



|                      |
|----------------------|
| 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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Part 1 – Preliminary Matters</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Q1.</b> What is the best title for the model Act?<br>Work Health and Safety Act. This is possible the best title for the act as the act covers not only the safety of the workers, employees etc but their health as well and to some degree their welfare.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Q2.</b> Does the definition of ‘officer’ clearly capture those individuals who should have ‘officer’ duties under the model Act?<br>The officer definition does cover the individual but should be more specific as the individual may be an employee of the company from supervisor to CEO, unless the term is to be applied only to a body corporate and or board members or a specific person within the body corporate or the board of a large multi corporate.<br><br>For the small to medium size company the term is not specific enough in that the individual would be the company director or managing director of the company and possibly not include the individual persons managing the actual worksite or within the planning process of how the work is to be undertaken at the worksite. |



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

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <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>Yes the structure attribute of the plant should come under the definition of plant ie ROPS and with in the designer, manufacturer, importer, and supplier of plant to ensure the structure is designed, manufactured, supplied and constructed as required to do the task specified ie if the manufacturer of the plant can not manufacture the structure as per the design then they are to inform the designer of the problem and where possible consult in rectifying the problem.</p> <p>The term "structure" should cover all structures constructed, excluding plant structures, both horizontal (civil) e.g. road works, bridges and vertical (construction ) e.g. housing, sheds and buildings</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>No individual person, minister both elected (federal, state, local) and positional, local authority, body corporate, strata title or board should be excluded. This should also include the crown, any crown employees and public servants. They have a duty to the health and safety of those personnel conducting work at there sites and as such should be accountable for their actions or lack of action. They may not be allowed to delegate the duty to another person but another person may undertake the duty as long as that person has the required training, knowledge, skill and authorisation to undertake the duty but the original person is still to be accountable to ensure the duty is undertaken in a way that complies.</p> |
| <b>Q5.</b> Is the scope of the suppliers' duty appropriate?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>Yes as long as in regards to substance supply the substance is a legal substance and the MSDS is supplied or is readily available ie internet.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Q6.</b> Is the scope of the 'worker' definition appropriate? Should it cover students gaining work experience?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>The definition of a worker is appropriate and should cover all types of workers, including self employed persons, volunteers or unpaid workers. Students gaining work experience maybe considered to be an unpaid worker or volunteer.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |



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

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Q7.</b> Is the definition of ' <i>workplace</i> ' appropriate?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| The definition of a workplace is appropriate                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Q9.</b> Is the definition of ' <i>reasonably practicable</i> ' appropriate in this context?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Q10.</b> Should the definition of ' <i>reasonably practicable</i> ' be exhaustive i.e. so only matters listed may be considered in determining compliance with the duty?                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Yes. If the definition of reasonably practicable was restricted then either it will need different definitions for the other clauses or a different term is required or the other clauses need to be complied with as stated and should be stated in a way that informs you of how to comply.                                                                                                                                                                                                                                                                                                |
| <b>Q11.</b> Is the proposed scope of the primary duty appropriate?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <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?                                                                                                                                |
| Yes it should include at a level understood by the workers. Language may be restricted to English (Australian) in verbal and sign as immigrants coming to Australia to work should have a basic level of being able to read, speak and understand English, but in written format for exams no restriction should apply. If this is not restricted then workers may require interpreters to explain the day to day requirements of the workplace for the tasks undertaken or the requirement of supervisors to be bilingual. This is an unnecessary expense. Australia is an English speaking |



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

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| country and new Australians or temporary workers should not be forcing employers to undertake unnecessary training or employees.                                                                                                                                                                                                                                                                                                                                               |
| If not at clause 18(4)(f) then under the requirement for training                                                                                                                                                                                                                                                                                                                                                                                                              |
| <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)?                                                                                                                                                                      |
| No it is covered under clause 19 (2)                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Q14.</b> Is the scope of the duties related to specific activities appropriate?                                                                                                                                                                                                                                                                                                                                                                                             |
| Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <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?                                                                                                                                                                                                                                                                                                                     |
| Yes it should. A worker should be allowed to use as a defence if they complied with the requirements of a superior after they made comment about undertaking and the supervisor justified why it is to be done a certain way. The worker should have identified the hazard and informed the supervisor if not they do not have the required knowledge to undertake the task and she'll be right is not good enough. That's why the construction industry has so may incidents. |
| <b>Q16.</b> Is the treatment of volunteers under the model Act appropriate?                                                                                                                                                                                                                                                                                                                                                                                                    |
| Volunteers should be treated the same as all other paid workers. This then makes it easier to comply with as all workers come under the same requirements. If volunteers are exempt from part then the requirements for volunteers will be different and they will need to be treated differently.                                                                                                                                                                             |
| <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?                                                                                                                                                                                                                                                                                                                     |
| Criminal offences should have a fine and/or a jail term or both. Where the offence was made by an officer (senior management, individual on a                                                                                                                                                                                                                                                                                                                                  |



