



CEMENT CONCRETE & AGGREGATES AUSTRALIA

SUBMISSION ON

**NATIONAL REVIEW INTO
MODEL OCCUPATIONAL HEALTH & SAFETY LAWS**

JULY 2008

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ABOUT CCAA

Cement Concrete & Aggregates Australia is the peak body for the heavy construction materials industry in Australia including the cement, pre-mixed concrete and extractive industries.

CCAA's members account for over 90% of the economic value of this \$6 billion industry and directly employ over 18,000 Australians and a further 80,000 indirectly.

CCAA represents a full spectrum of the industry from large multinational integrated construction material companies through to small family owned quarrying companies.

We represent our members on a wide range of matters relating to the promotion and protection of the interests of the industry.

CCAA's membership takes their obligations to providing a safe and healthy workplace very seriously and is pleased to have the opportunity to contribute to this Review both in this submission and any other opportunities that arise from it.

EXECUTIVE SUMMARY

CCAA:

- (a) supports the formation of a single national OH&S Act;
- (b) (if a single Act is not at this time politically achievable) supports the concept of a Model Act to be applied within and across the current OH&S jurisdictions;
- (c) believes that the Government should however maintain the long term goal of a single national Act;
- (d) believes that the primary focus for OH&S should be in the workplace with the employer and their employees working collaboratively to remove risk from the workplace and continuously improve safety;
- (e) believes that the role of the regulator is to educate and mentor the relevant stakeholders in improved OH&S practice and where necessary 'police' and prosecute to ensure compliance with the law; and
- (f) believes that any OH&S laws must be viewed by all stakeholders as fair and reasonable to comply with in the context of the community's current expectations around safety in the workplace.

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

SPECIFIC COMMENTS

1.0 Legislative Approach:

CCAA POSITION

CCAA supports a single national OH&S position.

While our differing OH&S systems are a natural evolution of the operation of the States, in the modern era there is no rational basis for the maintenance of different OH&S systems.

The national scope of many employers, increasing labour mobility and the desire to deliver a fair but efficient system of OHS regulation all supports nationalisation.

Accordingly, we believe that the implementation of a single national OH&S system is as much an imperative as a national industrial relations system was.

Should such a system be unachievable at this time then the approach advocated through the operation of a Model Act is supported. However CCAA believes the Government:

- (a) should maintain as a long term objective the creation of a single national system; and
- (b) ensure that a co-ordinated timetable be implemented to achieve harmonisation; and
- (c) be vigilant that once harmonised, different jurisdictions do not ultimately defeat the overall objective of harmonisation by incrementally amending State legislation.

This said, harmonisation must achieve improved and improving OHS outcomes.

The legislative framework which emerges will have an important role to play in this but the ongoing administration of any harmonised legislation is equally critical.

The Model Act is intended to achieve this by the adoption across all State jurisdictions to produce an aligned and harmonised approach to OHS regulation across Australia. Obviously, achieving this goal will depend on the preparedness of each State to implement the legislation.

The Government will need to ensure that different State Governments are limited in their ability to deviate from the Model Act or adopt a materially different implementation time table.

REGULATORY STRUCTURE

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

CCAA believes that the model OH&S Act should be based on a balance of principles, process and performance standards. The objectives of the legislation should be clearly stated and performance outcomes rather than a prescriptive set of actions should be pursued.

The legislation should apply equally to all duty holders in both private and public sectors.

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

The model Act should not be particularly detailed. It should focus on the principles that would be expanded in subsequent Regulations or Codes of Practice.

TITLE, OBJECTS AND PRINCIPLES

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

We have no particular preference for the title of the Act beyond saying that the title should reflect the scope of the Act.

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

The objectives of the Act should be clearly stated in the Act.

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

The OHS Act should include a set of clearly articulated principles of health and safety protection. They should include:

- a legislative environment which encourages continuous improvement in safety outcomes
- a consistent national approach:
 - risk based and applying to all types of risk of personal harm;
 - requires training and development of regulators in risk management;
 - duty of care clearly defined and reasonably practicable for all involved in operations;
 - a framework that is clear and enforceable and requires all involved in operations to discharge their responsibility for health and safety;
 - agreed definitions;
- accountabilities and obligations to apply to all (regulators, management, employees, suppliers, manufacturers, designers, contractors and service providers);
- the level of obligation to be commensurate with the degree of responsibility and

- control held
 - employer to be responsible for providing a safe working environment
 - individual to be personally accountable for their actions;
- facilitates a positive safety culture and preventative approach, which includes identifying and promoting leading practice, and learning from experience;
- all risks to be managed so that residual risks are as low as reasonably achievable;
- safety and health management systems to be capable of assessment, monitoring, auditing / validation and review;
- consultative arrangements between management and employees on the development of safety and health policies and practices;
- employees able to collectively select safety and health representatives;
- employees to be empowerment to identify the hazards and assess the risks in their work environment, and to raise their concerns with management;
- application of graduated enforcement measures;
- regulatory authorities to be independent, transparent and open, and to have competent and experienced personnel;
- a process for conflict resolution to be clearly articulated.

