

# 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:

3	Name of model OHS Act	A couple of options are proffered: Australian National OHS Act (ANOHS); The Aussie Safe Bill; Australian Workplace Health and Safety Bill; If Welfare or Wellbeing is included within the name, then preference is for the term Wellbeing; it is more holistic, etc
4	Specify Objectives	Yes
5	Should it include a set of Principles for health and safety protection	Yes

### Scope, Application & Definitions:

8	Incorporation of industry specific legislation	Yes, but can it be achieved within the allotted timeline. On the other hand, consider capturing any specific industry requirements within a series of specific codes of practice for industry that sit under the Act and attendant regulations.
10	General duties tied to conduct of work, etc	Yes – The QLD model seems to adequately cover work activities undertaken outside the confines of a traditional workplace.

12	New and evolving types of work arrangements	Yes; incorporate as per highest common denominator from all state/territory jurisdictions; maybe an approach that ensures constraining ‘proportionality to the liability’ might be worthy of investigation.
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13	Emerging hazards	Yes – Eg. nanotechnology. While there has been a Nanotechnology National TaskForce, reviews from both here and overseas, and development of a range of guidance material, the rate of technological change exceeds current resourcing by government and others; they simply can’t keep up with the pace of change. Therefore it might be useful to consider utilising the ‘nanotechnology’ methodology employed by ASCC as a useful starting point for examining emerging hazards and at least establishing a ‘watching brief’ type of approach for government and the new National OHS Office. Weblink –
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		<p><a href="http://www.ascc.gov.au/ascc/HealthSafety/EmergingIssues/">http://www.ascc.gov.au/ascc/HealthSafety/EmergingIssues/</a></p> <p>Other emerging issues and hazards include but not limited:</p> <ul style="list-style-type: none"> <li>• robotics &amp; other complex automated systems such as human enhancements,</li> <li>• biotics, genetics and nanotechnology convergence,</li> <li>• ageing workforce,</li> <li>• pandemics,</li> <li>• psychological injury,</li> <li>• bullying,</li> <li>• fatigue,</li> <li>• diesel particulates, and</li> <li>• contemporary workforce dynamics such as casualisation, hire services, work experience, volunteer, outworker, etc.</li> </ul>
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### Duties of Care – Who owes them and to whom?:

<b>16</b>	Should the model OHS Act include a 'control' test or definition? If so, why and when should it be?	There is a clear need to define the term 'control' and to identify a test which determines its applicability. The Victorian 2004 Review (Maxwell QC) recommended that 'control' be defined and included in a list of factors to determine what is 'reasonably practicable'. That recommendation was not implemented and worthy of further investigation within the notion of a set of harmonised laws.
<b>17</b>	What should the role of control be in relation to determining who is the duty holder, the nature of the duty, the extent of the duty and the defences?	<ol style="list-style-type: none"> <li>1. It should stay with the primary duty holder. Based on contributory or 'influence' to what is reasonably practicable to the activity. The primary duty holder would have to be clearly defined.</li> <li>2. Definitions of duty holders should be solid and have an explicit relationship with the definitions of employer / worker / manufacturer / designer, therefore negating the requirement for the control test and any defences.</li> </ol>
<b>18</b>	Should control be able to be delegated or relinquished? If so, in what circumstances and what should the legal effect of doing so be?	No; as stated in Q 16 – 17, explicit duty holder roles and responsibilities cascading down from employer to manager and employee, will negate the requirement for delegation. There should be no available opportunities to relinquish control if duty holder descriptions are thorough. Delegation should allow the responsibilities to be shared, promoting the uptake of OHS by middle management.

