

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

## SPECIFIC COMMENTS

### Legislative Approach:

Industry has long said and I quote “Please tell us what is required in plain simple facts”

Firstly the OHS legislation must cover all workplaces! No exceptions. Working at any workplace is the same. Hazard based management is the key to safe working.

### Q1. Which regulatory approach or approaches should be taken in the model OHS Act, and why?

- The legislation should not be an “Act in Principle”
- The national legislation should replace all state legislation and give all industries uniformity.
- The national legislation should be the same three tiered as is in all states. That is fully and simply stating what are the rules and the roles of all persons at the workplace whether paid or voluntary.

The legislation (The OHS Act) must be easily read and understood.

For example, OHS Act must show, have or what is required;

- The Act must incorporate all the administrative requirements of OH&S.
- That it covers all workplaces in the private sector, including all government levels as they employ the big majority of the work force.
- There must not be any exceptions.
- All definitions must be contained in a dictionary and not splattered throughout the document.
- Contain all the important terms such as; what is a workplace? Who is an employer?
- Who is a person in control,
- Inspector’s duties just to name a few.
- What is a regulation
- Who has a duty?
- Codes of practice
- Inspector appointments, duties and roles.
- Safety advisors/officers required qualifications and functions.
- Safety Reps qualifications and functions.
- Safety committee functions.
- Accredited providers.
- CEO’s of companies.
- Compliance by members of company boards
- Offences.
- Defences of persons with a duty.
- Reviews and appeals for notices.
- Include a statement. **“Where a duty is imposed on a person, that duty holder must carry out that duty.”**

Basic concepts such as .i.e. WHSQ section 27A for risk management which states “**27A Managing exposure to risks**”

To properly manage exposure to risks, a person must—

- identify hazards; and
- assess risks that may result because of the hazards; and
- decide on appropriate control measures to prevent, or minimise the level of, the risks; and
- implement control measures; and
- monitor and review the effectiveness of the measures.

(2) To properly manage exposure to risks, a person should consider the appropriateness of control measures in the following order—

- eliminating the hazard or preventing the risk;
- if eliminating the hazard or preventing the risk is not possible, minimising the risk by measures that must be considered in the following order—
  - substituting the hazard giving rise to the risk with a hazard giving rise to a lesser risk;
  - isolating the hazard giving rise to the risk from anyone who may be at risk;
  - minimising the risk by engineering means;
  - applying administrative measures;
  - using personal protective equipment.
- Duties of all persons at the workplace.
- Penalties for non-compliances of the OH&S Act
- Industry and workplace consultation requirements.
- Defences for under this OH&S Act. for duties of particular persons complying with requirements.
- How regulation work
- How Codes of Practice work etc.

## **Q2. How detailed should the model OHS Act be in comparison with the subordinate regulations and codes of practice?**

The Act should detail all the administrative requirements for carrying out OH&S in any workplace.

Regulations Prescribe the standards to be established and maintained by specified persons for the protection of the health and safety of all workers, employers and self employed persons at any workplace such as but not limited to;

- Must cover all workplaces
- Define, enlarging or restricting the meaning of any word or expression used in the WH&S Act but not defined in the act.
- Imposing requirements with respect to making of any plant or articles or equipment used at the workplace or made at the workplace and regulating or restricting the use of any plant.
- Imposing requirements for the manufacture, supply storage and use of Hazardous substances and dangerous goods found at any workplace, including if necessary the requirements of health surveillance.
- Imposing requirements for any high risk activity.
- Prescribing the contents of occupational health and safety programs.
- Imposing requirements for labelling and disclosure of information of any substance used in the workplace.
- Imposing qualifications
- Safe access and egress, lighting, ventilation, work space, noise, levels, vibrations, dusts, fumes, smoking to all workplaces.

- Requirement of incident notification and recording and where vaccinations may be required.
- Atmospheric monitoring requirements.
- Providing minimum standards of certain welfare facilities for employee's including adequate water supply, sanitary and washing facilities, first aid arrangements workplace caused illnesses, eating facilities etc.
- The provision of personal protective equipment.
- Imposing the requirements with respect to instruction, training, supervision and information required to do the work safely.
- Prescribing the required forms for notification to the regulatory authority.

Codes of Practice prescribe safe ways with a particular subject written with the help of industry.

### **Q3. What is an appropriate title for the model OHS Act?**

Research shows that it is known as Occupational Health & Safety in most countries around the world.

This can be achieved in two ways;

All industries preferred,

1. Occupational Health & Safety Act (date)  
Occupational Health & Safety All Industry Regulations (date)  
Codes of practice for items of specific subjects.

Or Industry specific.

1. Occupational Health & Safety Act (date)
2. Occupational health & Safety Regulations (date) for each separate industries i.e. Mines, Petroleum, Rural, Construction, Manufacturing, retail, hospitality, Transport (air, land and sea), to name a few etc. and items with specific Codes of Practice for each industry

### **Q4. Should the model OHS Act specify its objectives? If so, how and what should they be?**

- Objectives must be generic and not specific otherwise technical advances and unforeseen circumstances will be missed.

### **Q5. Should the model OHS Act include a set of principles of health and safety protection? If so, what should they be?**

- Yes! Hazard based management. As in Load Robens style of management a risk management is proven bases for a safe place of work. A qualified OH&S person of the workplace must carry this out.

### **Q6. Are there any other issues that should be considered in the legislative approach of a model OHS Act?**

- Inspectors should be industry based and powers increase on a sliding scale, after achieving prescribed levels of knowledge and experience.
- The OH&S Act should be the same throughout Australia and cover all industries with no exceptions, all government bodies included.
- Must be enforced on the crown, and at all government levels etc. At this present stage all governments' levels are hiding behind this as they say it is only paper work. The fines should be taken out of their budgets to ensure compliance. In some cases it is known for a government department to inform the regulatory authority to leave it alone, its government work. The chief executive's of government departments must be held accountable.

## **Scope, Application & Definitions:**

**Q7. Should the model OHS Act maintain the status quo in each jurisdiction regarding industry specific safety legislation? If so, what provisions should be made for establishing the relationship between the model OHS Act and industry specific legislation?**

No

- Only one OH&S Act and Regulation etc. set down by the regulating Authority covering the entire Australian workforce that will ensure safe of all persons.
- This will be easy for the mobile workforce and management to understand and implement especially companies with offices in many states.
- It will remove the present confusion with transient workers between states.

**Q8. Alternatively, should a model OHS Act incorporate all industry specific safety legislation? If so, how and to what extent (e.g., could industry specific issues be dealt with in regulations, codes of practice or guidance material under the model OHS Act)?**

Answered in Q3 Yes

**Q9. Should the model OHS Act contain provisions for improving coordination between safety regulators within jurisdictions? If so, what should be provided?**

The national legislation that has one controlling authority. May be administered by the states.

