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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?
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?



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Q5. Is the scope of the suppliers' duty appropriate?

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Q6. Is the scope of the 'worker' definition appropriate? Should it cover students gaining work experience?

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Q7. Is the definition of 'workplace' appropriate?

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Part 2 – Safety Duties

Q8. Do the principles that apply to the duties of care give clear guidance on what is expected?

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Q9. Is the definition of 'reasonably practicable' appropriate in this context?

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Q10. Should the definition of 'reasonably practicable' be exhaustive i.e. so only matters listed may be considered in determining compliance with the duty?

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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?
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)?
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?



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



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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?
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?
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?
Q29. Should a health and safety representative be required to complete approved training before being able to direct that work cease under these provisions?
Q30. Should a health and safety representative be required to complete approved training before being able to issue a PIN under these provisions?



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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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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?

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Part 6 – Workplace entry by OHS entry permit holders

Q33. Are the notification requirements appropriate?

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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?

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Q35. Should contraventions of this Part attract criminal or civil sanctions? If civil sanctions are considered appropriate, should penalty levels



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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?

Part 7 – The Regulator

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

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



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those notices?

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?

Do you have any other comments?

1.The duty of care of an entity conducting a business should be limited by exclusion of the duty towards contractors,experts and consultants who come onto the work site to perform specialist activities whenever such entrants provide the entity with a job safety analysis prior to commencement of their activities.
It is contrary to natural justice to impose a duty of care (other than to disclose any known unusual conditions) to persons who may enter the work site to perform activities of a nature in which the entity has no expertise.
Similarly ,a duty of care should be excluded to the entity for any injuries sustained on its site due to activities carried out by its contractors, experts or consultants. After all,the entity is placing its trust in the expertise of this class of entrants to perform their activities with due care and professionalism and in accordance with their job safety analysis.

2.The proposed legislation should be generally recast to be prescriptive and not performance based in its operation.
The consequences of a breach is criminal in nature,bearing severe penalties for offenders. therefore the “act” or “omission” for which responsibility is attached should always be specified as is usual in a criminal code.



“ Have your say on workplace safety laws. ”



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