19	Should the model OHS Act clarify responsibilities where multiple duty holders and multiple duties are involved? If so, how should this be achieved?	<p>Yes. Expand the definition of duty holders to capture the changed nature of the work environment of Australia today. In addition to existing duty holders (manufacturer, supplier, installer, designer, owner, etc) consider including labour hire/online services, persons who control non-traditional workplaces such as domestic premises and mobile workplaces such as home help, community support agencies and other workplaces where employee's management representatives are not present. See also Q 20.</p> <p>With regard to multiple duty holders it may be necessary to include a clause that stipulates the multiple duty holder must adhere to all aspects of their applicable multiple duty holder responsibilities, and where these are considered contradictory then the highest common denominator is applicable or something similar.</p>
20	Is primary reliance on employment relationships a valid basis for framing safety obligations?	<p>Yes, most definitely. However, we believe that it is important to clarify the obligations for duty holders involved in labour hire / on hire processes, as they may be several employers removed from the person who controls the work location. Moreover, asset owners should also be considered as they have far greater influence on workplace conditions. Additionally, it may be 'legally' arguable that volunteers, work experience or visitors are considered outside the 'employment relationships' definition. It may be more solid to explicitly state all duty holders rather than rely on 'interpretations'. May need to also clarify the obligations when you have persons moving onto workplaces for work experience.</p>
21	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?	<p>Utilise by defining 'worker' as an individual who carries out work, whether for reward or otherwise under: (a) an arrangement and (b) for someone conducting a business or undertaking. Quote examples such as employee, independent contractor, outworker, volunteer and/or a person undertaking/performing work experience. There will be a requirement to define the meaning of 'outworker'. Volunteers and persons undertaking work experience should be explicitly covered in the Model OHS Act.</p> <p>Also important to recall the duty of care to visitors to workplaces/areas of control and visitors duty of care to others.</p>
22	Is there a broader concept that	See above

	more effectively covers the various work arrangements?	
23	How and to what extent should the model OHS Act specify an employer's duty of care?	Under a general obligation requiring employers to ensure the health and safety of employees to the extent that is reasonably practicable. Follow the specific duties as spelt out as per Section 3.4 of the Issues Paper. Agree also that employers must take reasonable care to ensure their own health and safety at work.
24	To whom should these duties be owed?	Employees or workers however defined; must include volunteers, outworkers and persons undertaking/performing work experience/visitors/contractors. Another issue concerns persons undertaking illegal tasks/cash-in-hand jobs. These include illegal migrant workers, sex workers in illegal brothels, labourers, workers in 'sweat shops'.
25	How and to what extent, should the model OHS Act specify worker's duties of care?	As per current legislation; see also Q 16.
26	Should the model OHS Act include duties of care for persons who are not performing work (eg visitors to a workplace, members of the public)? If so, what should the duties be?	<ol style="list-style-type: none"> <li>1. Yes....see also Q 19 and 21.</li> <li>2. All state and territory legislation should be reviewed and the highest common denominator is utilised for <b>all duty of care definitions</b>. Most 'state/territory legislation' has this aspect well covered.</li> </ol>
27	Should the model OHS Act provide a mechanism for persons to be appointed to a position that has specific OHS responsibilities?	<ol style="list-style-type: none"> <li>1. Yes. The Queensland model with the WHSO seems to work well. But, unsure if there has been a review to determine the effectiveness of this model or alternatively the impact on management responsibility and involvement in workplace safety performance. The level of skill and training must be mandated.</li> <li>2. If the question relates to HSRs, then the requirement for compulsory HSR training should be standardised. IOSH research in the Construction Industry (Cameron, I. Hare, B., Duff, R. (2008) <i>Superior safety performance; OSH personnel and safety performance</i> (report submitted to the IOSH Research Committee) has shown that OHS training for management personnel representatives significantly improves workplace safety performance.</li> </ol>

		<p>3. If specific responsibilities (other than practitioners) can be appointed then a similar model to the First Aid Officer Scheme could be adopted. As employees safety is at risk from poor and uneducated advice then anyone 'appointed' (as opposed to employed) must have mandatory legislated training prior to commencement.</p>
28	What should the liabilities of such appointed persons be if the responsibilities are not met?	<p>As per Q27 and modelled on the First Aid framework. Corporations only; individuals if negligent and/or reckless;</p>
29	What should the relationship be between the OHS responsibilities of the duty holder and such appointed persons?	<ol style="list-style-type: none"> <li>1. Responsibilities of each duty would apply and similar conditions apply as per Q 19 – multiple duty holders.</li> <li>2. Specific duties and responsibilities / accountabilities through employment contract or a board.</li> </ol>
30	Should the model OHS Act include positive duties for officers of bodies corporate?	<p>Yes. Without documenting these responsibilities issues such as the management of asbestos in older buildings would not be identified or met. Body Corporate should align with managers/supervisors level responsibilities. Owners/controllers of premises should <b>not</b> be able to delegate or relinquish their duty of care.</p>
31	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?	<p>Yes; this could result in multiple duty holder situation; see Q 19.</p> <p>Ensure consistency with the definition of control within any proposed sub-ordinate regulations. See also Q 16 response. Also need to ensure that they are consistent with how these terms are also defined in other legislation &amp; regulations such as the Dangerous Substances, etc.</p>
32	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?	<p>Yes.</p> <p>Ensure there is consistency in the use of the terms 'at work' and 'workplace', or any premise under employer control. These terms should be clearly defined in the legislation.</p>
33	Should the model OHS Act establish H and S obligations for various activities which affect H and S for the whole life of an item, structure or system (ie conception to disposal)? If so,	<p>YES. Design, manufacture, importation, supply (including re-supply), distribution, installation, erection, decommission and disposal. Some of current legislation expresses these duties quite strongly and should be similarly followed eg.....ACT, VIC.</p>

