



Auspine Limited
ABN: 48 004 289 730

GUNNS TIMBER PRODUCTS

Submission re National OHS Act 2009

Introduction

Auspine Ltd (Gunns Timber Products) is part of the Gunns Limited group with the head office located in Launceston Tasmania but with a smaller presence in Mt Gambier for some corporate functions.

Gunns Timber Products is a national business growing, harvesting and manufacturing quality timber products and chip from its Pinus Radiata plantations. It is also actively engaged in sustainable hardwood forestry management of Tasmanian Oak and Western Australia Jarrah.

Gunns Timber Products is committed to sound practices in Health and Safety and Environmental Management and maintains accreditation in Self Insurance in SA, ISO 9001, 140001 and Australian Forestry Standards (Tasmania).

The total number of personnel employed by Gunns Limited nationally is approximately 2500.

Overview

Gunns looks forward to the ongoing development and implementation of a National Occupational Health & Safety Act (The Act). With operations encompassing most states across Australia, Gunns undertakes to meet legislative requirements for each state through its various management operating systems, policies and procedures. Having one Act will minimise the need to make variations for each business thereby allowing the organisation to develop a streamlined and consistent approach across its activities ensuring a standard approach to health and safety. This review will address the questions raised in relation to the Public Comment Response.

Q1. *What is the best title for the model Act?*

R. In order to align all present OHS Acts, it may be prudent to maintain the stated name as the 'National Occupational Health & Safety Act 2009'. This ensures consistency with other Acts and sets the parameter that it is an "overall Act for the nation.

Q2. *Does the definition of 'officer' clearly capture those individuals who should have 'officer' duties under the model Act?*

R Some states have defined roles for Responsible Officers of companies, so there may be some confusion in relation to the title and the responsibilities. Consideration of changing the name (as Officer under the Act) may need to be given.

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?*

R Plant is generally defined as what is set in place or fixed and structure is generally defined as the supporting framework, building or essential parts.
Does the definition of plant include issues such as hand tools (screw drivers/hammers etc?) Structure includes use of towers/masts etc, this could normally be considered as plant. There may be a need to clarify and define more succinctly 'plant' and 'structure' to avoid confusion. (This could be more defined in the Regulations of a Code of Practice)

Q3 *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 corporates be excluded?*

R Does this include those who work from home i.e. consultants and if so how would this be controlled?

Q4 *Is the scope of the suppliers' duty appropriate?*

R There are no issues with the scope of the suppliers' duties.

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

R Yes, work experience students should be covered. Does the volunteer fit into this category when it has already been outlined that volunteer organisations are not incorporated under the Act?

Q7 *Is the definition of a 'workplace' appropriate?*

R The definition of a workplace is appropriate?

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

R Whilst there are no issues with the duty of care guidelines provided the question raised is where does responsibility stop with the employer and roll back to the employee. An employer may have sound systems in place but can not 'reasonably foresee' inappropriate actions that an employee may initiate possibly resulting in a work related injury or harm to others. Currently the employer incurs the costs regardless of what systems and processes are implemented.

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

R In the example given, No. Generally however employers accept they have a duty of care and will implement measures to ensure compliance, in that context the definition is appropriate.

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

R Each case should be assessed on its merits following the guidelines as detailed under the determination of what is reasonably practicable. This may be clarified more in the Regulations?

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

R There are no issues with this scope.

Q 12 *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?*

R This should be automatically understood as given, but to further reinforce the principal of the requirement that appropriate languages and understanding is a standard requirement would clarify the requirements. Whilst it should be up to the employer to consider what is 'reasonably practicable' in determining employee requirements that should be activated at the commencement of employment this may be clarified further by defining in a Code of Practice.

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. take account of requirements for mobile workplaces)*

R Does mobile workplaces include a persons vehicle? There may be a requirement of defining what a mobile workplace is.

