

# WHAT SHOULD THE OPTIMAL STRUCTURE AND CONTENT OF A MODEL OHS ACT BE?

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## SPECIFIC COMMENTS

### Legislative Approach:

We propose using generally the principle and process based regulatory structure. This is inline with the current OHS frameworks. We also recommend using prescriptive standards for identified high risk activities similar to the QLD legislation. We recommend one National Act, supported by National Codes and Standards. The National Act would be administered at a state and territory level and validated by a national overseeing entity.

Suggested title for the draft legislation could be *The Australian Workplace Health and Safety Act*.

Q6. Legislation should strongly include Risk Management, Consultation and General Duties for all stakeholders.

### Scope, Application & Definitions:

Model legislation should have one Act, with specific industry sections included within for high risk sectors.

General duties should be tied to workplaces, notwithstanding the duties which need to be imposed on all individuals to uphold their safety duty. For example this would include duties placed on members of the public, volunteers, designers, manufacturers, importers, on-sellers, owner builders, trainees, employees, employers, principal contractors, amusement operators, and government workers – federal, state and local based.

Q12. YES, should be sufficiently broad. There needs to be a singular safety duty placed on all stakeholders which is based on moral and social expectations and acceptance of health, safety and welfare requirements. This needs to be coupled with a prescribed legislative review period and an ongoing nationally managed validation process.

### Duties of Care – Who owes them and to whom?:

As per Robens Principles i.e. everyone has a duty to themselves, those directly affected by that persons actions or inactions, and further chain of responsibilities.

Where professional subcontract conditions exist, the safety duty applicable should include the reasonably practicable test in deciding the level of expertise of the entity engaged within the contract when apportioning the safety duty between the contracted parties i.e. licensed scaffolder has more knowledge of safety requirements in scaffolding than a Building Site Supervisor.

## **‘Reasonably Practicable’ & Risk Management:**

Strongly recommend placing the “reasonably practicable” test into the National legislation. There needs to be a high level of definition with regard to the elements to be considered when deciding what is reasonably practicable. This would guide employers, workers and the legal OHS profession when testing whether the reasonably practicable obligation has been discharged. Definitions of hazard, risk, and risk management should be consistent with AS 4360 and AS/NZS 4801.

## **Consultation, Participation and Representation:**

Model should include provision for Right of Entry under suspected OHS breach to authorised representatives of organisations representing workers onsite. Exercising this Right of Entry should be coupled with a requirement to report to the relevant WorkCover entity, the results of all OHS inspections of suspected breach.

## **Regulator Functions, Powers & Accountability:**

Best option is to have one overarching regulator at a national level setting legislative requirements with States & Territories to administer regulation in accordance with nationally consistent legislation. The State or Territory regulator would perform the education process along side enforcement in order to provide a consistent message.

## **Compliance & Enforcement:**

Use the enforcement pyramid concept in the Issues Paper as a base for enforcement structure.

## **Prosecutions:**

Prosecution should be based on the criminal standard with the burden of proof placed upon the prosecutor (i.e. Innocent until proven guilty beyond all reasonable doubt).

The State or Territory Regulator should be the only organisation to commence a prosecution. Third parties should have access to Regulator to present a case but it is up to the Regulator to proceed or not.

## **Other Issues:**

National Codes of Practice need to be enforceable under the National legislation.