Lord Robens suggestion was to establish an OH&S board and Industry committees, similar to the Queensland WHS legislation model. The members of the board and industry committee's not necessary taken from the state government authorities as a lot of these persons do not have industry experience.

1. An independent balanced national board of OH&S to effectively control provisions for improving OH&S between regulators within jurisdictions. Membership of this board must be balanced between Unions, Employer and independents' OH&S professionals.
2. To help the board, the board must establish national industry committees, in this case to cover all industries. Again these committees must be balanced between Unions, Employer and independents' OH&S professionals.
3. It is this committee's responsibility to carry out the board's request of introducing rules or laws relevant to their industry.

**Q10. Should general duties of care be tied to the conduct of work, to the workplace or to some other criteria?**

General duties should be tied to the conduct of work taking into account the

- Best practice of the industry
- Way it is being done
- How it is being done.
- Effects on other employees and non employees (members of the public).

**Q11. Should general duties of care under the model OHS Act be extended to members of the public? If so, how?**

- The act must ensure every effort must be made to ensure the safety of the general public. The wording of "others" is open to confusion. The workplace must not harm or place at risk any person in or around the workplace whether they are employees, employers or the general public within the vicinity of the work being done.

**Q12. Should the scope and application of the model OHS Act be sufficiently broad and flexible to accommodate new and evolving types of work arrangements? If so, how should this be achieved?**

- Yes; Consultation with all industries and evolving new technologies by proactive management. As answered in **Q9**

**Q13. Are there current or emerging hazards and risks that are not effectively addressed under general duties of care? If so, how should they be provided for under a model OHS Act?**

- Yes, workplace harassment by all department, sections and members of the workplace. Apprentice initiation ceremonies etc..This leads to stress, bullying, and violence at the workplace. Violence at a workplace must be addressed.

**Q14. Which terms are critical for achieving national consistency? How should they be defined in the model OHS Act?**

- Acronyms should not be in any legislation. All definitions terms must be housed in each legislation dictionary. ie One in the OH&S Act, another in the OH&S Regulations, and another in the codes of practice etc.

**Q15. Are there any other issues relating to the scope, application and definitions of a model OHS Act?**

- All definitions must be in one place in documentation, a document dictionary. Not scattered throughout the legislation, as this makes it difficult to read and understand.

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

### **Q16. Should the model OHS Act include a 'control' test or definition? If so, why and what should it be?**

The OH&S Act must define that all persons that have a duty in or at the workplace, eg.

- Employer
- Main or Principal Contractor
- Designer
- Person in control
- Employee
- Volunteer
- Member of the public
- Or as WHS Act 1995 Qld
- Safety Rep
- Safety Advisor/officer.

The Macquarie dictionary meaning of “Duty” has a legal implication. Research shows that Duties of (one of those listed above) is used in many places, most Australian legislation and around the world in other OH&S documentation.

Words in Queensland legislation as “Obligation” are not as strong as “duty.”

### **Q17. What should the role of control be in relation to determining who is a duty holder, the nature of the duty, the extent of the duty and the defences?**

The duties of a person in control of workplaces. A precedent has been set in Queensland under WHS Act section 30 Person in control. 2003

#### **Lewis & Jones - The Grocers fined after worker breaks leg**

Lewis & Jones The Grocers Pty Ltd has been fined \$30,000 after a worker was injured at its Mareeba IGA Supermarket in November 2003.

The company pleaded guilty in the Mareeba Industrial Magistrates Court to breaching Section 30 of the Workplace Health and Safety Act 1995, having failed to ensure the risk of injury or illness from a workplace is minimised for workers coming onto the workplace to work.

The court heard that the worker was using two over-turned milk crates, stacked on top of each other to count stock on upper shelves during a stock take. While reaching towards the back of the shelves, the crates collapsed and the worker fell, suffering a fractured right femur that required surgery.

The occupational health and safety investigation revealed that the system of work to ensure provision of suitable work platforms for workers undertaking the stock take was inadequate.

The company has since taken steps to ensure appropriate and adequate equipment is available for such tasks and to provide inductions and training for all staff so such an incident does not recur. The company has also reinforced with staff that the use of milk crates outside their intended design and use is a prohibited system of work.

Industrial Magistrate Mr John Locke heard the company cooperated fully with inspectors from Workplace Health and Safety Queensland.

The company was also ordered to pay investigation costs of \$5,000. No conviction was recorded.

The prosecution was brought by the Department of Industrial Relations.

- This could be carried on where a person has been trained to do certain work and becoming a supervisor, foreman, department head, etc. in the absence of

the employer. There must be proof of training and the level of training given. Defences would be against the level or degree of training given.

- The person must be adequately documented and delegated the amount of control in that roll and of all implications and recorded change when persons perform the work.

**Q18. Should control be able to be delegated or relinquished? If so, in what circumstances and what should the legal effect of doing so be?**

The Act must state or Include a statement or similar as follows.

- **“Where a duty is imposed on a person, that person or duty holder must carry out that duty.”** A duty holder cannot contract their duties.

**Q19. Should the model OHS Act clarify responsibilities where multiple duty holders and multiple duties are involved? If so, how should this be achieved?**

- Yes; In most occupational health and safety Legislation, a person may hold more than one duty under this OH&S Act. A section of the OH&S act must state this fact.

**Q20. Is primary reliance on employment relationships a valid basis for framing safety obligations?**

- All persons have a duty at a workplace whether it is for paid or voluntary work. The Act should not discriminate against a worker whether he/she is getting paid or not.

**Q21. How should the model OHS Act provide for duties owed to non-employees such as contractors, labour hire personnel, volunteers, apprentices/trainees and other persons performing work?**

- In the case of Labour hire and or apprentices, the direct employer (labour hire) must have a duty to ensure the workplace they intend to send an employee is safe with written proof. On the other hand the person giving the direction to work (host employer) at the workplace must also have a duty to ensure the labour hire worker and/or apprentice is protected from any injury or illness.
- The term contractors should be covered as employers or self employed persons. This should be covered in definitions.
- The definition of employer must cover the employer of a voluntary organisation, ie the person giving the direction to do the work whether for payment or voluntary unpaid work.

**Q22. Is there a broader concept that more effectively covers the various work arrangements?**

- Duty of a person in control of a workplace must have a duty to ensure all persons at the workplace are not at risk to injury or illness. They must be trained and understand their specific duties. This includes workers, visitors, members of the public, volunteers etc.