	what should the duties be in relation to these activities?	
<b>34</b>	How should the model OHS Act deal with situations where 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?	<ol style="list-style-type: none"> <li>1. This area has always been somewhat difficult to manage. Clearly there is a need to clarify and comprehensively define the term 'effective control' when it comes to design, manufacture, importer, etc of plant and equipment; and to <u>ensure constraining 'proportionality to the liability' on all duty holders</u> across the whole lifecycle of an item, system or structure.</li> <li>2. Manufacturers should not be forced to accept deficiencies in the design work undertaken by another employer ie a designer; there must be appropriate 'gate points' in the whole lifecycle process. An example - this often applies to Defence when it acquires overseas foreign military equipment via 'off the shelf' processes (Commercial or Military), where the manufacturer has no presence in Australia and results in Defence assuming a broad range of responsibilities as manufacturer, designer and employer. Often extremely difficult and costly to manage.</li> </ol> <p><u>Note:</u> See also a recent Defence Legal Brief, Feb 2008, from Blake Dawson, <i>Defence Contracting: OHS Issues</i> which discusses these difficulties in some detail.</p>
<b>35</b>	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)?	<ol style="list-style-type: none"> <li>1. It should be defined to include re-supply; unsure about whether it should include 'gratis', 'second hand' or temporarily such as loan or hire. Suggest further investigation with experiences within other State / Territory jurisdictions.</li> <li>2. What has been the experience from overseas jurisdictions such as Europe including UK or Canada? Is there some overseas benchmark which could be adapted to suit Australian context / requirements?</li> <li>3. Supply is a major issue as ownership of plant and equipment may not necessarily sit with the particular workplace.</li> </ol>
<b>36</b>	Are there any other issues in	Duties covering decommission and disposal of

	relation to the duties of care that should be addressed in the model OHS Act?	plant, and disposal of hazardous substances should feature as a separate duty.
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### ‘Reasonably Practicable’ & Risk Management:

37	Should the test of “reasonably practicable” be included in the model OHS Act?	<p>Yes - the concept must be promoted. However, the definition must be defensible and be explicit so that there are ‘no legal loopholes’.</p> <p>Again, need to ensure that there is consistency of language and order of expression between legislation and regulations</p>
38	If not, what alternative standard should be included?	- ALARP – not just reasonably practicable;
39	How should the standard be defined? What level of detail should be provided?	<ol style="list-style-type: none"> <li>1. Should be defined as ‘as low as reasonably practicable’ and must be justified that a full risk assessment and all possible mitigation strategies have been exhausted and documented.</li> <li>2. Proposed definition - Reasonably practicable can be defined as: <ol style="list-style-type: none"> <li>a) having regard to: the severity of any injury or harm to health, the degree of risk (or likelihood) of that injury or harm occurring;</li> <li>b) how much is known about the hazard and the ways of reducing, eliminating or controlling it; and</li> <li>c) the availability, suitability and cost of the safeguards.</li> </ol> </li> <li>3. The degree of risk of injury or adverse effect must be balanced against the cost in terms of money, time and physical difficulty, of taking measures to reduce the risk. If the quantified risk of injury or adverse effect is insignificant compared with measures needed to mitigate risk, then no action needs to be taken? Also to be considered is the knowledge of a solution (to reduce the risk), the availability of a solution (to reduce the risk), the adherence to approved codes of practices, the application of industry standards and cost.</li> </ol> <p>[Ref: ABR 6303 Royal Australia Navy – Navy Safety Systems Manual V4]</p>
40	Should control be an	Yes. Due to current inconsistent application and

