

1.1 Regulatory structure

The model OHS Act should be principle based with minimal detail. Details should be in the Regulations and Codes.

Regulations should be performance based except for high risk activities that should prescriptive.

1.2 Title, Objects and Principles

An appropriate title should be Occupational Health a Safety Act and specify its objectives.

The model OHS Act should include the following principles:

- Precautionary principle
- Elimination of Risk at Source
- Compliance for different stakeholders
- Communication Consultation
- Collaboration and shared responsibility
- Regulator
- Duty holders

The model OHS Act should include principle of a system of management that is integrated as part of the system

2.1 Scope, application and definitions

The ATO considers there should be on set of OHS Laws covering all jurisdictions and industries. The legislation should allow collaboration and create integrated national systems, for example, data bases, procedures for investigation, common licensing system, procedures.

The Act should be generic and Regulations and Codes of Practice giving details specific to hazards.

2.2 Work Places and Non-workplaces

The general duties outlined in the model OHS Act should include both conduct of work and workplace and work relating to any work including volunteers.

2.3 Responding to Change

The model OHS act should be sufficiently broad and flexible to accommodate new and evolving types of work arrangements including:

- Contracts and labour hire to be included
- Workplace apprentices
- Work experience
- Franchisees

Some suggested current and emerging hazards to include in a model OHS Act should include

- Psychological
- Fatigue
- Work at home or in transit

- Long hours of work
- Availability for work with new technology
- Aged or people with disabilities workers
- Nano technology
- Gene technology

2.4 Definitions

To achieve consistency the ATO considers that the model OHS Act should include a dictionary and show examples of interpretation.

3.2 Control

The model OHS Act should include a definition of duty holders and responsibilities.

The definition should be meaningful and consistent. The role of control should be broad and look at entire chain of control over whole life and organisational processes from design to decommissioning and the role of control can be shared. The model OHS Act should have the provision to delegate or relinquish control but should include the opportunity to provide a defence, for example, wasn't reasonably practicable.

The model OHS Act should clarify responsibilities where multiple duty holders and multiple duties are involved this should be done by providing clear and detailed definitions of where responsibilities start and finish. Have categories of responsibility; for example, designer, owner, renter, contractors' subcontractors, employees, outworkers, volunteers and what duties apply and are owed by.

3.3 Work relationships

Relying on employment relationships should not be a basis for framing safety obligations. The model OHS Act should be expanded to include non-employees, for example, public where they enter the sphere of your control of work.

The model OHS Act should define the duty is the safe conduct of business or undertaking including the people assisting the undertaking and being people being exposed to that undertaking

3.4 Duties of employers

The model OHS Act should reflect a system of management that sits along other systems of management for the undertaking including risk management workplace, plant, training, consultation records, communication and monitoring safety & health aspects of the business, faculties.

3.5 Duties of workers and others

The model OHS Act should specify the workers duties of care as a shared collaborative model as per the OHS Act 1991.

3.6 Appointed persons and officers

The model OHS Act should provide a mechanism for persons to be appointed to a position that has specific OHS responsibilities. The person should have a specific level of training to undertake the role. OHS responsibilities should rest with the employer not the appointed person. The relationship between the OHS responsibilities of the duty holder and such appointed person should be under a normal employment relationship.

3.7 Duties of Persons in Control

The model OHS Act should clearly define the concept of “persons in control”

3.8 Activities which impact on health and safety

The model OHS Act should clearly establish the health and safety obligation for various activities which affect health and safety for the whole life (conception to disposal) including design, manufacture/ importation, supply, distribution, installation, erection, decommission and disposal. The model OHS Act should be drafted to take into account situation where the relevant upstream activity occurs in another jurisdiction or outside Australia. There should be arrangements for compliance activity across jurisdiction, for example, the purchaser should not be responsible for a deficient design.

The definition of supply should include every process or transaction and include the entire life cycle including decommission and disposal.

4.1 Concept of “reasonable practicable”

The definition of “reasonable practicable” should be included in the model OHS Act to remove doubt and included in the definition of “reasonable practicable” (see above).

The basis of reasonably practicable should also be applied to the level to which risk management processes apply as well (see definition of “reasonable practicable” Exposure Draft ACT Work Safety Bill 2008)

The test for compliance should be in the Act as a broad approach but specific aspects to demonstrate compliance for a particular hazard could be in a Regulation.

4.2 Risk Management

The definition of hazard and risk should be defined to remove doubt as it is common that the terms “hazard” and “risk” are used interchangeably.

