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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?
Safe Work Act
Q2. Does the definition of '*officer*' clearly capture those individuals who should have '*officer'* duties under the model Act?
Yes however it needs to be clarified as to what level of officer.
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?
Yes. In the fishing and maritime industries, vessels could be considered both structures and/or plant, or even structures upon structures.
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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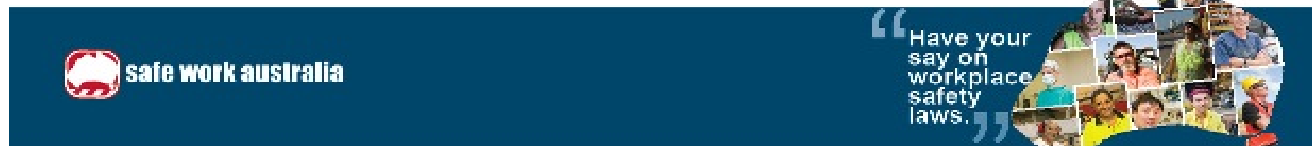

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Q5.	Is the scope of the suppliers' duty appropriate?
Yes	
Q6.	Is the scope of the '*worker*' definition appropriate? Should it cover students gaining work experience?
Yes. Precedent has already been set in South Australian courts covering work experience – they are deemed to be a worker.	
Q7.	Is the definition of '*workplace*' appropriate?
No. To this day, there has and will continue to be ambiguity when it comes to the definition of a workplace until it is clearly defined in law. This should not be that of a court to decide. I also think the SA OHS&W Act has a clearer definition for vessels than the Model Act.	
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 compliance with the duty?

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No comment
Q11. Is the proposed scope of the primary duty appropriate?
No comment
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?
No. My personal view is that if a person cannot speak English to a standard required in Australia, then they should not be employed in Australia. There are ample English speaking people in this country that would eliminate unemployment and reduce the risks associated with employees not understanding what is required in the workplace. Why should employers be burdened with the costs of providing interpretive material or resources?
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)?
Absolutely. Using the term '*reasonably practicable'* is not prescriptive enough. Australia is wide, vast and remote. There should be a minimum standard of provisions required for remote workers.
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?
No comment
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?
Proposed levels are appropriate
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?
It would be absolutely ridiculous for anyone, let alone an employer, to be charged a criminal offence for non-duty of care offences. How more Americanized can we get? I have also experienced inspectors get employers on the wrong side by stating ‘this is a crime scene’ upon entry and investigating accidents. Clearly the wrong message to an employer that is trying to deal with a workplace accident.

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Part 3 – Other Obligations
Q20. Is the list of notifiable incidents sufficiently clear and objective, so duty holders easily understand their obligations?
Not broad enough eg. admitted as an in patient. This may have been OK back in 1985-86 when most Acts were implemented, but these days an injured employee can be admitted, operated on and released within less than a day for an injury that would have required a week hospitalization back then. The in-patient should be time based eg. overnight, two nights. The term serious is too ambiguous and left open to interpretation. What may be serious to one person, may be minor to another and vice-versa. A bump on the head to an amateur boxer, bricklayer, fisherman or other hardened employees may be considered minor, however the equivalent bump if received by an office worker might be considered serious and they may seek medical treatment. The determination for this is left up to the employer – how? Employers see foreign body eye injuries and welding flash that require medical treatment and several days off work, should they bother the inspectorate for all those? Spinal injuries – a slipped disc, herniated disc, impinged nerve, vertebrae spurs, all spinal – do they require reporting? Serious lacerations – how many sutures? Is this to include butterfly strips? Essentially, what or how is it to be deemed 'serious' for all the above? As for 'notifiables' – 36(a) What is potentially hazardous? Any substance has the potential to be hazardous, even water!! 36(c) Should be removed or clarified as to what extent of release and types of gas 36(d) Ridiculous. Events occur daily in every single building or construction site in Australia. Needs to be defined. 36(f) For malfunction and damage, as per (d) 36 (h) Will 'excavation' be defined in regulation?
Part 4 – Consultation, participation and representation
Q21. Is the proposed scope of duty to consult workers appropriate?

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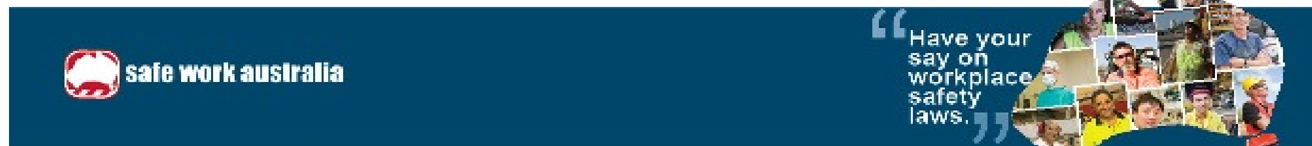

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Yes
Q22. Should the model Act include a procedure to follow if agreement on a consultation procedure cannot be reached?
No comment
Q23. Clause 49 allows work groups to be determined for workers engaged in 2 or more businesses or undertakings. Should such arrangements be by agreement only, i.e.with no prescribed procedure if negotiations fail?
No comment
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?
Yes – 28 days is ample.
Q25. 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?
Yes, otherwise who in the workplace determines what is '*reasonably practicable*?
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?