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

The provisions of the Act should not duplicate or parallel existing “generic legislation” such as the Crimes Act as it will lead to inconsistencies and distortions in application.

2.0 Scope, Application & Definitions:

CCAA POSITION

Workplaces and occupational health and safety matters arising from work must remain as the focus for the Model Act. We do not support extending the notion of duty of care under the legislation to some broader community obligation as this would materially change the nature of the legislation as accepted by the primary stakeholder (employers and employees). (Q11)

INDUSTRY SECTORS

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. The maintenance of the status quo in each of the jurisdictions will perpetuate the inconsistencies in OH&S legislation which complicates the effective delivery of good health and safety outcomes.

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)?

Yes. CCAA supports a single Act covering all industries with industry specific regulations and national codes of practice.

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

The Act should clearly define the role of the regulator and facilitate consistent interpretation and application of the law across all jurisdictions.

WORKPLACES AND NON-WORKPLACES

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

The general duties of care should focus on the management of risk as far as reasonably practicable. The duties of care should apply to both the conduct of the work and the workplace in as far as the workplace is under the control of the duty holder, ie it cannot practically extend to the home as a workplace.

PUBLIC SAFETY

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

General duties of care should only extend to the public where there is direct risk from workplace hazards. The OHS Act should not extend into environmental legislation where provisions are already in place for managing environmental impacts.

WORK ORGANISATION

- 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?**

The OHS Act should be sufficiently broad and flexible so that it does not require regular review in the face of innovation and development.

EMERGING HAZARDS AND RISKS

- 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?**

The Act should not attempt to address emerging hazards and risks but rather it should be left to the controllers of the process to identify and manage risk. It is appropriate that emerging hazards and risks be reflected in codes of practice and regulations rather than the Act.

DEFINITIONS

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

Consistency and completeness of definitions will be critical to ensuring that the objectives of a model Act are achievable. The list of definitions will depend on the legislation itself which we would be pleased to review.

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

The scope of the Act should extend to all parties including public sector employees.

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

CCAA POSITION

Duty of Care

The definition of the employer's duty of care has been a significant issue within the NSW jurisdiction. It is our view that the employers duty should be "as far as reasonably practicable".

Opponents of this definition argue that "reasonable practicability" is addressed in defences available under the NSW Act. They also argue that burden of proof required is on the balance of probabilities therefore the current NSW Act provides adequate protection to defendants.

This position defies experience and runs counter to the commonly acted practices in law.

The 'duty of care' as it applies to all duty holders, required under the Model Act should be "as far as is reasonably practicable". The Victorian OHS Act 2004 provides a useful definition.

NSW largely sits at odds with the rest of Australia. The operation of an absolute liability jurisdiction in NSW has not in and of itself improved OHS performance in NSW.

It actually creates a very unhelpful culture where managers who are committed to leading safety improvement can find themselves being prosecuted and being discouraged from implementing innovations and increasing effort as they would be found guilty in the event of an incident anyway.

In NSW defendants are encouraged to plead guilty and to seek to mitigate any penalty that may be imposed. We do not accept that this is good law.

We argue that the general application of "reasonably practicable" to the definition of obligations will result in better safety outcomes.

It is clear that the requirements of the Victorian OHS Act 2004 still place a significant obligation on duty holders.

The inclusion of 'reasonably practicable' in the definition of the offence will not in our view result in material degradation in safety standards nor will it become "impossible" for regulators to achieve successful prosecutions.

With respect to an employee's duty of care for themselves and others at the workplace we believe s25 of the Victorian OHS Act 2004 is appropriate.

Similarly S 23 of Victorian OHS Act 2004 is an appropriate model for the duty of care which should be exercised with respect to persons other than employees at the workplace.

The Employment Relationship

Safety obligations in the Model Act should continue to arise primarily in the context of the employment relationship.

The responsibilities of other duty holders identified in the Model Act should also be referenced to the effect of their activities on the workplace.

Other "employment type" relationships such as labour hire, apprentices/trainees etc. can be addressed via the duties of the employer or controller of premises.

Control

The notion of duty of care should be further qualified by the inclusion of a "control" test.

A definition of "control" as it applies to the operation of the Model Act is critical.

As a general principle the determination of control should rest on who has actual control of the circumstances rather than creating an artificial understanding of control to support a prosecution. This principle is particularly relevant when a duty holder has a valid reason to rely on the skills and/or expertise of others for the performance of work. This principle also has applicability when considering whether or not control can be delegated or relinquished.

