

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

SPECIFIC COMMENTS

Please complete this template to provide specific comments with supporting reasons against each chapter of the Issues Paper. If you are responding to a specific question in the Issues Paper, please include a reference to the relevant question number.

Legislative Approach:

Question 1

Regulatory approach

- Process based standards, and
- Prescriptive standards

A negative effect from being too difficult and open to various interpretations by individual inspectors. Regulatory approach needs greater consistency. e.g: excavation/trenching, COP; has 1.5 metres (but local inspector saying 1 metre), AND traffic control on worksites.

Question 2

National model OHS Act needs to be brief along the lines of the NSW Act. Part 3, 4 & 5 of the NSW Act could have less emphasis on inspector powers and include this information in the OHS Regulations and relevant codes of practice.

National model to separate the role of the regulators e.g. Distinction between compliance and advisory. Currently issues of conflict of purpose by a regulator and self-insured Councils audited by Workcover.

Question 3

Title: Health Safety and Welfare

Current NSW Act refers to welfare in the objects but is not referenced further.

Question 4

Yes, on the Model on NSW Act. Clarification needed on object (f). and (h) to clarify public/community exposure to OHS Legislation.

Environmental issues should be considered and linked to the OHS Regulations.

Question 5

No, NSW OHS Regs cover this. Objectives are preferred over a set of principles, as principles may confuse the intent of the objectives of the Act.

Question 6

Yes, A greater link with environmental policy.

Basic concepts of environmental issues need to be incorporated in training courses for industry, management and specialist fields.

Question 7

No

Question 8

Yes

Model

- National OHS Act
- National OHS Regulation
- Australian Standards
- National Codes of Practice
- Industry Codes of Practice and Guidelines

Once the National OHS Act and Regulation are in place referencing Australian Standards, codes of practice can be selected from the current State COP and be mandated as an initial framework and referenced in the National Legislation. Industry and other Guidelines can be State or high risk specific where necessary. After adoption a timetable of review of codes and guidelines adopted, will need to be implemented.

Setup a system of application for adoption/accreditation for industry legislation.

Question 9

Yes, Memorandums of Understanding

Question 10

Division 1 Section 8

- (1) Employees
- (2) Others at workplace
- (3) Propose/define area/extent of control and object (h) review regarding working at home, culture issues.

Question 11

No, Common Law and Public Liability are sufficient for implementation and control but “control” and “extent of control” needs greater definition. e.g. members of the public/building codes and DAs and Contractors

Question 12

Yes, NSW model is flexible but emerging trends of working at home needs further investigation.

Question 13

- Health issues – fitness for work, increase in suicide rates and drug and alcohol incidents, guidelines for undiagnosed health issues.
- Job sharing
- Duty of care – to and from home using public transport. When is this a place of work?

This could be dealt with as a journey claim only as currently under NSW’s Workers Comp. Expand definition of “others” under section 8 (2) to include volunteers, and working from home, plus consider training needs.

Under NSW Regs define specific hazards to include psychological

Scope, Application & Definitions:

Question 14

Refer to 1.3.1 Standardisation of Definitions SIA Consideration should be given to adopting globally accepted definitions of key terms (refer ILO/WHO definitions 1995) to align Australian practice with Global practice.

Question 16

Yes, to achieve consistency of interpretation of applying the Act.

Question 17

Question 18

Yes, control should be able to be delegated, eg. To seek specialist or technical advice

Question 19

Tenants versus Landlords
Occupier versus Owner
State versus Local Government

Question 20

Yes – also workers comp to be National to apply consistent definitions of relationships.

Question 21

NSW Act covers this definition of “others”. Definition to be expanded.

Question 22

No, refer to Regs 2001 as well.

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

Question 23

Extent of Control
Reasonable and practicable

Question 24

duties to be owed to be included at 8.1 and 8.2

Question 25

Duties of employees include “to take reasonable of others **and** themselves”

Question 26

NO, this is unworkable in a Local Government environment.

Question 27

No, Legislation, compliance and implementation can only work where everyone has OHS responsibilities for themselves and others.

These responsibilities must be included in all job descriptions.

Question 28

N/A, refer to 27

Question 29

An OHS appointed position holder must provide professional advice/instruction and promote safety across all workplaces but cannot be accountable for others responsibilities. Safety is not an add-on but must be incorporated into all job descriptions and work procedures. The standard of training of appointed safety officers/managers must be established eg. Queensland.

Question 30

Yes, and include regular safety inspections and reports.