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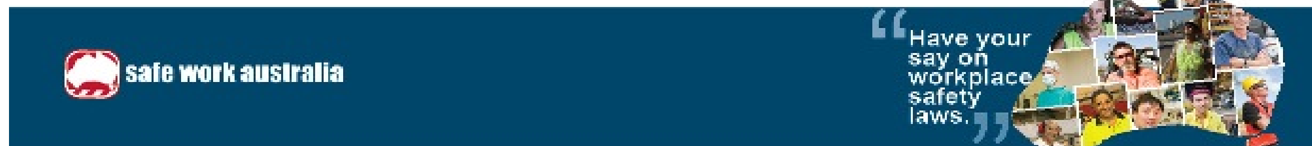
Yes, however further assistance in rural and remote areas is required. For example, HSR training is not held in Port Lincoln, a town of 14,500. HSR's are required to travel to Whyalla (2 ½ hrs drive one way, accommodation etc), Pt Augusta (3 1/2 hrs drive one way, accommodation etc) or Adelaide (7 hrs drive or flights, accommodation etc) at the cost of the employer. The regulator should be a training provider and deliver this training to regional areas regularly. They don't do enough proactive work as it is.	
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 – 2 months is ample.	
Q28.	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 with the Fair Work Act?
Yes – maintains consistency. 'Concern' is also more descriptive of health and safety than 'grounds'	
Q29.	Should a health and safety representative be required to complete approved training before being able to direct that work cease under these provisions?
No. Lets say that a timeframe is established between when an HSR is elected and when they must receive training, if this is to be the case. If not it could be worse. Anyway, the requirement to cease work is critical and therefore timing is critical, HSR training is not. Do we let employees continue to work in dangerous situations, with dangerous equipment, not receive training in dangerous plant and equipment and therefore expose employees to injury and employers to penalties? I would hate to be the parent of an employee that was critically injured because a HSR was not authorised to take action that could have prevented the accident. Seems to me to defeat the purpose of the Act.	
Q30.	Should a health and safety representative be required to complete approved training before being able to issue a PIN under these



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provisions?
No
Q31. A PIN cannot require compliance before 7 days from the date the PIN was issued. Is this time frame appropriate?
Yes
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?
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?
Yes. An authorisation should state that any person entering a worksite under a permit is required to undertake any entry requirements particular to that worksite eg. inductions (although the level would not need to be as in depth as that of an employee), to be accompanied by an officer of the company etc. It is also my view that inspectors undertake that same induction, unless it's an emergency.

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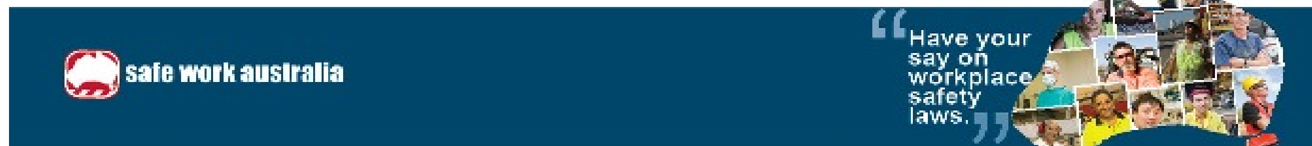

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Q35. Should contraventions of this Part attract criminal or civil sanctions? If civil sanctions are considered appropriate, should penalty levels reflect those that apply under the Fair Work Act?
Civil sanctions are appropriate.
Q36. The right of entry 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?
If its consistent, yes.
Part 7 – The Regulator
Q37. Should guidelines have any other particular legal status under the Act?
Guidelines, although that title should change, should have full legal status and be consistent across all jurisdictions. All COP's should also be called 'Approved Codes of Practice'. Currently in SA there are those that are Approved, and those that are not. At the end of the day, either can be called up in court to demonstrate a particular standard of care or practice. So why differentiate? There may also be a need for jurisdictions to maintain unique Approved Codes of Practice.
Part 10 – Review of Decisions
Q38. Is the list of reviewable decisions appropriate?
Yes

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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?
No comment
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?
No
Do you have any other comments?
Further to HSR training, consideration needs to be given to the impact this may have on career paths that prospective HSR's may embark on. The current 3 levels of HSR training, particularly in SA, are linked to Nationally Recognised Training towards TAFE Cert's 3, 4 and Diplomas. Given that the Model Act and regulations appears to be reducing the amount of training, has consideration been given to the impact upon HSR's future, other regulatory training requirements or the impact upon training institutions?