Allowing circumstances to evolve where control can be properly and clearly delegated would remove some of the complexity that has now arisen in terms of chain of responsibility and the question of foreseeability. This said, we accept that for any control to be delegated it would need to be delegated with clarity and to persons who are and are capable of exercising control.

Appointment of Persons and Officers

The inclusion of legislative provisions for the appointment of persons with specific OHS responsibilities is a vexed question. Our Members' experience in their quarry operations is that it does create more accountability but also can be a disincentive for managers assuming these roles as the statutory responsibility can require you to act independently of or possibly contrary to the usual chain of command in the business. Some Members operate over 400 sites and being able to identify someone at a site level who had the capacity to assume such a statutory burden would be problematic. On balance we do not support this.

Current NSW legislation imposes significant and unreasonable obligations on officers of bodies corporate. Clearly, legislation must have regard to who is controlling the mind of a corporation however; it is unreasonable and defies reality to extend this so

that a corporate officer may be subject to a prosecution and perhaps a conviction merely because he/she is an officer of a corporation that is alleged to have committed an offence.

The Model Act must make provision for a causal link between the acts or omissions of the corporate officer and the alleged offence.

CHAIN OF RESPONSIBILITY

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

Responsibility for health and safety must be shared amongst those who contribute to it and control it. The level of responsibility and accountability imposed on individuals should be aligned with the degree of that control responsibility and accountability.

The control test should be used to determine what is reasonable and practicable in determining the obligations under the model Act.

- 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?**

Any and all persons whose actions could affect health and safety outcomes have duties and responsibilities. But the concept of control should be related to determining the extent of that duty and responsibility.

- 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**

It should not be possible to delegate or relinquish control for the purpose of limiting duties and obligation.

SHARED RESPONSIBILITIES

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

The Act should clearly articulate and define the responsibilities of the duty holder. The requirement for this is not diminished where there are multiple duty holders.

WORKPLACE RELATIONS

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

Safety obligations should apply to all persons at a workplace regardless of the employment relationship. All persons have a duty of care to themselves, their colleagues and others at the worksite within the limits of their level of control.

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?

The above principle should apply.

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

As above.

DUTIES OF EMPLOYERS

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

The model Act should specify the employers duty of care in recognition of the fact that an employer can provide a safe workplace but may not be able to anticipate a person at the workplace disobeying a practice or process.

Q24. To whom should these duties be owed?

The duty of care should apply to all persons working at the workplace.

DUTIES OF WORKERS AND OTHERS

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

The model OHS Act should specify the workers duty of care as their own health and safety and that of their colleagues as far as reasonably practicable where they have control.

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?

All persons entering a workplace must ensure they do not put themselves or others at risk and follow instructions and procedures provided by authorised persons.

APPOINTED PERSONS & OFFICERS

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

It is the employer's responsibility to appoint competent people to manage all facets of the operation including the management of OHS. The appointment of another individual with separate OHS responsibility and will result in confusion of responsibilities and increase risk.

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

The liabilities of any person should be proportional to their responsibilities and level of control.

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

The relationship should provide for direct access to the duty holder or delegate as required.

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

Yes, provided the duties are subject to the qualification of practicability applicable to duties of employers generally.

DUTIES OF PERSONS IN CONTROL

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?

The provisions differ across jurisdictions and these should be replaced with a single set of provisions.

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?

Anyone in control of a work area should have a duty.

ACTIVITIES WHICH IMPACT ON HEALTH AND SAFETY

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?

The model OHS Act should not attempt to define such detailed obligations as they will almost certainly be incomplete or incorrect or out of date.

The Act should encourage a risk management approach which will encourage whole of operation assessment.

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?

The adoption of a risk management approach will encourage identification of risk throughout the operation. Responsibility for the failings within the operation should be apportioned to the person with the control.

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)?

The model OHS Act should not attempt to establish a permanent relationship between supplier and operator. Instead the process of due diligence should apply.

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

4.0 'Reasonably Practicable' & Risk Management:

CCAA POSITION

CCAA strongly supports the principle of “reasonably practicable” which is based on our assessment of probability, consequence, knowledge, control and cost as described in the Victorian OHS Act 2004.

CONCEPT OF 'REASONABLY PRACTICABLE'

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

What will be determined as reasonably practicable will vary with the specific circumstances. As such it is difficult to incorporate this into the model Act.

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

Guidance as to the definition of reasonably practicable can be included in subsequent regulation and guidance notes.

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

A position statement clearly articulating what reasonably practicable means and providing guidance as to interpretation should be provided.

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

Control should be an element of the standard as it is recognised that control is a critical aspect of determining what is reasonably practicable.

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?

Compliance tests and examples should only be set out in guidance notes and codes of compliance. They should not be in the model OHS Act.

