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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
<b>Part 1 – Preliminary Matters</b>
<b>Q1.</b> What is the best title for the model Act?
National Safe Work Act
<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?
The definition implies that the “officer” is a single person in the organisation. Where the intent may be that more than one person has duties that would include them in the definition of “officer”. Changing the word “person” to “person/s” would help clarify the intent
<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?
Current arrangement is OK
<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?
The term undertaking in the model Act is used in 2 ways. Change the term OHS undertaking to OHS compliance order or similar. Define the term “undertaking” in the definitions section of the Act



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No specific activities or undertakings are to be excluded. All situations where work is undertaken to be included
<b>Q5.</b> Is the scope of the suppliers' duty appropriate?
Yes Note – Meaning of supply should include items supplied where there is no monetary transaction.
<b>Q6.</b> Is the scope of the 'worker' definition appropriate? Should it cover students gaining work experience?
Definition of "worker" should include people working as part of a mutual obligation or community service order arrangement imposed by a court of law
<b>Q7.</b> Is the definition of 'workplace' appropriate?
In general terms the definition of workplace is good. Inclusion in the definition of "and includes public areas where workers carry out their duties" or similar wording
<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?
No The Duty of Care provisions contained in Section 18 is more helpful
<b>Q9.</b> Is the definition of 'reasonably practicable' appropriate in this context?
Yes



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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?

No. Reasonably practical has to be able to include for consideration things which may not be specifically listed in the Act

**Q11.** Is the proposed scope of the primary duty appropriate?

Yes

**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 and should include that the level of understanding is verified following the provision of training, information and instruction

**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)?

No

Workers who are mobile need not only access to facilities but a work schedule that is flexible to allow the location of facilities to be planned into the work routine to coincide with meal times and times where it is likely that access to toilets would be needed  
Including the words "access to" would probably be applied to workers who are permanently based at one location where facilities are shared  
EG shop assistants in shopping centres



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<b>Q14.</b> Is the scope of the duties related to specific activities appropriate?
No The scope is too broad for a section of the Act covering specific activities Going in and out of the workplace and anything arising from the workplace would be a general duty of care Please define who is a “prescribed person”
<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?
Any determination of a breach must include consideration of what the person knew, <u>or should have reasonably known</u> . Most workers would have an expectation about what they would be expected to know after a period of instruction, training and experience
<b>Q16.</b> Is the treatment of volunteers under the model Act appropriate?
No Volunteers can and do hold positions of authority in organisations that employ people as well as enlist the services of volunteers. Volunteers with positional authority, decision making power and control over the activities of other volunteers and paid workers must be held accountable under the model legislation
<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?
No penalties were found in the downloaded model Act or Regulation



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

Penalties for breaches of the regulations would need to be in line with the penalties prescribed in the Act. As there is no indication of what penalties apply in the Act it is not feasible to offer a sensible answer. Currently penalties for a breach of environmental legislation are more severe than the penalties under OHS legislation. What value do you put on a life? What value do you put on the environment? Both are important.

**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?

This proposal has merit. Minor administrative non-conformances do not deserve to be a criminal offence. It trivialises the importance of OHS and provides critics with an argument, with good reason, about OHS being “over the top”

**Part 3 – Other Obligations**

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

No  
The list of incidents has to be linked to a work related event. As this currently reads a person dying at work from a heart attack would fall into the category of a notifiable incident  
Please define what is a “prescribed kind”

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

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



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No Include consultation required when changes are proposed to the workplace, method of work and systems of work
<b>Q22.</b> Should the model Act include a procedure to follow if agreement on a consultation procedure cannot be reached?
Yes
<b>Q23.</b> 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?
As the workgroups have to arrive at a point where they engage in negotiations it would be reasonable to expect a level of interest in consultation. Providing the process with a structure to fall back on if negotiations collapse would be an advantage and support the workgroups
<b>Q24.</b> 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 21 days seems fair
<b>Q25.</b> 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



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Within 28 days
<b>Q26.</b> 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 The time frame does need to accommodate the factors referred to in Q26
<b>Q27.</b> 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
<b>Q28.</b> 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?
No "Concern" can be subjective "Grounds" implies facts or evidence
<b>Q29.</b> Should a health and safety representative be required to complete approved training before being able to direct that work cease under these provisions?
YES



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<b>Q30.</b> Should a health and safety representative be required to complete approved training before being able to issue a PIN under these provisions?
YES
<b>Q31.</b> A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate?
Yes
<b>Part 5 – Protection from Discrimination</b>
<b>Q32.</b> Should the model Act expressly protect persons from being coerced or induced to exercise their powers in a particular way?
Yes
<b>Part 6 – Workplace entry by OHS entry permit holders</b>
<b>Q33.</b> Are the notification requirements appropriate?
Yes
<b>Q34.</b> 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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Specific authorisation preferred

**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?

Both criminal and civil sanctions. Penalty levels need to be in line with those prescribed under the OHS legislation

**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?

In general terms these provisions appear reasonable providing they do not conflict with right of entry provisions assigned to the inspectorate of a regulator

**Part 7 – The Regulator**

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

Clarification as to whether a guideline is considered as a general guide or a “standard” and if so, would not meeting the “standard” be used as evidence to support a breach.

**Part 10 – Review of Decisions**

**Q38.** Is the list of reviewable decisions appropriate?



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**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**

**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?

Code of Practice preferred

**Do you have any other comments?**

Do not agree that members of local authorities should be exempt from the provisions of the model Act