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

board etc) the individual should also not be allowed to be on any board, strata title etc for a minimum period ie 5 years (after being released from jail), and possibly need to receive training/refresher training in OH&S prior to being appointed back to a position on a board.

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

A breach of the regulations is a breach of the act and as such should have the same penalty as the appropriate clause within the act. This should also hold to breaches of the codes of practices and any standards that are identified with in the act, regulations or codes of practices. Thus the maximum penalty for a contravention of the regulations is a Category 1 offence.

**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?

All duty of care offences should be criminal offences and as such should be heard in the criminal courts or at least the person committing the offence receives a criminal record. Other offences could be a fine or on the spot fine with the record kept by the state where the offence was made.

**Part 3 – Other Obligations**

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

Yes they spell out what the incident requirements are for when you need to notify.

Notification of serious diseases should be to an appropriate medical body possibly within the state and the body for other serious incidents ie OH&S Division. This medical body may already exist. This so the OH&S Division can keep accurate records of all incidents but the medical body can have records of how when where any possibly why the disease occurred, which should help in the solution to reduce the number of preventable diseases.

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

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



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

|                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Yes and no. Yes they cover the requirements to consult and when to consult.<br/>                 No the DHSR should have the same training and duties as the HSR not just some as listed in section 61(3)</p>                                                                                 |
| <p><b>Q22.</b> Should the model Act include a procedure to follow if agreement on a consultation procedure cannot be reached?</p>                                                                                                                                                                |
| <p>Yes or it can be in the regulations but there should be something ie have an inspector and possibly union reps come in and mediate the process.<br/>                 Also Division 4 sections 73 &amp; 74 cover issue resolution which looks as if it would cover this situation as well.</p> |
| <p><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?</p>                                                             |
| <p>No see section 50(5) and prescribe within the regulations. This should be the same as Q22 above.</p>                                                                                                                                                                                          |
| <p><b>Q24.</b> Negotiations for work groups must be commenced within a 'reasonable time'. Should a time limit be prescribed e.g. 14, 21 or 28 days?</p>                                                                                                                                          |
| <p>Definitely what is a reasonable time for one person may not be reasonable for the others, while 28 days, 20 working days or 1 calendar month is a defined time that all parties can see.</p>                                                                                                  |
| <p><b>Q25.</b> Elections for HSRs and possibly deputy HSRs must be conducted 'as soon as reasonably practicable' 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?</p>   |
| <p>Yes.<br/>                 The time frame should allow for the nominations to be received and the nominees confirm that they are willing to accept. Then the election to be conducted.</p>                                                                                                     |
| <p><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</p>   |



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

|                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>area. Should a time limit be specified within which the training must be provided?</p>                                                                                                                                                                                                                                                                                                                                    |
| <p>No if only for just those reasons. It may be an unnecessary expense for the employer to send the HSR away for training which may be available in the local area soon after they have returned. If a time limit is necessary then 1 year for rural areas should be allowed.</p>                                                                                                                                            |
| <p><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?</p>                                                                                                                 |
| <p>Yes a committee can be set up earlier but remember that you HSR's are on the committee and they possibly need to be elected.</p> <p>Section 69(2) states that the HSR can be on the committee if they consent, this is not acceptable, the HSR's should be on the committee not if they consent to be on the committee. They are the workers reps for the group and need to represent them at the committee meetings.</p> |
| <p><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?</p>                                                                              |
| <p>If this going to be aligned to the <i>Fair Work Act 2009</i> (Cth) (Fair Work Act) then the same terminology should be used to stop confusion between the two acts.</p>                                                                                                                                                                                                                                                   |
| <p><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?</p>                                                                                                                                                                                                                                                   |
| <p>No the HSR should be able to stop work at all times even if they have no training either as a rep or on the task. Some times if something looks or fees wrong it is wrong. The HSR generally has been in the job for a while and the workers have elected them to help look after their health &amp; safety.</p>                                                                                                          |
| <p><b>Q30.</b> Should a health and safety representative be required to complete approved training before being able to issue a PIN under these</p>                                                                                                                                                                                                                                                                          |