**Q23. How and to what extent should the model OHS Act specify an employer's duty of care?**

- Legislation the NSW OH&S Act Section 8 and the WH&S Act Queensland Section 28/29 are very explicit in this.
- Providing and maintaining a safe and healthy work environment,
- Providing and maintaining safe plant
- Ensuring the safe use, handling, storage and transport of substances
- Ensuring safe systems of work
- Providing information, instruction, training and supervision to ensure health and safety.

**Q24. To whom should these duties be owed?**

- The employer, self employer or host employer must ensure a safe place in which to work.

**Q25. How, and to what extent, should the model OHS Act specify worker's duties of care?**

I think the Queensland act has the best controls however in saying this it must be seen as an offence if not complying and penalties must be enforced. If the employer has everything in place, proper instruction and training, there must be a penalty for wilful non compliance of the worker. It is all too common today for the worker not to comply and "saying nothing will happen to me, it's the employer's responsibility."

A worker or anyone else at a workplace has the following obligations at a workplace—

- To comply with the instructions given for occupational health and safety at the workplace by the employer at the workplace and any main/principal contractor for construction work at the workplace;
- For a worker—to use personal protective equipment if the equipment is provided by the worker's employer and the worker is properly instructed in its use;
- Not to wilfully or recklessly interfere with or misuse anything provided for occupational health and safety at the workplace;
- Not to wilfully place at risk the occupational health and safety of any person at the workplace;
- Not to wilfully injure himself or herself.

**Q26. Should the model OHS Act include duties of care for persons who are not performing work (e.g. visitors to a workplace, members of the public)? If so, what should the duties be?**

- Yes; All persons have a duty whether they are visitors, members of the public to comply with safety. To many times the public ignore a safety instruction.
- Safety has to be applied/adopted across **ALL** industries and workplaces with no exceptions. Not just construction or building. Too much of an emphasis is place on building and construction. There is many incidents with farm machinery.
- This should include the manufacture of, installation of, repairing of, design of, safe use of, maintenance of (including building maintenance), etc.

**Q27. Should the model OHS Act provide a mechanism for persons to be appointed to a position that has specific OHS responsibilities?**

Yes. There should be available to employers a position for a qualified OH&S person whom has been trained not only in safety and training but applying it to the employers workplace.

- This person should have no civil liability as it is the employers duty to ensure a safe workplace. As stated in the WHS Queensland legislation which has had this successfully in operation for some time, since 1989.
- All workplaces should have immediate access to a professional with proven experienced in OH&S information. Greater than 25 workers mandatory. Less than 25 workers advisory.
- If not the same as Queensland legislation as a Safety Officer's accreditation, then the equivalent as in Cert 111 for OH&S safety representatives and Cert 1V or greater in OH&S for safety advisors/safety officers.
- There has to be proof that the employed OH&S advisor/safety officer has done his/her job as in safety audit on the workplace over a set time frame. This gets the employer on his/her toes to ensure notice is being taken of the advice given by the OH&S professional, as in the QLD Act section 96A

**Q28. What should the liabilities of such appointed persons be if the responsibilities are not met?**

- Safety Representative and Safety Advisor/safety officer should have no civil liability as it is the employer duty to ensure a safe workplace and take the OH&S professionals advice.
- A occupational health and safety representative, a workplace health safety advisor/officer or a member of a occupational health and safety committee is not civilly liable because of the exercise of, or the failure to exercise, a health and safety entitlement

It is the employer, self employed and/or Main/principal contractor duty to ensure a safe workplace.

**Q29. What should the relationship be between the OHS responsibilities of the duty holder and such appointed persons?**

- Advisor to management only, as the employer or the person in control has the duty to ensure a safe workplace.

**Q30. Should the model OHS Act include positive duties for officers of bodies corporate?**

- Yes. There has to be a person that must ensure safety at all workplaces. A body corporate is still a workplace for some ie board members, cleaners, maintenance workers, administration etc.
- CEO (director generals) of government corporations or private companies the CEO must ensure compliance with all OH&S laws.

**Q31. Do current provisions for persons in control of a workplace (and plant and substances) clearly express who owes a duty, to whom, and under what circumstances the duty is owed? If not, how could this be clarified?**

By placing duties of all person in the OH&S act who are likely to give instructions at the workplace or effect a workers or public safety, being explicit ie

- Duties of employers
- Duties of owners of plant

- Duties of a manufacture of plant.
- Duties of Importer of plant,
- Duties designers and Installers of plant
- Manufacture, importers and suppliers of Hazardous substances
- Owner of fixtures and fittings
- Owners of public property ie local government, shopping centres car parks. Etc

**Q32. Should the model OHS Act specify that persons in control of a work area or a temporary workplace also have a duty? If so, to whom?**

Yes see Q17

**Q33 Should the model OHS Act clearly establish health and safety obligations for various activities which affect health and safety for the whole life of an item, structure or system (i.e., conception to disposal)? If so, what should the duties be in relation to these activities?**

➤ See Q31

**Q34 How should the model OHS Act deal with situations where the relevant upstream activity occurs in another jurisdiction or outside Australia, for example, where design occurs in one jurisdiction and manufacture in another? Should the manufacturer be responsible for the failings of a designer in this situation?**

➤ See Q31; All plant and substances must comply with Australian industry standards or ISO standards.

**Q35 How should the activity of supply be defined? Should it occur only once or every time an item changes hands, whether permanently (wholesale, retail, second hand, and gratis) or temporarily (loan or hire)?**

➤ There should a register of certain high risk items of plant and plant design. These should registered on an annual basis as is with the Queensland legislation which requires change of ownership, disposal etc. From the cradle to the grave.

**Q36 Are there any other issues in relation to the duties of care that should be addressed in the model OHS Act?**

➤ Not at this time of writing

## “Reasonably Practicable” & Risk Assessment

### Q37 Should a test of “reasonably practicable” be included in the model OHS Act?

- Yes! should be based on hazard and risk identification.
- However, “**Reasonably Practicable**” should include the proven experience, knowledge and education of the person making the assessment in its definition.

### Q38 If not, what alternative standard should be included?

- Reasonably Practicable could be replaced with “Due Diligence” however again this also should be based on the knowledge and education of the person making the assessment in its definition, also should be based on hazard and risk based identification.

### Q39 How should the standard be defined? What level of detail should be provided?

Hazard and risk based identification and using the hierarchy of control. There must be written proof that the hierarchy of control has been achieved in the following order:-

- elimination then
- Substitution
- Isolation
- Engineering includes design & redesign.
- Administration
- PPE.

NB:-The last two points do nothing about the hazard only make a person aware.