RISK MANAGEMENT

Q42. Should 'hazard' and 'risk' be defined in the model OHS Act?

Hazard and risk are very important concepts and should be defined in the Act.

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?

Risk management principles are fundamental to effective standards so these should be referred to in the standard.

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

Yes, please note our comments above.

5.0 Consultation, Participation and Representation:

CCAA POSITION

Consultation is essential for improved safety outcomes. How a broad duty to consult is best satisfied should remain a matter for agreement between employers and their workforces.

With some of our Members operating more than 400 sites a determination of how to consult is best left at the local level. This could produce a variety of consultation forums:

- One on one consultation
- Whole of site consultation
- Site based employee OH&S committees
- Site based employee and contractor OH&S committees
- Committees that are representative of clusters of sites (within and sometimes across product streams)
- More plenary committee structures at Divisional or Regional or business unit level

The Model Act should provide multiple means by which the duty to consult may be satisfied with a primary reliance on the parties in the workplace to adopt a methodology that best suits them. The NSW provisions (OHS Act 2000 Division 2) provides a template. (Q45, 46.47, 48)

Representatives

Consistent with our position on consultation we do not support a mandatory requirement for the appointment of health and safety representatives or committees.

We do not believe it appropriate that 'employee' representatives be given the authority to issue improvement notices or take other actions against the employer.

This is squarely the role of the regulator and the employees and employer should be left to work collaboratively to remove risk from the workplace and improve safety. Should such representatives be given these powers then the penalty for misuse would need to be punitive to ensure that they were not used inappropriately or for an unintended collateral benefit such as the pursuit of industrial claims or as would likely be the case building pervasive control of the workplace more generally.

Representatives of employee organisations should also not have the right to enter workplaces. Representatives may on occasions use this right for purposes other than the resolution of OHS matters which is unacceptable.

The powers of authorised officials should be limited to that which is reasonably necessary for them to determine if a contravention of OHS legislation may have occurred so they may then advise the regulator. This should largely be limited to discussions with employees and management. Authorised representatives should not be able to exercise a right of entry without notice or exercise powers of investigation. These are the responsibilities of the Inspectorate. (Q59, 60, 61, 62)

Disputes

In the event of disputes over OHS matters at the workplace the Model Act should provide a framework which encourages the resolution of disputes at the 'coal face'. In the absence of resolution the regulator should engage to resolve the issue to the regulators satisfaction. This should always be an objective outcome satisfying the regulator rather than an attempt to reach a negotiated settlement satisfying the parties.

Given the potential consequences which arise from a breach of OHS laws we do not consider it appropriate that dispute resolution by alternative dispute resolution means is appropriate. (Q63, 64, 65, 66)

DUTY TO CONSULT

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

An employer's duties should include consultation with employees to allow them to contribute to maintaining their health and safety.

Consultation principles should be included in the model OHS Act but detail on specific consultation requirements should be reserved for supporting regulation or codes of practice.

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

Consultation provisions should be workplace focussed and apply to all persons in the workplace and should include contractors and others where they are part of the workforce.

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

The level of consultation required will vary with the level of control of work held. Prescription of the level of consultation in the Act would not be helpful as it would tend to stifle innovation in improvements. The size of the workforce will also impact on what is practical.

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.

The model OHS Act should not address this level of detail. The specific nature of guidance on consultation should be reserved for regulation and codes of practice.

PARTICIPATION AND REPRESENTATION

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

Not all workplaces would benefit from the establishment of HSRs and HSCs. It would be preferable to have these provisions as options which could be determined by the specific workplace situations.

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?

The provisions for effective representation of workers to improve health and safety should be determined by what is most appropriate for the workplace. It is acknowledged that employees should collectively select safety representatives should they be required.

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

See Q 49 and Q 50.

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

Should the process for selecting OHS representatives be via election, then all persons being claimed to be represented should be entitled to vote.

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

The powers and functions of HSRs should not be detailed in the model Act.

CCAA however supports the functions described in the National Mine Safety Framework Consultation provisions.

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

The functions of Health and Safety Committees or any other body elected by the workforce may include:

- to facilitate consultation and cooperation between employers and employees in relation to OHS matters;
- to keep informed as to standards relating to safety and health;
- to recommend to the employer and employees the establishment, maintenance and monitoring to programs relating to the health and safety of employees;
- to have access to information on hazards that arise or may arise in the workplace;
- to consider and make recommendations to the employer as to any changes or intended changes to the workplace that may reasonably be expected to affect the health and safety of employees at the workplace;
- to consider any matters referred by a health and safety representative or equivalent.

However HSC's are not appropriate for all worksites.

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

Any health and safety representative should have the skills to meet their responsibilities.

Any training required should be conducted by an appropriate provider as agreed by the employer and employee and be accredited by the relevant regulator.