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

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| provisions?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Yes. They should not be able to write pins or provisional notices until they have completed the appropriate training.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Q31.</b> A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| A time frame is required it is not reasonable to state within a reasonable time frame. If the issue is not going to be remedied within the 7 day time frame then the committee should be involved to help rectify the problem.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <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 diversity is good.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Part 6 – Workplace entry by OHS entry permit holders</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Q33.</b> Are the notification requirements appropriate?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| No<br>If the OHS entry permit holder has reasonable grounds to suspect that a contravention of the model act has occurred or suspects that it is occurring then why do they only have to give notice of the contravention <b>AFTER</b> they have entered the workplace? They should be giving the notice of the suspected contravention <b>before</b> they enter the workplace as this is the reason they are entering the workplace in the first place. The only time they should be allowed to enter the workplace without informing the workplace of the reason is as per section 108(2), it will defeat the purpose or delay the permit holder.<br>Also the OHS entry permit holder should have some OHS qualifications. This is to be able to back them up if the contravention is substantiated. |
| <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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| No the process under the fair work act is good enough as long as the model act stipulates that.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Q35.</b> Should contraventions of this Part attract criminal or civil sanctions? If civil sanctions are considered appropriate, should penalty levels                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |



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

|                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| reflect those that apply under the Fair Work Act?                                                                                                                                                                                                                                                                                                      |
| If the power to enter the workplace is from the fair work act then the penalties that are imposed should also be from that act. This will stop any bias between penalties or the OHS entry permit holder trying to enter the workplace under false grounds as the penalties if convicted could be higher.                                              |
| <b>Q36.</b> 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?                                                           |
| If the model act states that a union rep may enter the workplace in relation to an OHS issue using the OHS entry permit and has reasonable grounds to suspect that a contravention of the act has occurred or suspects that it is occurring then Yes. But as stated in Q 33 they should give the reason for the entry prior to entering the workplace. |
| <b>Part 7 – The Regulator</b>                                                                                                                                                                                                                                                                                                                          |
| <b>Q37.</b> Should guidelines have any other particular legal status under the Act?                                                                                                                                                                                                                                                                    |
| No guidelines being made under the model act by the regulator would be enforceable.                                                                                                                                                                                                                                                                    |
| <b>Part 10 – Review of Decisions</b>                                                                                                                                                                                                                                                                                                                   |
| <b>Q38.</b> Is the list of reviewable decisions appropriate?                                                                                                                                                                                                                                                                                           |
| Yes otherwise the whole of the act will become reviewable.                                                                                                                                                                                                                                                                                             |
| <b>Q39.</b> Are the processes and timeframes prescribed for the internal review of decisions appropriate?                                                                                                                                                                                                                                              |
| Yes                                                                                                                                                                                                                                                                                                                                                    |
| <b>Q40.</b> Are stay arrangements appropriate in relation to the issue of a prohibition or nondisturbance notices, having regard to the purposes of                                                                                                                                                                                                    |



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

|                                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| those notices?                                                                                                                                                                                                                                                               |
| Yes                                                                                                                                                                                                                                                                          |
| <b>Exposure Draft of Key Administrative Regulations</b>                                                                                                                                                                                                                      |
| <b>Q41.</b> 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?                                                                                                          |
| They can be in either. If they are in a code of practice then they can be expanded on to show the sub points that each points covers and explain how when where and why. This is important as some employers and new HSR's may not have a good understanding of how and why. |
| <b>Do you have any other comments?</b>                                                                                                                                                                                                                                       |
| Statements of "In this Division" should be removed and the term made a definition e.g. "What is a notifiable incident" becomes "A notifiable incident is". The definition will then be the same though out the act.                                                          |