### Q40 Should control be an element of the standard? (see Chapter 3)

- Yes as in the national and states legislation, a code of practice on the subject giving common sense examples and easy to understand. A code of practice should be able to be used in a court of law as evidence.

### Q41 Should a test or examples for assessing compliance with the standard be set out in the model OHS Act or in subordinate instruments? If so, what would that contain?

- In a Code of Practice on the subject, with common sense examples that are easy to understand.

### Q42 Should ‘hazard’ and ‘risk’ be defined in the model OHS Act?

Yes as per Qld Act 27A Managing exposure to risks

To properly manage exposure to risks, a person must—

- **identify** hazards; and
- **assess** risks that may result because of the hazards; and
- decide on appropriate **control** measures to prevent, or minimise the level of, the risks; and
- implement control measures; and
- **monitor** and **review** the effectiveness of the measures.

(2) To properly manage exposure to risks, a person should consider the appropriateness of control measures in the following order—

- **eliminating** the hazard or preventing the risk;
- if eliminating the hazard or preventing the risk is not possible, minimising the risk by measures that must be considered in the following order—

- **substituting** the hazard giving rise to the risk with a hazard giving rise to a lesser risk;
- **isolating** the hazard giving rise to the risk from anyone who may be at risk;
- minimising the risk by **engineering** means;
- applying **administrative** measures;
- using **personal protective equipment**.

**Q43 Should a definition of 'reasonably practicable', or an alternative standard, include a reference to risk management principles and processes (hazard identification, risk assessment and risk control)? If so, how?**

- Yes; In all dictionaries of the legislation ie OH&S Act, Regulations and Codes of Practice.

**Q44 Should risk management principles and processes be specifically required by the model OHS Act in relation to the general duties, or otherwise?**

- Yes; In the OH&S Act, Regulations and supported in Codes of Practice.

## Consultation, Participation and Representation:

### Q45 What provisions should be made in the model OHS Act for consultation?

- As I have stated in **Q9 Lord Roberns** style of Industry and workplace consultative arrangements seems to be working best in Qld.
- **Industrial Consultation.** The setting up of a OH&S board with a series of industry committees with tripartite content. Equal membership of Unions, employer organisations and qualified OH&S independent members to manage problem areas.
- The membership of the board and industry committee's are not necessary taken from the state government authorities as a lot of these persons do not have proven industry experience.
- **Workplace consultative** arrangements includes Safety Advisor/Officer; workers safety representatives (see Q27). The safety representative and safety advisor/safety officer form the main members of a safety Committee. The employer must be a member or his/her representative and others by negotiation. To many members on the committee and there is a committee breakdown, and becomes unworkable.

### Q46 What are the work relationships to which a consultation provision should apply?

On a request basis from Workers,

- Safety Representatives,
- Safety Professionals or
- As instructed by the regulatory authority.

### Q47 Should there be different levels of consultation required for different work relationships?

- No, consultation should be the same, at all levels.

### Q48 How should consultation be provided for:

- a multi-employer worksite;
- an employer with operations across more than one worksite;
- small business;
- remote workplaces;
- precarious employment; and
- workers from culturally and linguistically diverse backgrounds.

- Across all sections of the work force as required to meet all demands and situations with no exceptions.

### Q49 Should there be a requirement for establishing HSRs and HSCs?

- Yes and to include safety advisor/safety officer and to have a balanced safety system not a biased system.

**Q50 What provision should be made in the model OHS Act to enable the effective participation and representation of workers to improve health and safety outcomes?**

Similar to the Queensland legislation, which states

- Negotiations with workers.
- Area of representation
- Election process
- Union requirements if to process elections
- Employers responsibility
- OH&S Representative area of responsibility
- Term
- Ceasing to be a Representative.
- Functions of a Representative.
- Employer to display the Representative identity.

**Q51 How, and in what circumstances should HSRs be appointed or elected, and HSCs established?**

- At the OH&S safety advisors/officers request.
- At a OH&S safety representatives request.
- At the workers request.
- At the employers request.
- Main/Principal contractors request (Construction).
- At the OH&S authorities instruction.

**Q52 Where an election is required, who should be entitled to vote?**

- All persons working at the workplace including workers that are members of a union or workers who are not union members.
- If a union is requested to run an election, only one union to preside for all workers at the workplace whether they union members or not..
- The elections must be held on the workplace where work is to be performed and not a private election somewhere else.
- There should be no discrimination or victimisation in the election process.

**Q53 What should the powers and functions of HSRs be?**

A occupational health and safety representative is entitled—

- to inspect the workplace or the part of the workplace within the representative's area of representation; and
- to be told by the representative's employer of any workplace incident happening at the workplace; and
- if a workplace incident has happened and an employer wishes to interview a worker about the incident—to be present at the interview if the worker asks that the representative be present; and
- to review circumstances surrounding workplace incidents told to the representative by the employer; and
- to advise the employer of the results of the review and to make recommendations arising out of the review; and
- to be consulted by the employer on any proposed change to the workplace, or plant or substances used at the workplace, that affects, or may affect, the workplace
- health and safety of persons at the workplace; and

- to help in the resolution of occupational health and safety issues within the representative's area of representation; and
- to be told by the employer of the presence of an inspector at the workplace if the representative is at the workplace; and
- to report orally or in the approved form to the employer or occupational health and safety officer an issue that in the representative's opinion affects, or may affect, the occupational health and safety of persons at the workplace; and
- to seek the employer's cooperation in remedying the issue and, if the issue is not remedied to the representative's satisfaction, to report the issue to an inspector; and
- to report orally or in the approved form to an inspector an issue that—
- has been reported previously to the employer or occupational health and safety officer; and
- has not been satisfactorily remedied within a reasonable time; and
- to ask the employer to establish a occupational health and safety committee for the workplace; and
- to be a member of a occupational health and safety committee; and
- to exercise other entitlements prescribed under a regulation; and
- to attend a training course prescribed under a regulation, and refresher courses for the training course, and to have all reasonable costs of the representative's attendance at the courses, including course fees and the representative's usual remuneration, met by the employer.
- Inspections may be conducted at weekly intervals or other intervals negotiated between the employer and the employer's workers.
- An employer must allow a occupational health and safety representative to exercise the representative's entitlements during the representative's ordinary working hours.

**Q54 What should the structure and functions of HSCs be?**

The primary function of a occupational health and safety committee is to assist cooperation between employer, Main/principal contractor and workers in developing and carrying out measures to ensure occupational health and safety at a workplace. Also, a occupational health and safety committee may give information and advice to an employer or Main/principal contractor about occupational health and safety.

