act for 2 reasons.</b></p> <p><b>The first reason being that the level of control held by the professional in most cases of design of private dwellings is so mitigated by the client’s/owner’s instructions and much of the design decisions are not actually made by the designer at all. There appears to be no provision in the Act to cover the responsibilities of ‘others’ who may exert control over the design decisions of buildings and structures. There is no definition of “designer”.</b></p> <p><b>The second reason is that because all dwellings have much the same issues involved, the temptation for the development of a “tick-and-flick” method of risk assessment cannot be overemphasized. This would do little for provision of safety during construction. There is also the possibility of a roll-on effect on housing affordability, with duty holders charging for compliance documentation workloads.</b></p>
<b>Q5.</b> Is the scope of the suppliers’ duty appropriate?
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<b>Q6.</b> Is the scope of the ‘ <i>worker</i> ’ definition appropriate? Should it cover students gaining work experience?
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<b>Q7.</b> Is the definition of ‘ <i>workplace</i> ’ appropriate?
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<b>Part 2 – Safety Duties</b>
<b>Q8.</b> Do the principles that apply to the duties of care give clear guidance on what is expected?
<b>No.</b> Since it is anticipated that breaches of these duties of care will be dealt with as Crimes, there needs to be much clearer expression of these duties and how they can be fulfilled. This could be achieved through production of Supporting information in Model Codes of Practice.
<b>Q9.</b> Is the definition of ‘ <i>reasonably practicable</i> ’ appropriate in this context?
<b>The term ‘Reasonably Practicable’, as defined in the Act, is rather a nebulous concept, in that it relies on the duty holders’ own assessment of both the likelihood of any particular hazards or risks occurring and of the degree of harm that might result if they did occur. It relies on what the duty holder knows, or ought to know about the hazards and risks and how to eliminate or minimize them. This seems to be far too open-ended a situation and could only be properly ameliorated by the production of a Model Code of Practice for every possible field of endeavour to provide a means of compliance with duties of care or by production of an exhaustive list of hazards and associated risks, the likelihood of their occurrence for each industry and the degree of harm that could be expected should they occur.</b>
<b>Q10.</b> Should the definition of ‘reasonably practicable’ be exhaustive i.e. so only matters listed may be considered in determining compliance with the duty?
<b>See above comment.</b>
<b>Q11.</b> Is the proposed scope of the primary duty appropriate?
<b>Not in as much as it does not give recognizance of the fact that the person who is in the best possible position to provide for health and safety is, in fact, the worker and that all other duty holders are listed in the Act as the support structure for him/her to do this.</b>
<b>Q12.</b> 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?
<b>The official language of this nation is English. For those that cannot understand/hear/read this language, many mechanisms for assistance already exist. It may be necessary to encourage employers to make use of these mechanisms.</b>



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<p><b>Q13.</b> 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)?</p>
<p><b>This section still smacks somewhat of old Workers Unions thinking and would seem to be better placed in the Industrial Relations legislation. If the intent of encouraging workers to be more in charge of their own welfare is accepted, then surely we could trust them to find a suitable place to perform everyday human functions of living. As an example, may I refer to my past experience as a Community Nurse, working in a variety of locations throughout each day. Would this Law have meant that my employer may have been reasonably expected to provide me with a port-a-loo; a port-a-shower; a port-a-lunchroom; etc - possibly all mounted on a semi-trailer, in order to ensure I had access to facilities?</b></p>
<p><b>Q14.</b> Is the scope of the duties related to specific activities appropriate?</p>
<p>-</p>
<p><b>Q15.</b> 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><b>In order to establish an equitable arrangement of responsibilities, according to the current wording of this Act, I believe that due regard should indeed be had to what the worker knew about the relevant circumstances and further, as to what the worker should reasonably ought to have known. What training was given; what training was organised but the worker did not attend; what training was offered and declined; are all issues that would bear looking at.</b></p>
<p><b>Q16.</b> Is the treatment of volunteers under the model Act appropriate?</p>
<p><b>Yes. Perhaps Work Experience students could also be given the same standing as a volunteer.</b></p>
<p><b>Q17.</b> 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><b>Penalties for breach of any law should always be commensurate with the degree of risk of harm that others are exposed to as a consequence of the action/inaction constituting the breach. In all other criminal laws, it is clearly spelled out what actions/inactions will constitute a breach, so why should this area of law allow for a breach of duty of care that is not similarly absolutely defined.</b></p>



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e.g. should a road user drive on the incorrect side of the road, he/she will have breached a clearly defined Road Rule. But how does a building designer know that he/she has breached a duty of care by not providing a safe design for a building, until the consequence of exposure to a risk/hazard that was most difficult to identify during the design phase, has actually occurred?  
A definitive Model Code of Practice for Designers of Buildings and Structures, which defines all the areas to be considered in the Risk Assessment and Control process, would fill this gap.

**Part 3 – Other Obligations**

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**Part 4 – Consultation, participation and representation**

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**Part 5 – Protection from Discrimination**

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**Part 6 – Workplace entry by OHS entry permit holders**

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**Part 7 – The Regulator**

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**Part 10 – Review of Decisions**

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**Exposure Draft of Key Administrative Regulations**

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**Do you have any other comments?**

See "Initial Comments"