The risk management process has to be robust and appropriate to the risk. There are alternate methods in determining “risk” that can be considered including:

- “Cost benefit analysis”,
- “Minimum Endogenous Mortality”:
- “Globally at least as good”.

There should be a general risk management requirement but the specifics of the RM process should differ between hazards and regulations and codes of practices.

5.1 Duty to Consult

The Tax Office agrees that the model OHS Act should include a general provision to consult. There should be a definition of Consultation. The individual methods of consultation should be adapted to each workplace with the agreement of employees and management. The Act should not give a prescriptive approach but should be outcome based.

The general provisions should be in the Act and the duties should be with the duty holders and should be between person in control and employees and should be principle based on consulting broadly. Consultation should also be included in the different parts of the risk management processes.

Consultation should be through participatory process to gain greater ownership of outcomes. It should not be prescriptive to the workplace but a general duty to consult broadly.

Consultation

Consultation involves the sharing of information and the exchange of views between the duty holder and employees and includes the genuine opportunity for them to contribute effectively to any decision making process aimed at eliminating or minimising the risk.

5.2 Participation and Representation

Health and Safety Representatives

The Tax Office considers the role of the Health and Safety Representative an important one and should remain in the model OHS Act. There needs to be more flexibility about setting up these consultative structures depending upon the particular characteristics of the workplace, for example, with constantly shifting workforce, one HSR per DWG is difficult to administer.

There should be broad consultation requirement as mentioned above with a view to agreed outcomes in terms of consistent safe behaviours to include a broad safety culture as a legislative structure as an outcome.

In workplaces where there are HSR's, they should be elected and functions and powers similar to the current OHS Act

Health and safety committees should be established depending upon the sizes of the workplaces. HSR's should have some input in HSC structures (eg as reps or through input). There should be some process/structure to integrate HSC process into general business decision making processes. The committee does not have to be a standalone committee but could be integrated into other management meetings.

All members of the committee and the HSR's should have some training/awareness of managing the health and safety management system and their roles.

Alternate consultative structures can be considered such as integration into normal management systems and assurance processes that ensure the activities occur.

Right of entry

The Tax Office believes there should not be a right of entry provision. There may be a provision to enter on agreement, should give notice to the employer, specify where they wish to visit, be site inducted, and be accompanied. Any such persons who enter the premises for Occupational Health and Safety reasons should have an understanding of their responsibilities under the Act and Risk Management through approved training.

Issue Resolution

The model Act should include general provisions for Issue Resolution. The Individual workplaces then develop a detailed Issue resolution policy through agreement with employees. The Tax Office has a provision of Issue Resolution is included in the current Health Safety Management Arrangements as per the OHS Act 1991, this arrangement has been used successfully.

Right to cease unsafe work

The current OHS Act 1991 has a provision of the right to cease unsafe work. This provision is also included in the Tax Office Health Safety Management Arrangements. Although rarely used the Tax Office considers this is an important principal to include in the model Act. The Right to cease unsafe work should be exercised by the HSR.

5.3 Protection from Discrimination and Victimisation

The Tax Office agree there should be a provision of protection from discrimination and victimisation. The standard of proof be the civil standard.

The regulator should be able to bring an action for unlawful discrimination and specific powers should be available to the regulator to provide protection from ongoing discrimination.

There should be mechanisms for resolution of discrimination disputes as alternatives to criminal prosecution. Remedies that may be available from mediation, conciliation, restitution, reinstatement and fines.

6.1 Role and functions of regulators and 7.1 Enforcement Measures

As a regulator the Tax Office recognised the need for a hierarchy of measures to ensure compliance, including advising taxpayers and their agents their rights. The Tax Office use a compliance model (as set out below) that complements the model of the hierarchy of enforcement measures set out

section 7.1. The tax payers charters sets out how we apply the principles of integrity, fairness, respect, transparency and accountability in dealing with taxpayers.

Tax Payers Charter & Compliance Model

The revenue system operates for the benefit of the community, and both the Tax Office and taxpayers have an important role to play. The system is based on taxpayers cooperating with the Tax Office and voluntarily complying with their legal obligations.

To help achieve this, we have a responsibility to assist taxpayers to understand their rights and obligations and to meet acceptable standards for service delivery. We also have a responsibility to deal with taxpayers who do not meet their obligations under the law.

The Tax Office has tools to guide its operation of the business model and deliver against its business intent. These are the Taxpayers' charter (the charter), the compliance model.

The charter outlines taxpayers' rights and obligations under the law, as well as the service and other standards they can expect from us. It's about being fair, open and accountable in our dealings with taxpayers, within the framework set by the law. It directs the way we behave towards the community and what the community can expect from us.