A committee may seek to discharge its functions by—

- encouraging and maintaining at the workplace an active interest in occupational health and safety; and
- considering measures for training and educating persons at the workplace about occupational health and safety issues; and
- telling workers about the formulation, review and distribution (in appropriate languages) of standards, rules and procedures about occupational health and safety
- at the workplace; and
- reviewing the circumstances surrounding workplace incidents referred to the committee for review; and
- telling the employer or Main/principal contractor of the results of the review and making recommendations arising out of the review; and
- helping in the resolution of issues about occupational health and safety at the workplace.

**Q55 What training and qualifications should members of HSRs and members of HSCs have?**

- Training should not be compulsory, however if the HSR & HSC's request training then the employer must provide and all reasonable costs including course fee's and usual remuneration met by the employer.
- The employer may also request HSR & HSC's to be train.
- Employer may be instructed by regulated authority to have persons trained.

**Q56 Are there alternative mechanisms that should be considered?**

YES consideration must be given for the 22,000 Qld trained safety officers who have been required by law to obtain qualifications.

- OH&S Safety Officer for construction 9 days certified course
- OH&S Safety Officer for industry (Manufacturing) 8 day certified course
- OH&S Safety Officer for Service industry 7 day certified course. All of whose duties are list below Q53A.

➤ **Q53A What would be the function of a Safety advisor/officer?**

**Functions of occupational health and safety advisors/officers**

A occupational health and safety advisors/officer has the following functions—

- to tell the employer or main/principal contractor about the overall state of health and safety at the workplace;
- to conduct inspections at the workplace to identify any hazards and unsafe or unsatisfactory occupational health and safety conditions and practices;
- to report in writing to the employer or main/principal contractor any hazard or unsafe or unsatisfactory occupational health and safety practice identified during inspections;
- to establish appropriate educational programs in occupational health and safety;
- to investigate, or assist in the investigation of, all workplace incidents at the workplace;
- to help inspectors in the performance of the inspectors' duties;
- if any workplace incident or immediate risk to occupational health and safety at the workplace happens—to report the incident or risk to the employer or main/principal contractor;
- another function prescribed under a regulation.

**Q57 To what extent should the specific requirements be dictated in the OHS Act, and to what extent in regulations?**

- All requirements (as in the above Q53, Q53A Q54) should be set down in the OH&S Act. as a statutory compliance.

**Q58 Are there classes of workers for whom current representation requirements are not effective? How could the model OHS Act address such problems?**

- Yes, Professional people ie doctors, lawyers, police, emergency personal, school teachers, domestic builders etc. all seem to think that legislation is not for them.

**Q59 Should the model OHS Act include right of entry provisions? If so, who should be entitled to exercise the right of entry?**

- Yes; only to regulatory authority OH&S inspectors. Unions maybe with specific controls and these must be set in the OH&S Act.

**Q60 Should the model OHS Act specify training and qualifications for such persons?**

- Yes, The OH&S Act must set the specific training required from all such persons.

**Q61 In what circumstances should the right of entry be exercisable?**

As the Qld Legislation as an example.

An inspector may enter a place only if—

- it is a workplace or a relevant workplace area; or
- the inspector reasonably suspects it is a workplace or a relevant workplace area; or
- for a workplace or relevant workplace area, or suspected workplace or relevant workplace area, on or near domestic premises
- the entry is to land around the premises to gain access to the workplace or relevant workplace area or
- suspected workplace or relevant workplace area; or
- its occupier consents to the entry; or
- specified high risk plant is situated at the place; or
- a prescribed activity is being performed at the place by a person who holds a certificate to perform the activity; or
- the entry is authorised by a warrant.

However, an inspector may, without the occupier's consent or a warrant, enter—

- a public place; or
- the land around premises to ask its occupier for consent to enter the premises.

**Q62 What powers should be exercisable upon entry, and subject to what conditions or limitations?**

After training for monitoring or enforcing compliance with this Act, the inspector may—

- search any part of the place; or
- inspect, measure, test, photograph or film any part of the place or anything at the place; or
- take a thing at or a sample of or from a thing at the place; or
- copy a document at the place; or
- make inquiries or conduct surveys and tests to assess—
- the degree of risk existing at the place; or
- standards of occupational health and safety existing at the place; or
- inquire into the circumstances and probable causes of workplace incidents; or
- take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or
- require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers.
- A person required to give reasonable help must comply with the requirement, unless the person has a reasonable excuse.

*Examples of excuses that are not reasonable excuses as they are matters of mere convenience—*

1 An inspector visits an employer's workplace to inspect plant involved in a workplace accident. The employer explains to the inspector that the plant is now at the employer's other workplace. The employer claims to be too busy to unlock the other workplace for another week. This is a matter of mere convenience not a reasonable excuse.

2 An inspector visits an employer's workplace to inspect plant. The employer claims that the plant cannot be operated because the worker who normally operates the plant

is not working then. However, another worker at the workplace is competent to operate the plant. The employer refuses to allow the other worker to operate the plant. This is a matter of mere convenience not a reasonable excuse.

**Q63. What provisions should be made in the model OHS Act to assist the effective resolution of health and safety issues?**

- These should be managed by the OH&S committees, if no resolution can be reached then by the regulating authority inspectorate.

**Q64. When should issue resolution procedures be activated?**

- As soon as there is no apparent action seen to be taken by the employer.

**Q65. If issue resolution procedures are to be specified, in whole or in part, should they appear in the model OHS Act or in the regulations?**

- Set down in the OH&S Act.

**Q66. How best can the model OHS Act ensure resolution procedures are, where possible, agreed at a workplace level?**

- Internally by workplace safety advisor/officer, safety representatives and safety committees. If needed the regulating authority inspectorate as an umpire.

**Q67 Should a model OHS Act specifically provide for the right of workers to refuse or cease to undertake work they consider unhealthy or unsafe?**

- Yes, Only after seeking safety advice from a OH&S Safety advisor/officer or a professional or the regulating authority inspector.

**Q68 Should a model OHS Act provide for the right of a HSR to direct that work cease? If so, what conditions, limitations or restrictions should be placed on the exercise of the right by a worker or representative?**

- No, however there should be a mandatory process within the act to cover all these situations that could arise.

**Q69 Should the model OHS Act require payment of wages and/or associated benefits to workers who have exercised the right to cease work in accordance with the Act? If so, what should be provided?**

- I consider this an "IR" (award) issue, not an OH&S issue.

**Q70 In addition, or alternatively, should the model OHS Act provide for the resolution of disputes associated with cessation of work?**

- Yes, but must be maintained as a safety issue only.

