



| |
|----------------------|
| 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 |
| <p>Q1. What is the best title for the model Act?</p> <p>Work Occupational Safety and Health Act or National Occupational Safety and Health Act or Australian Workplace Occupational Safety and Health Act.</p> |
| <p>Q2. Does the definition of ‘officer’ clearly capture those individuals who should have ‘officer’ duties under the model Act?</p> <p>The definition of managers who control the workplace is not sufficient explicit. The definition of officer under the model act does not clearly define the responsibilities of line managers. It appears to be a higher management definition, rather than line managers. Therefore people may be able to pass the buck or opt out of their responsibilities. The definition is not clear with wording that could be misinterpreted and contested by individuals.</p> |
| <p>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?</p> <p>There is an over lap, but that is better than a gap.</p> |
| <p>Q4. Are there any other types of activities or undertakings that should be specifically included or excluded from application of the model</p> |



| |
|----------------------|
| Office use only |
| Registration number: |
| Received by: |

| |
|--|
| Act? For example, should residential strata title body corporates be excluded? |
| This should be referred to Real Estate Institute of WA and the Department of Housing and Works. |
| Q5. Is the scope of the suppliers' duty appropriate? |
| Yes |
| Q6. Is the scope of the 'worker' definition appropriate? Should it cover students gaining work experience? |
| The worker definition is appropriate and should cover work experience students. |
| Q7. Is the definition of 'workplace' appropriate? |
| Yes, perhaps 'not limited' could be added to (2). |
| Part 2 – Safety Duties |
| Q8. Do the principles that apply to the duties of care give clear guidance on what is expected? |
| Yes |
| Q9. Is the definition of 'reasonably practicable' appropriate in this context? |
| Yes |
| Q10. Should the definition of 'reasonably practicable' be exhaustive i.e. so only matters listed may be considered in determining |



| |
|----------------------|
| Office use only |
| Registration number: |
| Received by: |

| |
|--|
| compliance with the duty? |
| No the definition can not be exhausted. Circumstances will dictate different practicability. |
| Q11. Is the proposed scope of the primary duty appropriate? |
| Risk is used instead of hazard as per the current definition under the OSH ACT WA 1984. Under the OSH Act WA 1984 an employer shall, so far as is practicable, provide and maintain a working environment in which the employees of the employer are not exposed to hazards. The model act definition exposes persons to an increased risk of injury due to the ability for persons in control to identify a risk. In the model Act definition of hazard and risk is not clarified, there is no clear distinction between a hazard and risk, which are indeed different. Risk should be changed to hazard. |
| 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 use the As Low As Reasonably Practicable principal, and aim at the lowest common denominator to ensure that people of all academic levels and abilities can understand procedures etc. |
| 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, workers should have access to facilities taking into account their welfare, possibly worded '... the provision of/access to adequate |



| |
|----------------------|
| Office use only |
| Registration number: |
| Received by: |

| |
|---|
| facilities...' |
| Q14. Is the scope of the duties related to specific activities appropriate? |
| Yes |
| Q15. In determining whether a worker failed to take reasonable care, should regard be had to what the worker knew about the relevant circumstances? |
| Yes |
| Q16. Is the treatment of volunteers under the model Act appropriate? |
| Yes |
| 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? |
| Yes |
| Q18. What should the maximum penalty be for a contravention of the model regulations? |
| It is presumed that the 13 page draft Model Safe Work Regulations document is to be expanded upon, however without know the regulation a penalty cannot be given. |



| |
|----------------------|
| Office use only |
| Registration number: |
| Received by: |

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?

The act should not be criminally based as this will result in incidents and accidents not being reported and go underground in order to ensure that people do not face a criminal process. Only in extreme situations like section 18 of the current OSH Act W1984, where gross negligence has occurred.

