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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
Part 1 – Preliminary Matters
Q1. What is the best title for the model Act?
Health and Safety at Work Act 20XX – It is important that Health is mentioned as well as safety
Q2. Does the definition of ‘ <i>officer</i> ’ clearly capture those individuals who should have ‘ <i>officer</i> ’ duties under the model Act?
Yes
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?
Plant and structures should be defined
Q4. 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?
No comment



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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?
Yes
Q7. Is the definition of 'workplace' appropriate?
Yes
Part 2 – Safety Duties
Q8. Do the principles that apply to the duties of care give clear guidance on what is expected?
<p>Include requirement for persons conducting a business or undertaking to produce a health and safety policy (to be defined) to ensure commitment to health and safety.</p> <p>Include requirement to record significant findings of hazard identification and risk assessment after consultation and to make available to employees, contractors and other affected persons etc. In my experience of dealing with a number of different employers and employees they are frequently asking just what is it that they need to document – the above should help clear away the confusion</p>
Q9. Is the definition of 'reasonably practicable' appropriate in this context?
Yes – WorkSafe Victoria position statement gives further clarification and should be used as support material



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Q10. Should the definition of 'reasonably practicable' be exhaustive i.e. so only matters listed may be considered in determining compliance with the duty?
Definitely not to being exhaustive
Q11. Is the proposed scope of the primary duty appropriate?
Refer to Q8 – explicit need for Health and Safety Policy and recording of risk control measures (eg from hazard identification and risk assessment/JSA's/JSEA's/SWMS) etc
Q12. The model Act requires the provision of, as 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?
Both eg provided at a level that can be understood by the workers including in any language or languages
Q13. The model Act requires, as 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
Q14. Is the scope of the duties related to specific activities appropriate?



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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?
Jail and/or imprisonment then a sliding scale depending on the seriousness of the 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 HSR's at the workplace, offences relating to right of entry?



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All should be criminal offences
Part 3 – Other Obligations
Q20. Is the list of notifiable incidents sufficiently clear and objective, so duty holders easily understand their obligations?
Yes
Part 4 – Consultation, participation and representation
Q21. Is the proposed scope of duty to consult workers appropriate?
Ensure consultation is flexible eg if HSR is not available and quick action is needed (such as dynamic risk assessment) then employees should be able to be consulted directly
Q22. Should the model Act include a procedure to follow if agreement on a consultation procedure cannot be reached?
Yes
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?
Arrangements by agreed negotiation
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?



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Prescribed – 14 days
Q25. Elections for HSR’s 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?
Prescribed – 28 days
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?
A time limit would be preferable eg one month for Metropolitan areas and 3 months for more remote – a degree of flexibility should be built into this
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 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?



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Terminology should be consistent
Q29. Should a health and safety representative be required to complete approved training before being able to direct that work cease under these provisions?
Training would be preferable but the answer would be no if training is not mandatory
Q30. Should a health and safety representative be required to complete approved training before being able to issue a PIN under these provisions?
Please refer to Q29 answer
Q31. A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate?
Depends on the seriousness of the issue – would recommend 8 days (actual as opposed to working)
Part 5 – Protection from Discrimination
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?



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Yes
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?
No comment
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?
Criminal and civil – penalties as per Fair Work Act
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?
Yes
Part 7 – The Regulator
Q37. Should guidelines have any other particular legal status under the Act?
No comment
Part 10 – Review of Decisions
Q38. Is the list of reviewable decisions appropriate?



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Yes
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?
Yes
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?
Yes
Do you have any other comments?
Just a plea for sensible risk management not bureaucracy to be a theme of the Act – look to AS/NZS 4801 and audit tools such as SafetyMap and include an explicit requirement for health and safety to be managed in a systematic manner through A specific legal requirement for PCBU to devise and implement a Health and Safety Policy (to gain commitment) A specific legal requirement for PCBU to devise and implement a Health and Safety Plan (to deliver the H&S Policy) A specific legal requirement to record significant findings of hazard identification and risk assessment and make available to workers etc

Richard Forster



“ Have your say on workplace safety laws. ”



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- A Code of Practice on Risk Management should also be considered

Keep it simple (and safe)

Good luck to all involved in the harmonisation project!