Q56. Are there alternative mechanisms that should be considered?

There are many alternate mechanisms to deliver effective consultation that should be tailored to the needs of the workplace. This should be assessed by the regulator and not described in the Act.

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

The model OHS Act should not specify requirements, they should be reserved for regulations

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

The model OHS Act could include principles for consultation with contractors and other workers.

RIGHT OF ENTRY

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

The only persons who should have right of entry is the regulator who has the responsibility to administer the OHS Act. No other party should have the right to enter a worksite without the approval of the site operator and no person without defined duties should have right of entry.

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

The only persons with right of entry should be the Regulator representatives and it should be the responsibility of the Regulatory Authority to ensure appropriate skills and training.

All other persons invited onto the worksite must undertake site safety induction.

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

The right of entry should extend only to the Regulator and not to any third party.

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

The Regulator should be the only party with right to entry. The Regulators powers should include:

- enforcing the legislation;
- monitoring safety and health performance;
- inspecting and auditing workplaces;
- providing coaching, mentoring, education and sharing of information;
- directing remedial actions to be undertaken in the event of unsafe practices;
- investigating complaints, fatalities, serious accidents, dangerous occurrences; and any other matter relating to the safety and health of workers.

ISSUE RESOLUTION

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

The model OHS Act should include a description of the circumstances under which the Regulator will become involved to resolve any conflict.

Q64. When should issue resolution procedures be activated?

When negotiation between parties has reached a stalemate.

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?

Procedures should not appear in the model Act. They should be in supporting regulations.

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

This should be detailed in regulation, not in the Act.

RIGHT TO CEASE UNSAFE WORK

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?

Employees have a common law right to remove themselves from any location at a workplace where they believe, with reasonable justification, that there is risk to their health and safety. The model Act does not need to expand on that. However, the Act should be clear that any such provisions must not be misused for industrial purposes and this should be supported by the provision for penalties. It is appropriate that employers be obliged to communicate that they have this common law right.

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?

The above Common Law provision we believe is adequate.

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?

While this should be assessed on a case by case basis, the provision of a right to be paid after exercising a right to cease work should be avoided. The payment of wages in the event of a cessation of work ought to be accompanied by an obligation to undertake alternate duties at the direction of the site controller.

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

The model OHS Act should provide dispute resolution procedures.

PROTECTION FROM DISCRIMINATION AND VICTIMISATION

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

The scope of the model OHS Act should not extend to discrimination and victimisation protection provisions as these are dealt with effectively under other legislation.

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

The model OHS Act should not cover these matters as they are dealt with adequately under other Law.

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

The nature of proceedings following a breach should follow the nature of the breach with civil matters being dealt with in a civil court.

- 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?**

The burden of proof in these matters should be the same as in any other proceedings with it resting on the prosecution.

The model OHS Act should in no way be different to other legal processes with all persons being considered innocent until proven guilty.

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

These powers already reside in other legislation and should not be duplicated in the model OHS Act.

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

Any remedies should not be considered by the Act.

- 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?**

While there should always be mechanisms such as conciliation and arbitration to resolve disputes ahead of criminal prosecution, these matters are adequately dealt with elsewhere.

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

6.0 Regulator Functions, Powers & Accountability:

CCAA POSITION

The role of the regulator is absolutely critical to giving effect to the Act and in supporting the delivery of improved OH&S outcomes.

The regulator should be responsible for monitoring, encouraging and enforcing compliance with the legislation at all levels of the workforce and industry.

The regulator must at all times be transparent and fair.

ROLE AND FUNCTIONS OF REGULATORS

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

The model OHS Act should definitely establish the functions, powers and accountability of regulators.

Specifically Regulator should:

- in planning inspections
 - focus on whether operators have a system in place to identify hazards, assess and control the risks, and that the system is implemented;
 - prioritise inspection effort to focus on those hazards representing the greatest risks;
 - monitor, inspect and audit operators safety management systems from a risk management perspective;
 - adopt a consistent approach between regulators, and across jurisdictions applying benchmark standards wherever possible
- In building their own skills and competence
 - possess a working and practical understanding of legislative obligations, codes, standards and guidance information, and a capability to communicate that information;
 - emphasise coaching, mentoring and sharing information and experience;
 - encourage the sharing of information on fatalities and significant incidents in an environment free of the fear of litigation;
 - provide consistent, transparent, flexible, rational and pragmatic advice;
 - influence cultural and behavioural change
- In enforcing compliance
 - apply the “as far as reasonably practicable” test when assessing compliance;
 - take enforcement actions that are consistent, balanced and proportionate to the circumstances;
 - use the full range of compliance tools to enhance safety;
 - take account of an operations past history and the level of systematic management deployed, monitored and reviewed on site;
 - ensure corrective measures reflect the nature of non-compliance and the

- o potential for harm, not what actually happened;
- o use a codified approach to decision making processes in the event of a breach of legislation;
- o not condone reckless behaviour, whether it be an act of recklessness, or an omission to act properly in the face of good information
- In initiating prosecution
 - o implement transparent decision making processes, with decisions reflecting public interest factors such as the protection of vulnerable groups of employees;
 - o equitable treatment for all with a capacity to influence workplace safety.