**Q71 What provision should be made in the model OHS Act to protect persons from discrimination or victimisation and who should be protected?**

As per the Qld act which states;

**Discrimination or victimisation**

An employer must not dismiss a worker, or otherwise act to the detriment of a worker in the worker's employment, for the dominant or substantial reason that the worker—

- is, or has performed a function as, a occupational health and safety representative, a occupational health and safety officer or a member of a occupational health and safety committee; or
- has made a complaint about an issue, or in any other way has raised an issue, concerning workers' exposure to the risk of illness or injury; or
- has contacted or given help to an authorised representative or an inspector.

*Examples of acting to the detriment of a worker—*

1 demotion of the worker

2 unwarranted transfer of the worker

3 reducing the worker's terms and conditions of employment (2) If an employer contravenes subsection (1) by dismissing a worker, the worker is taken to have been unfairly dismissed under the *Industrial Relations Act 1999*, chapter 3, part 2,14 and subject to that part, has the remedies under that part.

**Q72 Who should be able to bring an action for unlawful discrimination? Should the model OHS Act allow representative actions?**

- Representative actions should be to the safety officer/advisor who inturns evaluates what action to be taken. If necessary the matter needs to be reported immediately to the regulating authorities inspectorate.

**Q73 Should a breach of the provisions be the subject of criminal or civil proceedings or both?**

- Should be a provision of criminal proceedings, under the non-compliance of statute law. A decision or outcome of "beyond reasonable doubt."

**Q74 Who should have the burden of proving relevant elements of offences (e.g. conduct and intention) and should the standard of proof be the civil standard (on the balance of probabilities) or criminal standard (beyond a reasonable doubt) for these elements?**

- All OH&S is statute law, and all non compliance with the OH&S decisions should be proven beyond reasonable doubt.

**Q75 Should specific powers be available to the regulator to provide protection from ongoing discrimination or victimisation pending proceedings?**

- Yes, the regulatory authority must control this issue.

**Q76 What remedies should be available to the victims?**

- Compulsory professional counselling between the victim and the employer set up by the regulatory authority.

**Q77 Should there be mechanisms in the model OHS Act for resolution of discrimination or victimisation disputes, as alternatives to criminal prosecution by the regulator, such as conciliation or arbitration before a tribunal?**

- As in Q 76

**Q78 Are there any other issues in relation to consultation, participation and representation that should be addressed in the model OHS Act?**

- Not at the time of writing.

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

**Q79 Should the model OHS Act provide for the establishment, functions, powers and accountability of regulators? If so, what should be provided?**

- Yes, It should be the national regulator with the function and powers of the regulator to be written within the Act

**Q80 Should the model OHS Act require regulators to publish enforcement and prosecution policies?**

- Yes, briefly as this shows and proves the action will take place.

**Q81 Should the model Act include provisions that allow the making of interpretative documents?**

- Yes

**Q82 Are there any functions and powers that should be available to an OHS regulator that should not be exercised by an inspector?**

- No; the inspector with industry proven experience is the regulator's representative.

**Q83 Should the advisory and enforcement functions of an OHS regulator be separated? If so, how and why?**

- Yes, separation is mandatory as an enforcement agency cannot effectively give advice. One inspector's advice may conflict with another inspector reasoning. It already happens in many states.

**Q84 How should the model OHS Act provide for the appointment, qualifications, powers, functions and accountability of inspectors?**

- Inspector must have proven practical background knowledge of the industry he/she is working with. Inspectors should then be graded by a tribunal of OH&S professionals. Temporary/acting appointments may given in the cases of emergency only. The grading must be separated from senior management because of personal conflict and staff pyramid building. Selection on ability.

**Q85 Should the model OHS Act strengthen the role and capacity of inspectors to provide advice and assistance? If so, how?**

- Yes, where an inspector reasonably believes a serious non compliance is being committed and a worker may be injured, the inspector may either seek assistance from the police force or from the courts or JP's in the form of a warrant.

**Q86 Are there any circumstances in which an inspector should be independent from direction, instruction or review by a regulator?**

- No, the inspector must be accountable for his/her actions.

**Q87 Should an inspector be able to modify, amend or cancel any notice or instrument issued by the inspector? If so, why and in what circumstances?**

- Yes, but not by the inspector who wrote the notice. Only by an inspector senior to the person who wrote the original notice. The inspector who wrote the notice should have had proven industry experience.

**Q88 What provisions should be made for the transparent internal review of decisions in the model OHS Act?**

- By the inspectors senior manager - review
- Chief Inspector - review
- A court of law - appeals

**What matters should be reviewable?**

- All Infringement notices
- All improvement Notices
- All prohibition notices

**What further appeal should be allowed?**

- Appeals to a court of law

**Q89 Are there any other issues in relation to the powers, functions and accountability of regulators and their inspectors that should be addressed in the model OHS Act?**

- No

## **Compliance & Enforcement:**

### **Q90 Should the model OHS Act include a hierarchy of enforcement measures in order of escalation? What should such measures consist of?**

Yes, similar to the Queensland Act

Discharge of obligations

A person on whom a occupational health and safety obligation is imposed must discharge the obligation. Maximum penalty—

- if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or
- if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or
- otherwise—500 penalty units or 6 months imprisonment.

### **Q91 Should these be statutory principles or requirements for the appropriate use of enforcement measures? If so, should they be contained in the model OHS Act, regulations or other policy or guidance documents?**

- In the OH&S Act

### **Q92 What provision should be made for PINs, improvement notices and prohibition notices in the model OHS Act?**

- Provisional Improvement notices should be for Qualified OH&S Safety Advisors/officers who have the training and practical experience within the industry they are working in and not be influenced by others.
- Infringement, Improvement and prohibition notices are to be issued only by the regulating authority's inspectors.

### **Q93 Should PINs, improvement and prohibition notices contain recommendations about how to achieve compliance?**

- Yes, they should show the non-compliance and show what is needed to comply with legislation. This is why inspectors must have proven practical knowledge of the industry in which they are working with.

### **Q94 What provisions should be made to allow for the review of PINs, improvement and prohibition notices?**

An order of review

- By the inspectors senior manager - review
- Chief Inspector - review
- A court of law - appeals

### **Q95 Should there be a specified minimum timeframe to allow for compliance with PINs, improvement or prohibition notices?**

- For provisional improvement notices and the authorities Improvement notices, Yes a time agreed by all parties and that time must be reasonable and practical.
- Infringement notices and prohibition notices are not to be negotiated.

**Q96 Should the lodging of an application for an internal review or an appeal application affect the continued operation of notices,? If so, what should the effect be?**

- NO; the notice stays until revoked.

**Q97 Should the model OHS Act provide for infringement notices? If so, when and for what offences should they be issued?**

- Yes on the spot fines must be included within the legislation and payable direct to the authority within a set time. Monies received from these notices are used to help to industry to improve safety. If not paid then prosecution must take place.
- On the spot fines are for a non-compliance of a regulation or code of practice.

