

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

SPECIFIC COMMENTS

Legislative Approach:

Q1.

The model OHS Act should take the following regulatory approaches:

Principal based standards (general duties of care)

Performance based standards (specifying on the outcome to be achieved)

Q2

The Act should specify what you intend to do; regulations should specify how you are meant to do it and Standards/Compliance Codes and Codes of Practice should give you the tools to do it.

The act needs to be concise and easy to read, so it doesn't overwhelm people who have basic to poor reading skills.

Q4

Yes the Act should have a page on its objectives. The objectives should provide an overall rationale for the act and should describe what the Act intends to achieve.

The objective should be along similar lines to the objectives in the Victorian Occupational Health and Safety Act 2004.

Q5

No the principles should be included under the various section of the Act that they relate to.

I know people that read the principles only and believe they know the act

Scope, Application & Definitions:

Q8

Yes the model OHS Act should cover all industries.

Victoria has Regulations that cover Mines, Major Hazard facilities and High Risk Work; the approach taken by Victoria could work for all industries with the regulations being as specific as required. Detailed information on how to comply could then be put into Codes of Practice.

Q10

Duties of Care should be tied to both the conduct of work and the workplace.

A perfect example is when staff are working at a remote worksite and for whatever reason decide that there is no need to put in place the safety measures they would normally use and this action not only exposes them but the general public to unsafe acts.

While travelling through rural Victoria on a single lane road with a 100Km. Speed limit, we came across road works on a section of road that had double white lines. The workers truck was parked taking up the lane we were travelling in and both sides of the road had thick bush close to the road. There was no signage warning of the works, no speed reduction and no traffic spotter. When the worker spotted us he ran to the truck and picked up a stop/slow sign, by the time he got the sign out of his truck we were already beside him. He then decided to use verbal abuse because we had to cross double lines to pass him, when he thought we

should have driven through the bush, this would have meant going off road and with the condition of the edges of the road was more dangerous than crossing double lines.

Q11

No, the general public and the unsafe acts they perform are covered by criminal law.

Q12

Yes, we need to keep in mind the amount of people that now out source and others that work from home. The places of work are considered workplaces and the employer held responsible for the health and safety of these workers. To overcome the difficulty of keeping up to date with the changes a definition of workplaces could be included and the definition could be as simple as:

A workplace is anywhere that an employee, contractor is performing duties on behalf of an employer.

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

Q18

Control should be able to be relinquished, if you hire in a contractor to do a specific job in which you have no expertise you should be able to relinquish control of the task to the contractor.

Q19

Yes if you hire in a contractor to do a specific task and the contractor provides sufficient evidence that they can do the task safely, you should be able to relinquish control and responsibility of the work and worksite to the contractor. In doing this you should also be able to discharge any liability the current Act places on you for the actions of the contractor.

Q27

Yes the Act should have a mechanism for the appointment of appropriately trained people to provide OHS advice and guidance.

Q28

Unless the appointed OHS personnel have the authority and budget to take action against any unsafe act or a particular risk, how can they be held responsible?

If these personnel are given the powers to take action you would be giving them management control and this wouldn't sit well in most businesses.

While saying this I would also expect that OHS personnel should be held responsible for providing incorrect information and guidance.

'Reasonably Practicable' & Risk Management:

Q37

Yes an interpretation of "reasonably practicable" should be included in the model OHS Act.

Q42

No, while hazard and risk should be mentioned the definition would be better suited to the regulations.

Q44

No, in keeping with the principal that the Act sets out what you intend to do and the regulations how you intend to do it; the risk management principals should be included in the regulations.

Consultation, Participation and Representation:**Q59**

Yes, right of entry should be included in the model OHS Act. Authorised representatives of employer and employee groups should have this right. The right should allow them to enter a business where either the employee or employer could be a member of their association.

Q60

Yes, any person who holds a right of entry permit should have as a minimum a Diploma in Occupational Health and Safety. How can the permit holder discuss issues with any credibility without the knowledge or skills?

Q61

The Victorian model on exercising a right of entry is a good model and the model OHS Act should be based on this.

Q62

The authorised representative should only be permitted to enquire into a suspected breach. Upon evidence that a breach has occurred, the authorised representative should then have the powers to discuss the issue with the employer and if necessary request an inspector visit the workplace.

Authorised representatives should not be given the powers to order work to cease or commence criminal proceedings and should be liable for any damage they cause.

Regulator Functions, Powers & Accountability:**Compliance & Enforcement:****Prosecutions:****Q107**

Our court system is so clogged it takes years for a case to be heard. It might free up the courts and have cases heard earlier if a specialist court was developed to hear OHS cases.

Q109

In cases of industrial manslaughter, the defendant/s should be permitted a trial by jury.

Q110

Inspectors, the regulator, the minister or the injured person should be entitled to commence criminal proceedings.

Q112

An appropriate time limit for a commencement of prosecution is six months. Three years is too long. If cases are waiting three years to be heard it is the very reason that a specialist court needs to be set up. This should especially apply to workers that are undertaking illegal tasks; if the employer and worker are engaged in illegal tasks there is probably very little understanding of OHS issues.

Other Issues:

Q137

Breaches of the OHS Act that result in death or serious injury should be dealt with in both OHS Legislation and the Crimes Act. By dealing with it in both, the OHS Legislation can look at the breaches of the Act and the Crimes Act can look at the outcome.

An employee that is found to have use illegal migrant workers should be penalised under the model OHS Act and any other federal legislation that applies.

Q143

Keeping in mind that the Act sets out what you intend to do and the regulations set out how you intend to do it, a breach of the regulations is a breach of the Act as such non compliance with the regulations is a non-compliance with the Act. The model Act should acknowledge that a penalty for a breach of the regulations will also imply a breach of the Act and a further penalty may apply.

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GENERAL COMMENTS

General Comments:

All jurisdictions should have the right to print a list, of the worst performing companies, every six months. This list should also identify companies that have changed their name in the hope that the prosecution etc. will not follow them.

If a list was printed and advertised in the media, it would give job hunters a guide of who not to work for and when these companies couldn't get the required staff, they might start to be pro active in OHS.

The power to advertise the worst performing companies could be a section under Inspectors and enforcement.