Q14 *Is the scope of the duties related to specific activities appropriate?*

R There are no issues with this scope.

Q15 *In determining whether a worker has failed to take reasonable care, should regard be had to what the worker knew about the relevant circumstances?*

R Is there an expectation that workers have access to information and ignorance is not acceptable? We understand this is expected of employers.

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

R Whilst officers of volunteer organisations should not be prosecuted for contravention of the Act, they may face common law action so should be aware of the requirements before they take on these roles.

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?*

R There are no issues with the penalties proposed.

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

R As detailed in Category 1. There is uncertainty about the purpose of imprisonment (unless the act was intentional) Imprisonment may not necessarily achieve any desired outcome, it may be more of a deterrent to remove the person from office and ensure they do not take on those types of roles again. Each case would need to be considered on the presenting evidence.

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 HRS's at the workplace, offences relating to right of entry?*

R Whilst sanctions are, and should be, actioned for non compliance to the law, there needs to be parameters set as to what constitutes criminal offences. Non display of notices is a lesser issue and may be best served for all parties by the issuance of improvement and or expiation notices. This may be clarified further in Regulations?

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

R Generally these are clear however further clarification in the regulations would assist personnel to understand the reporting requirements.

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

R There are no objections to the consultation and communication requirements as detailed.

Q22 *Should the model Act include a procedure to follow if agreement on a consultation procedure can not be reached?*

R There should be notation for this to occur in the Act, perhaps a description outline in the Regulations would assist a business or undertaking to develop their own process and implement these.

Q23 *Clause 49 allows workgroups to be determined for workers engaged in 2 or more businesses or undertakings. Should such arrangements be made by agreement only, i.e. with no prescribed procedure if negotiations fail?*

R There is no issue with this proposal. It is believed that safety representatives should ideally represent the Company or the specific site location more so than just one work group.

Q24 *Negotiations for work groups must be commenced within a 'reasonable time. Should a time limit be prescribed e.g.14, 21 or 28 days?*

R It is suggested that preference should be for no later than within 28 days, reasonable time interpretation can vary with individual businesses or undertakings.

Q25 *Elections for HRS's and possibly deputy HRS's must be conducted 'as soon as reasonably practicable' after the relevant workgroups are established, or after a request for an election is received if workgroups are already established. Should a time limit be prescribed?*

R As above

Q 26 *The model Act requires that HSR training must take place within a reasonable time, to accommodate a range of circumstances. Should a time limit be specified within which the training must be provided?*

R Suggestion is that training should be arranged within 6 months (not necessarily completed) of being appointed in the role of HSR. (Course availability will depend upon location of areas and instructors). This could be further defined in the Regulations.

Q 27 *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 time frame, which varies across jurisdiction from 3 weeks to 3 months. Is the time frame of 2 months appropriate?*

R There is no issue with the proposal of 2 months for establishment of OHS committees following the request. (As above)

Q 28 *The Fair Work Act 2009 (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 to the Fair Work Act?*

R The organisation would consider the institution of 'reasonable grounds' more so than 'reasonable concerns' as this may be subject to feelings of the person concerned. Reasonable grounds allows for tangible results based on risk management principles. Consideration should be given to detailing in the Regulations the process to follow in particular dealing with issues within the business or undertaking through the respective person in charge before any ceasing of work occurs. Where there is failure and the employee still believes there is 'reasonable grounds' then external sources could be initiated.

Q 29 *Should a health and safety representative be required to complete approved training before having power to direct that work cease under these provisions?*

R Training would assist health and safety representatives to understand what is required, but this should not deter them from offering an opinion in what they see as 'reasonable' in the circumstances.

Q 30 *Should a health and safety representative be required to complete approved training before being able to issue a PIN under these provisions?*

R Yes, it would seem unfair to expect a health and safety representative to issue PIN without an understanding of potential ramifications.