However, there are differences in how the charter should translate into Tax Office actions depending on a taxpayer's behaviour and individual circumstances.

This is where the compliance model comes in.

The compliance model gives us a structure for better understanding factors and attitudes which motivate compliance and non-compliance. It's about us recognising that taxpayers are not the same and their circumstances can change. It directs that we better understand why taxpayers are not complying and that we develop appropriate and proportionate responses.

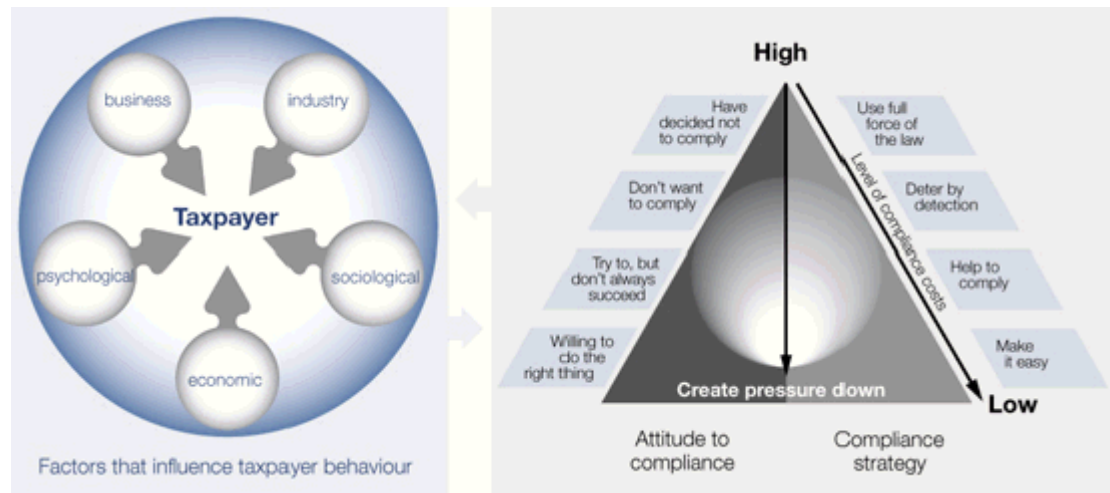
The charter and the compliance model are supported by our approach to brand management. The introduction of a brand management system positions the Tax Office to project an image that commands respect within our markets and aligns with our professional approach to managing the community's revenue systems.

The Compliance Model is a structured way of helping us to understand the factors that influence different compliance behaviour. This enables us to choose the most appropriate intervention for the circumstances.

Taxation compliance behaviour is influenced by many factors – business, industry, sociological, economic and psychological – all of which influence

whether a person chooses to meet their obligations. The model shows a continuum of taxpayer attitudes towards compliance. At the base of the continuum, taxpayers have the desired attitude of being 'willing to do the right thing'. At the other extreme, taxpayers have decided not to comply – choosing to evade or opt out of the tax system.

The model also summarises the different sorts of support and intervention that we may need to provide to collect the required revenue. The model suggests that the Tax Office has the ability to influence taxpayer behaviour through our response and interaction.



By using prescriptive approaches there is less trust. The Tax Office has moved away from an enforcement regime towards more cooperative, self-regulatory approaches.

Part of the regulators role should be advice and assistance. The Tax Office uses this model by providing help and information and making actual compliance cheaper, easier and more personalised is the starting point for compliance under a system that relies on the cooperation and support of taxpayers and their agents. This complemented by a risk management approach that drives our compliance verification work. Assessing the risks to the laws we administer helps us make informed choices about where to direct our resources.

6.2 Inspectors

The model OHS Act should include provisions for the appointment, qualifications, powers, functions and accountability of inspectors.

The inspector should have all the powers to either educate, remind or enforce depending on the sincerity of the duty holder

Inspectors should have knowledge of the hazards or industries or work environments through knowledge and training.

There should be a collaboration process to enable an inspector to modify, amend or cancel any notice or instrument issued by the inspector.

6.3 Internal Review of Inspectors decisions

There should be a review provision to ensure all decisions of Inspectors are able to be conducted.

There should be one further appeal mechanism such as the ARIC.

7.2 Measures Exercised at the Workplace

The model OHS Act should include the provision for Provisional (PIN) Improvement Notices, Improvement Notices and Prohibition Notices. PINs and Improvement Notices should include recommendations about how to achieve compliance with a minimum time frame.