**Q98 Should the administration of infringement notices occur under OHS law or individual state legislation?**

- All administration must be controlled by the one national legislation to obtain uniformity within industry and the OH&S laws.

**Q99 What amounts should be specified as fines for infringements?**

- All fines should be set out in penalty units. Depending on the severity which will determines the amount. It is easier than rewriting legislation on every change.

**Q100 Should the model OHS Act provide for injunctions to ensure compliance with the model OHS Act? If so, in what circumstances and what evidence should be required to apply for an injunction?**

- Normal proof for an injunction. Use of a temporary injunction and the court approval for serious matters.

**Q101 Should the model OHS Act provide for the use of enforceable undertakings as an alternative to prosecution for an offence against the Act? If so, for what offences?**

- Yes. It is a method of injecting the money back into the industry. It is a contract between the offender and the regulating authority. Not meeting this contract on time is a breach of contract and automatic prosecution. This enforceable undertaking contract should have the same value as going to court with a conviction.

**Q102 Should the giving of an enforceable undertaking result in an admission of fault or liability?**

- It should have the same inference as would a court prosecution.

**Q103 Are there any other issues in relation to compliance and enforcement that should be addressed in the model OHS Act?**

- There should be matters addressed relating to the failure of complying with the enforcement undertaking.

## **Prosecutions:**

### **Q104 Are there any other issues in relation to compliance and enforcement that should be addressed in the model OHS Act?**

- Yes. The enforcement authority should cover both rural as well as in the main cities. It is very evident at the moment that main enforcement is only in the main towns and the workplaces in rural areas are not considered or only in a token way. That is one of the main reasons that safety is not working effectively.

### **Q105 Which duties or obligations should be the subject of criminal offences and penalties and which may appropriately be heard as civil matters?**

- All matters dealing with noncompliance to this OH&S legislation.

### **Q106 Which courts or tribunals should have jurisdiction to hear prosecutions for OHS offences?**

- In order of seriousness of the offence; to the Magistrate Court, District Court, Supreme Court, with appeals to the High Court.

### **Q107 Is it appropriate for prosecutions to be heard by specialist courts or tribunals (or specialist divisions in courts)? Why?**

- No, this is to prevent conflict. Lawyers of today are looking for this.

### **Q108 To where should appeals lie? Should the right to appeal be subject to any conditions and if so, what should they be?**

- The Superior Court.

### **Q109 Should defendants be entitled to trial by jury in prosecutions for any offence and, if so, which?**

- No

### **Q110 Who should be entitled to commence criminal proceedings?**

- The regulatory authority prosecution section for offence against the National OH&S legislation.

### **Q111 If the model OHS Act provides for civil proceedings for breach, who should be entitled to commence such proceedings?**

- A prosecution section within the OH&S authority. This prosecution body must have or have access to persons with proven industrial knowledge and principles.

### **Q112 What should appropriate time limits be for the commencement of a prosecution and why**

- 2 Years – to rush complex cases, there is a likely hood of mistakes being made.
- Mistakes need to be avoided for a prosecution to be successful.

### **Q113 Should the model OHS Act include specific provisions for the conduct of prosecutions, and what should they be? Alternatively, should that be left to the rules of criminal law and rules of the relevant court or tribunal?**

- Yes, The authority must have powers to prosecute for any non-compliance of the OH&S legislation. These powers must be in black and white and within the legislation documentation.

**Q114 Should the model OHS Act contain specific evidentiary procedures for OHS prosecutions? If so, why and what procedures?**

- No; It must be a court decision.

**Q115 Should the proof of any elements of an offence be affected by specific provisions in the model OHS Act? If so, which elements and how?**

- No

**Q116 What should be the evidentiary status of codes of practice, regulations and other subordinate instruments?**

- All levels of legislation must be complied with. All levels should be able to be used in a court of law for a prosecution or defence.
- Any Australian Standards that may be used in a court of law should be nominated in all levels of legislation. Eg OH&S Act, OH&S Regulations, OH&S Codes of Practice's.

**Q117 Is 'reasonably practicable' an appropriate standard for the model OHS Act?**

- In theory no. The Legislation needs to be as close as possible to what is required in mandatory statements. However it is very hard to write legislation in these terms so as long as the definition of 'reasonably practicable' is defined clearly there is no reason to omit it.

**Q118 Should the prosecutor or the duty holder be required to prove whether the standard was met? Why?**

- There must be a defence mechanism within the legislation. This defence can be used by both sides of the court. A defence on how the act, regulation or codes were met.

**Q119 Should the burden of proving elements of an offence differ between different types of offences (e.g. duties of care and procedural obligations)? If so, why?**

- No

**Q120 What, if any, defences should the model OHS Act provide?**

- As per criminal code, OH&S Act reasonable person approach.

**Q121 Should the burden of proof or defences be different for a corporation and an individual (officer or employee)? If so, why?**

- No

**Q122 Should 'officers' of a corporation be liable to an offence because the corporation has committed an offence?**

- Yes, The CEO must be held liable as should the board of any organisation or corporate body.

**Q123 How should officer be defined?**

As an example as per Queensland WHS Act 1995. Section 167.

Executive officers must ensure corporation complies with Act

- The executive officers of a corporation must ensure that the corporation complies with this Act.
- If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision. Etc.

**Q124 Should liability of an officer, if any, be subject to the prosecution proving that an act or omission by the officer contributed to the offence of the corporation? Alternatively, should the officer be automatically guilty of an offence, subject only to proving a defence? Why?**

- Yes, in the case of a Grievous Bodily Harm or Bodily Harm

**Q125 Should the model OHS Act provide for a test for determining liability of an officer? If so, what should the test be or contain?**

- The act should contain "Defences" for a person to prove compliance. This should show how these defences work and how to use them with no confusion.

**Q126 Should the model OHS Act provide for specific defences to be available to an officer? If so, what?**

- Defence should generic, to cover all walks of life. These defences should explain compliance and non-compliance. Eg Complied with Act, Regulation and Codes. If none of these covered the situation then was due diligence taken.

**Q127 What should the approach to officers of unincorporated associations or volunteer officers be?**

- As in any workplace. There should not be any difference; otherwise workers within these organisations are going to be put at risk of injury or disease.

**Q128 For which offences should monetary penalties (fines) be imposed?**

- All offences should be subjected to monetary penalties unless enforcement undertaking has been imposed. In the case of injuries or illnesses causing Grievous Bodily Harm or Bodily Harm, then consideration for a jail term be imposed.