Question 31

Yes, in the NSW model clarification for certain circumstances where duty is shared eg. State/Local, Building Inspections, Tenants/Landlords.

Question 32

Yes, to their employer and members of the public.

Questions 33,34 & 35

Yes, NSW

Question 36

Environment and procurement issues

‘Reasonably Practicable’ & Risk Management:

Question 37

Yes, to assist the consistent interpretation of legislation and enforcement.

Question 38

Use the AS 4360

Question 39

Use the AS 4360

Question 40

Yes

Question 41

Question 42

Yes, refer to AS 4360

Question 43& 44

Yes, comments to be made on review of AS 4360.

Consultation, Participation and Representation:

Question 45

Committee's, safety representatives or alternate arrangements. Add to flexible arrangements currently in COP NSW.

Question 46

Small business may need to be defined as exempt. Define 'small businesses.

Question 47

Yes, included in NSW COP

Question 48

The workgroups will depend on the Company and its activities. These can be described and defined in greater detail in the consultation code of practice. Flexible arrangements are needed for smaller and more isolated and culturally diverse situations

Question 49

YES,

Question 50

Need some specific exemptions and flexibility to ensure representation of all workers. Use of technology to provide more effective communication channels. Employer is to demonstrate effective consultation process other than HSC.

Question 51

Defined workgroups (where required) decided by workers AND employees in consultation. When directed by a regulator as part of an improvement plan.

Question 52

Employer AND employee's to vote

Employee representatives able to vote for a manager to represent them

Question 53

Reps should be able to call an inspector if resolution is not made, as per NSW's current COP

Question 54

Similar to as described in NSW COP

Question 55

Standardised training in communication, workplace inspection and problem solving, computers, hazard identification and control measures

Question 56

YES. Individual representatives OR other flexible arrangements agreed to by employer and employee(s). OHS a standard agenda item on Staff meetings

Question 57

Mostly described in the Regulations and a COP (as in NSW)

Question 58

People working from home, job sharing, casuals and volunteers, travelling sales and long distance driving

Question 59

Right of entry to be for

- a recognised Union representative (i.e. directly representing the relevant employee).
- a regulator to advise they are on site and inducted to the site or escorted. Need to produce identification.
- an appointed OHS advisor/manager or delegated person providing OHS advice

Question 60

YES. Approved training to be outlined in Regulations. National accreditation and relevant industry experience

Question 61

Question 62

Question 63

Question 64

Regulator Functions, Powers & Accountability:

Question 79

YES. NSW Act

Inspector to be able to resolve disputes regarding consultation arrangements and effectiveness.

Question 80

YES. Interpretation will be more consistent and help to keep legislation up to date.

Question 81

YES.

Question 82

YES. Dual role can lead to conflict of interest between prosecution role and advisory and inspection role. In NSW Work Cover is able to set audit criteria, inspect, and prosecute. Interpretation left to individual inspector.

Separate function for

- Enforcement
- Inspection
- Advisory, education
- Workers Compensation

National Regulation AND State enforcement

- Registration
- Enter Worksites

Review process of decisions made by inspectors – more transparent

Question 84

Reference to *National Training Packages*
Plus industry competence/experience
Define - 'suitably qualified' and set minimum criteria

Question 85

YES. Separate Regulatory and enforcement roles

Question 86

YES. When acting in an advisory/educating/ improvement role

Question 87

NO.

Question 88

NSW Act Part 5
Compliance "When an Inspector Calls"
Guidelines

Question 89

Show Identification on site.

Compliance & Enforcement:

Question 90

Minimise measures for infringement and prosecution e.g.

- Level ONE Court
- Level TWO Notices Fines
- Level Three Notices No fines –(Non-Conformance report)
- Level Four Advice, Improvement (Proactive), Warnings

Question 91

YES. Made statutory for greater transparency and consistency

Question 92-99

NSW Model okay except the need to refer to earlier response about having national model with state inspectors, this will help with the current issue about Work Cover inspectors using own interpretation for issuing notices. Also, should be the set fines for breaches-same process as driving offences (no 'Double Demerit' points though)

Prosecutions:

Legal groups to discuss this

Other Issues:

Specific industry needs should be reflected in the Model E.G. Local Government and some areas of State Govt-"control of workplace" issues, Directors, Councillors.

More responsibilities on individual to comply with law i.e. if driving and breaks the law = drivers fault-not employees, same rules should be applied to workplace, if rule in place and not followed by worker, employer should not be at fault-this would be based on outcome of an investigation process.