Part 3 – Other Obligations

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

The definition of risk and hazard needs to be clarified, the term risk has been used when it should be hazard. A risk is not a hazard. There is no clear direction in this clause; it needs to be identified as per the current OSH Act 1984. Serious/Dangerous what does this mean? There no definition in the model act and no consistency throughout the act with terminology. The wording changes and is lacking in prescriptivity, at present under the OSH Act WA 1984 what is a notifiable incidents cannot be misconstrued. Clarification is required regarding the timing in which incidents are reported. There is no indication that an incident resulting in a long absence from work is reportable, will this be added?

Part 4 – Consultation, participation and representation

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

It needs to define it's audience.

Q22. Should the model Act include a procedure to follow if agreement on a consultation procedure cannot be reached?

More prescriptive direction on the process is required where a consensus cannot be reached.



| |
|----------------------|
| Office use only |
| Registration number: |
| Received by: |

| |
|--|
| 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? |
| No, a prescribed procedure is required 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? |
| A time limit should be set. A meeting date should be allocated within 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? |
| No deputy HSR. Representatives from other areas can cover for HSR when they are not available i.e. when on annual leave. If the position is to be vacant for a long term then the HSR should step down and nominations called for. |
| 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? |
| Time frames need to be nominated to provide clear direction. The way training is accredited and delivered needs to be reviewed to allow flexibility of learning e.g on-line units, staggered study days etc. There should be room for Recognition of Prior Learning for all courses. |
| 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 |



| |
|----------------------|
| Office use only |
| Registration number: |
| Received by: |

| |
|--|
| 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 |
| 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? |
| The Model Act should include this and not refer to another 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? |
| Yes |
| 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? |
| There needs to be a time frame for HSRs to have a guideline, 7 days is sufficient. |
| Part 5 – Protection from Discrimination |



| |
|----------------------|
| Office use only |
| Registration number: |
| Received by: |

Q32. Should the model Act expressly protect persons from being coerced or induced to exercise their powers in a particular way?

Yes

Part 6 – Workplace entry by OHS entry permit holders

Q33. Are the notification requirements appropriate?

Query is this for the act or part of a regulation? At present it seems more of a procedure. There isn't a definition of a workplace entry permit holder.

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?

The content should be included in the Act. It should not refer to another act.

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?

A contravention should not attract a criminal sanction.

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?

The union rep should only be allowed on site for OSH related matters. The role should be included in the act and not refer to any other act.



| |
|----------------------|
| Office use only |
| Registration number: |
| Received by: |

| |
|---|
| Part 7 – The Regulator |
| Q37. Should guidelines have any other particular legal status under the Act? |
| No |
| Part 10 – Review of Decisions |
| Q38. Is the list of reviewable decisions appropriate? |
| Clarification on section 169 is required i.e. the definition of a 'thing'. |
| Q39. Are the processes and timeframes prescribed for the internal review of decisions appropriate? |
| Yes |
| Q40. Are stay arrangements appropriate in relation to the issue of a prohibition or nondisturbance notices, having regard to the purposes of those notices? |
| A definition is required of a 'nondisturbance' notice. |
| 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? |
| |



“ Have your say on workplace safety laws. ”



| |
|----------------------|
| Office use only |
| Registration number: |
| Received by: |

No the list of matters should be left in the Regulations, otherwise they are not seen as a legal requirement.

Do you have any other comments?

- Further definitions are required i.e. hazard, incident, risk, thing, workplace entry permit holder.
- Differentiation between a hazard, near miss and incident needs to be in the act, these definitions are regularly misinterpreted, resulting in OHS practitioners spending considerable amounts of time on these and issues arising from lack of understanding.
- Risk is not a substitute for hazard, the definitions are different. Where risk is used instead of hazard there is an implication that the 'risk' can be accepted under the risk management process, rather than eliminating hazards (as stated in the OSH Act WA 1984).
- Every incident must be investigated, and the most effective way to do this is by risk assessment and the use of hierarchy of controls. These processes need to be kept within the Act.