**Q129 Should maximum fines be provided in the model OHS Act, or is there an alternative approach?**

Yes for example the Queensland WHS Act states;

**Discharge of obligations**

A person on whom a occupational health and safety obligation is imposed must discharge the obligation. Maximum penalty—

- if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or
- if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or

➤ otherwise—500 penalty units or 6 months imprisonment.  
Something similar to the above

**Q130 Should the level of fines be different for the various offences? If so, for what offences and at what levels?**

➤ No, all charged as at the courts discretion.

**Q131 Should there be a statutory minimum fine for some offences? If so, what?**

➤ Yes otherwise courts are going to be full of minor misdemeanours. The smaller penalties should be taken care as in other legislation as “on the spot fines” administered by the OH&S regulatory authority inspectors.

**Q132 Should the level of penalties depend on culpability (recklessness) or outcome (death) or repeat offences?**

➤ Yes, all fines of workplace should be national computer data based. The data base may be accessed by all sections of the regulating authority’s prosecution team anywhere within Australia.

**Q133 Are there options that could facilitate more consistent outcomes across the jurisdictions, such as a national register of decided cases?**

➤ Yes a national data base of all offences with a search engine to access any company listed in any state.

**Q134 What penalty options should be available in addition to or instead of fines?**

As discussed previously three levels

- Court Action (Prosecution),
- Enforcement Undertaking(Contract of an undertaking)
- Monetary fines (On the spot fines) payable to the OH&S authority in the state the notice was written. This then can be used as stats to show how well the inspectorate is progressing.

**Q135 Should the model OHS Act provide for terms of imprisonment for specified offences? If so, which offences and what maximum periods of imprisonment?**

Yes, as stated in Q129

**Discharge of obligations**

A person on whom a occupational health and safety obligation is imposed must discharge the obligation. Maximum penalty—

- if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- if the breach causes bodily harm—750 penalty units or 1 year’s imprisonment; or
- if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year’s imprisonment; or
- otherwise—500 penalty units or 6 months imprisonment.

## **WORKPLACE DEATH AND SERIOUS INJURY**

**Q136 Should there be specific offences relating to workplace death or serious injury? If so, what?**

- As in Q135 above.

**Q137 Should breaches of OHS duties resulting in death or serious injury be dealt with in OHS legislation or in the Crimes Act?**

- Under the OH&S Act. The prosecution section of the national authority presenting the case in court.

**Q138 Should the consequences of the breach, rather than only the degree of culpability, determine the penalties to be imposed for some offences? If so, which offences and how should this be dealt with in the model OHS Act?**

Examples:-

- if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or
- if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
- if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or
- if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or
- otherwise—500 penalty units or 6 months imprisonment.
- Or similar.

**Q139 What, if any, provisions should be included in the model OHS Act for the enforcement of penalties imposed by a court?**

- Normal court processes

**Q140 Should the model OHS Act provide for the enforcement of penalties against officers or other persons? If so, how and subject to what conditions, limitations, defences or requirements?**

- Yes officers under the corporations Act

**Q141 Are there any other issues in relation to prosecutions that should be addressed in the model OHS Act?**

- Unsure

## **Other Issues:**

### **Q142 Should the power to make regulations be limited and if so, in what way?**

Regulations could be made in two ways.

- In the case of an emergency the Federal Minister of OH&S
- By consultation with industry eg. By the OH&S board and OH&S industry committees.

### **Q143 Should regulations provide for summary offences with lower penalties, or should some breaches under regulations also be taken to be a breach of the model OHS Act?**

- A summary list of offences and penalties should be available, whether it is available as a separate document or within legislation is up for discussion.

### **Q144 What provisions should be made in the model OHS Act relating to the development and approval of codes of practice?**

- In consultation with the specific industries. The industry should be providing advice as to what, where and how. Very similar to the way it is presently done. Why reinvent the wheel?

### **Q145 How should an effective reporting system be provided for in the model OHS Act without an unnecessary compliance burden?**

- Similar to the NSW section or Victorian Section 37 model but the requirements must clear, concise and applicable to the subject.

### **Q146 What provisions should be made in the model OHS Act for the external review of regulatory decisions?**

- The same as most states.

### **Q147 Should the model OHS Act include provisions for the resolution of OHS issues by conciliation or arbitration?**

- No; either there is compliance or non-compliance and the penalty must apply.

### **Q148 Should the model OHS Act facilitate tripartism in the administration of OHS regulation, and if so, how?**

- Yes, as described above. OH&S Board and Industry Sector standing committees. The board and committee's must be seen as proactive not dictated to by the authority. Both these bodies must be made up of equal numbers of industry, unions and independents.

### **Q149 Should there be some provision for tripartite committees that deal with OHS matters in particular industries?**

- As above.

### **Q150 What areas should be subject to formal mutual recognition provisions in the model OHS Act?**

- All dot points and include 5 yearly health checks, and noise attenuation.

**Q151 What is the most appropriate way for a model OHS Act to provide for permits and licensing for workers engaged in high risk work that results in:**

- better OHS outcomes;**
- greater efficiency and effectiveness;**
- lower regulatory compliance and enforcement burdens; and**
- improved harmonisation of the requirements for such permits and licensing for industry across Australia?**

➤ National Conformity.

**Q152 How should the model OHS Act be framed to reduce or remove the extent of overlap between federal and State or Territory OHS laws, or minimise the difficulties of such overlap?**

- One National Legislation such as, OH&S Act and Regulations and Codes of Practice for all industry workplaces.

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

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## GENERAL COMMENTS

Occupational Health & Safety must have national conformity for all industries i.e. Construction (both commercial & domestic), Mining, Manufacturing, Hospitality, Retail, Transport (including Rail, Road & Air), Medical, Voluntary Organisations, to name a few with **NO** workplace exceptions across Australia to stop the confusion and difference between states. This in turn will help to lower injuries in the workplaces.

### **Q53A What would be the function of a Safety advisor/officer?**

#### **Functions of occupational health and safety advisors/officers**

An occupational health and safety advisors/officer has the following functions—

- to tell the employer or main/principal contractor about the overall state of health and safety at the workplace;
- to conduct inspections at the workplace to identify any hazards and unsafe or unsatisfactory occupational health and safety conditions and practices;
- to report in writing to the employer or main/principal contractor any hazard or unsafe or unsatisfactory occupational health and safety practice identified during inspections;
- to establish appropriate educational programs in occupational health and safety;
- to investigate, or assist in the investigation of, all workplace incidents at the workplace;
- to help inspectors in the performance of the inspectors' duties;
- if any workplace incident or immediate risk to occupational health and safety at the workplace happens—to report the incident or risk to the employer or main/principal contractor;
- Another function prescribed under a regulation.