Q 31 *A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate?*

R There needs to be clarification on compliance vs. completion. 7 days would seem appropriate in most circumstances for compliance to agreed outcomes however in some cases it may take longer to complete based on action required.

Q 32 *Should the model Act expressly protect person from being coerced or induced to exercise their powers in a particular way?*

R Yes, this should be clearly stated in the Act.

Q 33 *Are the notification requirements appropriate?*

R This should be based on case dependant. (i.e. serious injury/death should be immediate access, with out interfering with legislative groups, in less serious cases 72 hours may seem more appropriate, particularly if it is a weekend event and the office staff are not available until the following Monday)

Q 34 *Should the model Act contain specific authorisation process for an OHS entry permit or can it rely on authorisation obtained under other acts such as the Fair Work Act?*

R Ideally one act should outline the requirements however reference should be made to the relevant section of the Fair Work Act when being cited in the Act.

Note:

It is important that authorised representatives hold suitable qualifications and the Company believes that this should be in line with the level of training that the Inspectorate receives, base line of, for example a Certificate in OHS or 5 years OHS experience.

Due to the potential conflict likely to arise in some circumstances, the representatives should also have a sound knowledge of how to handle issues relating to conflict, anger management and poses sound interpersonal skills. Representatives must have a good understanding of Management Operating Systems for OHS and the relevant Acts for the State.

Organisations should have access to a list of authorised representatives for their local area which is updated regularly to ensure currency thereby ensuring employers know who the authorised and registered representatives are.

Q 35 *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?*

R There may be a requirement to have both civil or criminal, depending on what the obstruction or unlawful entry involved.
The Company believes that where a permit has been revoked due to miss representation by the authorised representative the Industrial Registrar should advise, in writing, the affected Company regarding the course of action taken. We believe that companies should have the right of pursuing action against the representative or their Union (where the case is warranted) and this should be defined in the Act.

Q 36 *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 a workplace in relation to OHS, rather than in relation to workplace relations?*

R No issue with this provision providing that OHS is not used as a platform for industrial relations entry.

Note:

Written notice must be very clear detailing the rationale for the representative visit and clearly include location, area and events to be reviewed. Notice should be provided to the Senior Management personnel or the Responsible Officer for the Business. Notice should be clearly stated as being provided with a **minimum** of 24 hours commencing from operating day time hours, not from the time of the event, in order to allow relevant personnel to be fully aware of circumstances and available to be present on the planned day of visit. In some cases where documents are held off site or archived, it may take longer than 48 hours to obtain copies. Not all areas have access to archives on site due to storage in other areas. Perhaps there should be inclusion to allow information to be available such as within 5 working days from the request. The release of confidential information should not be accessible to authorised representatives and we believe this should only be actioned by the Inspectorate. We ask what recourse would the employer have to exercise restraint in relation to release of documentation, where there are obvious differing opinions as to what is "reasonable" release of documents?

The Company expresses its concern to release of information regarding the health of an employee. In order to avoid confusion of what documentation should be released, this should be clearly stated on the release authority signed by the employee (i.e. for hearing loss only). The Company would not be supportive of release of information unless this is clearly defined as suggested.

Q 37 *Should guidelines have any other particular legal status under the Act?*

R No

Q 38 *Is the list of reviewable decisions appropriate?*

R There is no issue with the list of reviewable decisions

Q 39 *Are the processes and time frames prescribed for the internal review of decisions appropriate?*

R Yes

Q 40 *Are stay arrangements appropriate in relation to the issue of a prohibition or non-disturbance notices, having regard to the purpose of those notices?*

R There are no issues with this section.

Q 41 *Should the list of matters to be considered in negotiations for workgroups be provided for in the Code of Practice rather than in prescribed regulation?*

R Since the requirement for negotiation with work groups is set out in legislation consideration should be given to the Regulations to assist a business or undertaking on how to implement the requirements.

The Company appreciates the opportunity to offer recommendations for consideration.

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