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

Yes, it is vital that there be transparency and consistency in all of the regulator's activities and this is no exception.

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

This is best achieved at the regulator level where the principles of the legislation can be translated into specific detailed requirements.

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

There needs to be a higher level dispute resolution authority within the regulator above the Inspector level.

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

The advisory and enforcement roles of the regulator should not be separated. Separating these roles would result in the enforcement hierarchy being disjointed and may unduly focus on maximising prosecutions rather than delivering systematic improvements in OHS outcomes.

INSPECTORS

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

The model OHS Act should provide for a competent inspectorate in terms of both technical skills and effectiveness.

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

The provision of advice and assistance in improving OHS outcomes is vital in ensuring long term systematic improvements. The ability to provide this should be enhanced.

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

The Inspector is the instrument of the Regulator in effecting the law, the inspector is not the creator or interpreter of the law.

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, the Inspector needs to have the flexibility to apply the enforcement tools available to him to deliver improved health and safety outcomes and this should include the modification, amendment or cancellation of any instrument.

INTERNAL REVIEW OF INSPECTORS' DECISIONS

Q88. What provisions should be made for the transparent internal review of decisions in the model OHS Act? What matters should be reviewable? What further appeal should be allowed?

An Inspector's decisions relating to the application of the Act must be transparent. Internal review provisions should be maintained by the regulator.

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?

7.0 Compliance & Enforcement:

CCAA POSITION

The Model Act should provide for an enforcement hierarchy. This is essential for consistency especially in the context of a model approach. (Q90, 91)

Regulators need access to a range of enforcement measures of increasing weight and seriousness. Improvement notices, prohibition notices and infringement notices are all appropriate responses. Provisional improvement notices, issued by persons other than inspectors are not appropriate.

We support enforceable undertakings as an alternative to prosecution. However there should be no threshold requirement for an admission of fault or liability; given there may be occasions when duty holders are prepared to enter into undertakings as an alternative to prosecution and whether there may be some doubt as to fault we would argue that agreement to fault or liability is not an appropriate or helpful precondition. (Q101, 102,102)

ENFORCEMENT MEASURES

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

We support the application of a hierarchy of enforcement measures. These should comprise:

- Verbal warnings
- Written cautions
- Improvement notices
- Prohibition notices
- Enforceable undertakings
- Prosecution.

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?

The enforcement principles should be embodied in the model OHS Act, however the specific enforcement measures should be in policy/guidance documents.

MEASURES EXERCISED AT THE WORKPLACE

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

PIN's, improvement notices and prohibition notices are all legitimate tools that can be applied by the Inspector. The detail of these should be included in regulations rather than legislation.

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

Recommendations and advice on how to achieve compliance is always valuable but following the recommendations or advice should not be mandatory.

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

All notices should be reviewable.

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

Notices should operate within a time frame to allow certainty and consistency in compliance.

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?

The lodgement of an application for internal review should result in the notice being put on hold.

INFRINGEMENT NOTICES

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

Infringement notices are not helpful in managing improved OHS outcomes but rather serve to distract from managing important OHS risks.

Infringement notices are not supported by CCAA.

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

CCAA does not support the application of infringement notices.

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

See above.

MEASURES EXERCISED BEYOND THE WORKPLACE

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?

Prohibition notices serve the same function as injunctions so are not required in our view.

ENFORCEABLE UNDERTAKINGS

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. Enforceable undertakings are an effective way of managing offences and allow parties to avoid the adversarial nature of prosecutions.

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

No. The object of the enforceable undertaking should be to minimise the risk of harm rather than prescribe guilt or blame. This will result in more effective relations between operators and regulators.

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

8.0 Prosecutions:

CCAA POSITION

The prosecution of OHS offences currently involves a mix of criminal and civil prosecutions. For example in NSW prosecutions are criminal matters with the prosecution required to prove the offence to the criminal standard but with the defence required to meet the civil standard. Whether or not prosecutions should be regarded as civil or criminal offences is complex.

If the consequence of the Model Act is prosecutions are reserved for the more serious class of cases then maintaining offences as criminal may be appropriate. If the reverse applies and prosecution operates as the default position of the regulator there needs to be a mechanism by which matters may be differentiated. (Q104, 105)

On the assumption OHS prosecutions will continue to be regarded as criminal offences the defendant should as a matter of right be entitled to the same appeal rights as are available to any other person convicted of a criminal offence.