All notices should have a review mechanism

Prohibition Notices because they identify serious threat to health and safety prohibit the activity. It is not necessary to have a minimum time frame. The activity should be allowed to resume once the prohibited activity has ceased. The appeal process should not affect the continuation operation of Prohibition Notices.

The Model OHS Act should have a provision for infringement notices. Infringement notices are another enforcement tool. Infringements impose administrative fines that are an alternative to prosecution for breaches of the regulations and should be cheaper and faster alternative to prosecution process. Infringement notices would still require the criminal standard of evidentiary proof therefore should only be applied to strict liability offences.

7.3 Measures exercised Beyond the Workplace

The model OHS Act should provide a provision for injunction, an example could be if a Prohibition Notice is issued and the activity continues.

8.1 Criminal or Civil Liability

Consider the model OHS Act should have a mixture of both Criminal and Civil liability depending on the severity of the risk.

8.3 Who may commence prosecutions and Relevant Procedures

The regulator should be the only entity to commence proceedings with the normal statute of limitations.

A prosecution should not be pursued unless it is in the public interest. That is, there is a need to consider:

- (i) the seriousness, or conversely, the triviality of the alleged offence or whether it is of a 'technical' nature only,
- (ii) any mitigating or aggravating factors,

- (iii) the youth, age, intelligence, physical health, mental health or special infirmity,
 - (iv) the period that has elapsed since the alleged offence,
 - (v) the degree of culpability in connection with the offence,
 - (vi) the availability and efficacy of any alternatives to prosecution,
 - (vii) the prevalence of the offence and the need for deterrence, both for the offender and generally, and
 - (viii) the necessity to maintain public confidence in the system.
- Receivables Policy Australian Taxation Office 2006 (public document found on the Web)

8.4 Evidence

The model OHS Act should contain specific evidentiary procedures for OHS prosecution to ensure consistency across jurisdictions and to leave no doubt.

8.5 The Burden of Proof and Defences

“Reasonably practicable” is an appropriate standard the model OHS Act. The prosecutor should be required to prove whether the standard was met.

This is a reasonable standard as the concept of “reasonable practicable” under pins the objectives of the Act.

8.6 Liability of Officers

Officers of a corporation should be liable to an offence and liability should be through chain of control and tracing back to who is responsible for the controlling the risk (where there is knowledge).

A defence should be available to include reliance on information supplied or results of research.

8.7 Sentencing Options

All offences should provide monetary penalties.

There should be a minimum fines and substantial to change behaviour. The level of penalties should reflect culpability, the severity of the risk, repeat offences and the financial resources of the organisation or individual.

Other sentencing options could include court enforceable undertakings, court declarations and corrective advertising.

9.1 Regulation Making Powers

The Tax Office prefers the wider regulation making provision if the regulation making powers are able to address OHS issues quickly, flexibly and in more detail. (also refer to 7.2)

9.2 Codes of Practice

The Tax Office considers that Codes of Practice should remain the same as in Section 70 of the Occupational Health and Safety Act 1991

9.3 Notification of Incidents and Reporting

Incidents and reporting requirements should be consistent across all jurisdictions. The definitions of incidents and reporting requirements should be consistent across all jurisdictions.

Jurisdictions should be able to cross match reports when incidents occur when employees are working in a cross jurisdiction and only report the incident once, for example, at the moment if a contractor working to the Tax Office was injured while working in the Tax Office, this incident should be reported to two jurisdictions, (i) to Comcare by the Tax Office and (ii) the jurisdiction where the contractors employer resides by the contractors employer.

Incident and reporting requirements should be clearly defined to ensure unnecessary reporting is not carried on.

9.5 Tripartite Mechanisms

The Tax Office considers that the model OHS Act should include provisions of tripartite mechanisms with collaboration and co design at all levels

9.6 Mutual Recognition

To ease jurisdictional regulation burden there should be mutual recognition provisions in the model OHS Act

All jurisdictions should have the same permits and licensing requirements for workers engaged in high risk work. This should then lead to mutual recognition.

9.7 Cross – Jurisdictional cooperation

9.7 Interaction of Federal and State Laws

There are currently occasions where there is an overlap between the Commonwealth and state laws occurring in the Tax Office. Under the current situation Contractors who work at the Tax Office premises may be subject to more than one OHS law.

The model OHS Act may be framed to reduce or remove the extent of overlap by ensuring the all jurisdictions have the same Act and Regulations. Inspectors should have powers in multiple jurisdictions to enable a consistent approach as they would be able to visit multiple employers covered under different laws. To also help consistency if there is no regulations available in one jurisdiction another jurisdiction's regulations can be used/referred to by duty holders and inspectors.