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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   |
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| <b>Part 1 – Preliminary Matters</b>   |
| <b>Part 2 – Safety Duties</b>   |
| <b>Q9.</b> Is the definition of ' <i>reasonably practicable</i> ' appropriate in this context?  |
| <p>The draft suggests that the “Duty holder must, as a minimum, know and comply with...” It then states “Other sources of information include: ... published scientific and technical literature.” This implies that the duty holder must know about these.</p> <p>One implication of this is that the duty holder must know about and comply with published scientific and technical literature.</p> <p>I don't think this was intended but I believe this possible interpretation should be removed.</p> <p>I therefore suggest that the above implication that the duty holder must know about this information be removed by adding wording such as:</p> <p>“Other sources of information <i>that the duty holder might become familiar with, but is not expected to know about or comply with</i> include:</p> <p>If it was the intention, I believe it is impracticable for several reasons:</p> <ol style="list-style-type: none"><li>1. The term ‘scientific and technical literature’ covers too broad an area and needs to be qualified by a term such as “that the duty holder might be reasonably expected to know (about)”....</li></ol> |



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2. Much scientific literature published in reputable journals is not necessarily reliable as to its conclusions. In fact a majority of such publications do not have conclusions that are reliable, or even always consistent with the published data. This therefore requires qualification by a term such as “whose conclusions have been accepted by a majority of OH&S specialists and that the duty holder might be reasonably expected to know about”.
3. Many companies are not of an adequate size to afford employing a person with sufficient expertise to be able to interpret the latest published scientific literature or to afford to pay for such expertise externally.

For example,

- (a) Much scientific literature has been published that correlates worker stress with incidents that occur while operating plant, such as driving a truck. However the quality of such research and the relevance to a particular industry is often not adequate to expect it to be reliable. So this is not widely accepted.
- (b) Much scientific literature has been published that correlates the amount of participation and responsibility the worker has in developing and implementing controls for a task and the incidence of degenerative diseases such as cancer and coronary heart disease. However the validity of the importance and relevance of such conclusions to a workplace are not widely accepted.

**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?

**No.** I believe that only the major ones involving duty of care offences that have resulted in or could contribute directly to a serious incident should be criminal offences.

I suggest only contraventions in categories 1-5 be criminal offences (company maximum penalties from \$3 million to \$100,000). All category 6 and 7 offences should remain civil offences (company maximum penalties from \$50,000 to \$25,000).



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In this sense it is possible that the Category 3 penalty for discriminatory conduct might be an appropriate anomaly.

**Part 3 – Other Obligations**

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

**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.** I believe that workers need to understand both the principles of OH&S and the implications and responsibilities under the Act before they can exercise this responsibility *on behalf of others*. The right of the workers to cease work covers the issue in relation to themselves.

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

**Yes.** I believe that workers need to understand both the principles of OH&S and the implications and responsibilities under the Act before they can exercise this responsibility *on behalf of others*.

**Part 5 – Protection from Discrimination**

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

**Part 7 – The Regulator**

Don Benjamin



“ Have your say on workplace safety laws. ”



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**Part 10 – Review of Decisions**

**Exposure Draft of Key Administrative Regulations**

**Do you have any other comments?**

I have worked in the OH&S area for 12 years under the Commonwealth legislation and 5 years under the NSW legislation and consider the Draft Act to have retained the essential features of the best of the legislation and the main principles of the Robens ideas.