As to the question of specialist court's opinion is often divided. In our view a specialist court enables the development of expertise and if full appeal rights from a specialist court are in place rather than being restricted by some privative provision, on balance we would support them. (Q106, 107,108,109)

NSW law currently reverses the onus of proof. NSW is an absolute liability jurisdiction. It has been, and continues to be argued that the application of reverse onus in social legislation such as OHS legislation is not unusual. Whatever the subtle legal argument that may support this proposition the reversal of proof is in our view unfair and unwarranted particularly in a jurisdiction where the obligations imposed on duty holders are such that it is most impossible to mount a sustainable defence. (Q117-121)

The proposition that an officer of a corporation may be liable for an offence simply because the corporation of which he/she is an officer is unreasonable.(Q122, 123,124,125)

Penalties

Penalties, other than financial penalties should be a rare exception. Custodial sentences are available in NSW for repeat offenders but to date there have been no custodial sentences imposed.

Also to date there have been no prosecutions under s32A of the Act with respect to workplace deaths. The NSW Act provides for custodial sentences of up to 5 years under s32A but that section also requires "reckless conduct" by the defendant, the prosecutor to determine to prosecute under the Section before the commencement of proceedings, bars prosecutions by unions and provides for expanded appeal rights.

Custodial sentences for OHS offences can only be justified where there is a specific offence relating to workplace death and that offence requires “reckless conduct” by the defendant.

Should consistency in sentencing not be achieved this alone could undermine the credibility of a harmonised system. The operation of a forum for relevant members of the various judiciaries might need to be established to ensure alignment of sentencing is achieved. (Q128 -133)

Alternatives to financial penalties such as enforceable undertakings, restoration orders or other actions deemed appropriate have a valid part to play in enforcement of OHS. The goal of the OHS system must be to improve OHS outcomes. The imposition of fines may in part achieve that outcome but greater emphasis on education and mentoring by the regulator would also achieve this with more lasting impact.

As NSW statistics show high prosecution rates and high penalties have not produced the safest workplaces in Australia.

We support the use of alternative penalties particularly where those penalties will result in a contribution to improved OHS. What those penalties should be and when they should be applied will depend on the facts of the case. Courts should be encouraged to consider alternatives. (Q134, 135)

It is our deep-seated position that unions should not have the right to commence proceeding against employers for an alleged breach of OHS legislation.

To give one of the industrial parties the right to prosecute the other is incongruent to the development of a collaborative approach at the workplace.

Workplace Death

We remain opposed to the creation of a specific offence for workplace death. There are two strands to this issue; the penalties that accrue where the offender is a corporate entity and those where the offender is a natural person.

Where the offender is a corporation then it is reasonable to provide for more severe penalties within the OHS legislation. Where the offender is a natural person then this is matter that should be properly dealt with under the relevant Crimes Act. Person accused of acts or omissions leading to the death of another person should not be subject to different standards simply because the death was or was not related to the conduct of work. (Q136, 137,138)

CRIMINAL OR CIVIL LIABILITY

Q104. Should the model OHS Act provide for breaches of duties or obligations to be criminal offences, or be the subject of civil proceedings and penalties, or a mixture of both?

Whether a breach constitutes a civil or criminal act is a function of the breach itself.

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

Most offences under an OHS Act would be civil in nature but acts of gross negligence or recklessness may be examples of criminal acts.

It is important that any determination is consistent with those that would apply in any courts hearing civil or criminal matters.

We strongly hold the view that any breaches that may result in imprisonment be heard through the criminal system with full evidentiary processes with the standard of proof being beyond reasonable doubt.

WHERE PROSECUTIONS SHOULD BE HEARD

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

Prosecution for OHS offences should be dealt with in courts of general jurisdiction. Prosecutions should not be heard in any specialist OHS Court or Tribunal.

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

No. the standards applying to prosecution of OHS matters should be identical to those in other courts.

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

The right of appeal should be the same for OHS matters as other matters.

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

Any offences that may have a penalty of imprisonment must be tried by jury. The standard of burden of proof being beyond reasonable doubt and the presumption of innocence is vital.

WHO MAY COMMENCE PROSECUTIONS AND RELEVANT PROCEDURES

Q110. Who should be entitled to commence criminal proceedings?

Criminal proceedings should only be able to be brought by the State. The Regulator must present a case to the Office of Public Prosecutions, who once convinced can commence proceedings.

Criminal proceedings should only commence if it is in the public interest as determined by the State. No other party including Unions or Regulators should have a role in the instigations of criminal prosecutions. No benefit from successful prosecutions should be derived by any party other than the State.

This is to ensure that there is no actual or perceived conflict of interest in pursuing or defending an action.

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

Following a comprehensive investigation by the Inspector or Regulator a case should be presented to the relevant Office of Public Prosecutions who should determine whether it is in the public interest to prosecute a matter. No other party should be entitled to commence such proceedings.

Q112. What should appropriate time limits be for the commencement of a prosecution and why?

A reasonable limit is two years after the incident.

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?

The conduct of prosecutions should be left to the relevant court to determine under its usual rules.

EVIDENCE

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

Evidentiary procedures should be those applying in a court of general jurisdiction. These procedures are well proven in law.

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?

As in all other matters dealt with in courts of general jurisdiction the burden of proof should rest with the prosecution. The introduction of any other standard would cause distortion of the law.

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

Legally based regulation may constitute evidence but other codes or advice should not be able to be used as evidence unless they are called up in the Regulation, as they represent general advice.

THE BURDEN OF PROOF AND DEFENCES

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

Yes, 'reasonably practicable' is an appropriate standard.

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

The burden of proof should always lie with the prosecution and OHS law should be no exception.

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, the burden of proof should always remain with the prosecution.

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

Compliance with a Regulation or recognised Code of Practice should be evidence of meeting a duty.

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

The burden of proof should remain with the prosecution regardless of whether a corporation or person is involved.

LIABILITY OF OFFICERS

Q122. Should ‘officers’ of a corporation be liable to an offence because the corporation has committed an offence?

The tests that need to be applied are those of proportionate responsibility and the ability of the individual to influence behaviours in the corporation.

The extent of contributory negligence or recklessness should be assessed in determining whether an ‘officer’ of a corporation should be liable to an offence.

Q123. How should officer be defined?

The term “officer” is defined in the Corporations Act. This definition should be used.

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?

The burden of proof should always lie with the prosecution. The concept of strict liability is inappropriate and does not lead to co-operative improvements in OHS management.

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 test for determining liability should be the degree of control that the officer had.

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

As stated previously, the burden of proof must remain with the prosecution.

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

The same for other individuals.

SENTENCING OPTIONS

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

The impact of fines requires assessment as frequently as they are regarded as revenue raising or otherwise not addressing the problem at hand. Other elements in the enforcement hierarchy are often more effective.

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

Should fines be applied it is important that they be consistent across jurisdictions to encourage consistent behaviour.

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

The level of fine should it be applied should reflect the seriousness of the offence.

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

Minimum fines are not supported as Courts should be encouraged to determine alternate remedies to fines.

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

The level of penalty should be related to the seriousness of the offence and the level of control a party has over the outcome.

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

A national register of decided cases would assist in increasing transparency and communicating outcomes.

OTHER SENTENCING OPTIONS

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

Alternative penalties to fines may include compulsory education, making enforceable undertakings or other community benefit activities.

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

No. Any sentences must be consistent with standards applied under the Crimes Act.

WORKPLACE DEATH AND SERIOUS INJURY

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

The existing criminal law framework adequately caters for any act of gross negligence or recklessness occasioning death or injury. There is no basis for developing separate offences such as "industrial" manslaughter.

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

The Crimes Act is the appropriate vehicle for dealing with criminal matters. Not the OHS Act.

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?

Culpability should be the main determinant of penalties. Assessing the consequences of a breach only may result in human error being inappropriately confused with recklessness.

ENFORCEMENT OF PENALTIES

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

Enforcement of penalties is a matter for the Courts not the OHS Act.

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?

Enforcement of penalties is a matter for the Courts, not the OHS Act.

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

9.0 Other Issues:

REGULATION MAKING POWERS

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

The making of regulations should be evidence based and subject to assessment of their impact prior to adoption.

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?

Regulations give effect to the Act.

CODES OF PRACTICE

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

The Act should facilitate development and approval of codes of practice.

NOTIFICATION OF INCIDENTS AND REPORTING

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

The Act should allow for simple and consistent data reporting on a national basis.

EXTERNAL APPEALS AND ISSUE RESOLUTION

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

Provision should be made for regular review of the Act.

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

Mediation provisions should be allowed to resolve issues but this should not be done via any industrial tribunal or other instrument.

TRIPARTITE MECHANISMS

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

It is recognised that a tripartite approach is essential in improving OHS outcomes but this should not extend to administration of the regulation. Unions are not duty holders and as such cannot contribute to effective administration.

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

Tripartite consultative committees can assist in improving OHS outcomes but these should be developed by the Regulator. They should not be part of the Act.

MUTUAL RECOGNITION

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

National harmonisation should be the prime objective with mutual recognition provisions working against the delivery of this.

The Act should focus on transferability of licences and skills across jurisdictions.

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?**

CCAA supports the framework of the Victorian OHS Act 2004 in facilitating this.

INTERACTION OF FEDERAL AND STATE LAWS

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?

The Act should encourage consistent interpretation by regulators and Courts nationally.