	element of the standard? See Chap 3	interpretation across the jurisdictions, agree with the notion as discussed within the Chap 3 of the Issues Paper; recommend that 'control' be defined and included as one of the factors to determine what is reasonably practicable.
41	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?	Not in Act; however possibly a regulation that can provide examples or 'tests' to be applied. There are many examples outlining compliance in the guidance material provided by the jurisdictions now. Collating the information and then aligning it with the new national model would assist workplaces. The idea is to promote continuous improvement. Workplaces need material that can be used to assist them. If the only connection with the regulator is through the inspectorate following an incident, the wrong message will be received by the business community.
<b>Risk Mgmt</b>		
42	Should 'hazard' and 'risk' be defined in the model OHS Act?	Yes. There is a need to ensure consistent use of terms, throughout the Act and any subordinate Regulations. Include a reference to hazard management principles and processes [identifying hazards, assessing and controlling risks]. i.e. employee will be exposed to <b>hazards</b> not risks in the first instance.
43	Should a definition of "reasonably practicable", or an alternative standard, include a reference to risk management principles and processes ( hazard, risk assess. and risk control)? If so, how?	Yes; See also Q 42. Must ensure that use of the term 'hazard' is not supplanted by the term 'risk'; you identify hazards first, then undertake a risk assessment, etc. Hazard management principles are applied before risk management. Hazards have no time base, while time is a factor with risk. i.e. employees will be exposed to <b>hazards</b> not risks in the first instance. Should clarify that the management of risk explicitly includes systems for identifying and assessing hazard. Ensure definitions are aligned with the Australian Standard and/or ISO depending on how closely we wish to harmonise with International conventions.
44	Should risk management principles and processes be specifically required by the model OHS Act in relation to the general duties, or otherwise?	Yes. Should always be provisions for employers to come up with a range of solutions, as opposed to always using the hierarchy of controls. Refer back to fundamental principles and/or reasonably practicable.  Ensure that there is consistency of language and order of expression between legislation and regulations.

## Consultation, Participation and Representation:

45	What provisions should be made in the model OHS Act for consultation?	<ol style="list-style-type: none"> <li>1. Place duty holders responsible for consulting. Consultation arrangements that promote dialogue between management and employees should be mandatory.</li> <li>2. This could also be made open to application by employers to fit in with their business. However, the Act should dictate that consultation must involve employer management reps, employees and / or their representatives. All state / territory legislation cover this adequately and the highest common denominator should be utilised.</li> </ol>
46	What are the work relationships to which a consultation provision should apply?	<p>All; business today does not necessarily have the workforce on the site controlled by their employee. The issue of outsourced staff and protection of the people through inclusion in consultation on all workplaces needs to be addressed.</p> <p>See above - Q 45</p>
47	Should there be different levels of consultation required for different work relationships?	<ol style="list-style-type: none"> <li>1. Yes..... The model of formal consultative frameworks does not function when the workforce is fluid and dynamic as in the modern workforce.</li> <li>2. This could be left for individuals and employers to apply. To difficult for organisations with over 100,000 employees down to small business &lt; 10. (unless another model could be found, say overseas).</li> </ol>
48	<p>How should consultation be provided for:</p> <ul style="list-style-type: none"> <li>➤ A multi-employer site;</li> <li>➤ An employer with operations across more than one worksite;</li> <li>➤ Small business;</li> <li>➤ Remote workplaces;</li> <li>➤ Precarious employment; and</li> <li>➤ Workers from culturally &amp;</li> </ul>	<ol style="list-style-type: none"> <li>1. Be developed by agreement with employees, contractors, labour hire, etc.</li> <li>2. Require rules of evidence in regards to demonstrating consultation arrangements such as records, meetings, timeframes, degree of relevance, etc.....</li> <li>3. See also Q 46 &amp; 47.</li> </ol>

	linguistically diverse backgrounds.	
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**Regulator Functions, Powers & Accountability:**

Nil

**Compliance & Enforcement:**

<b>90</b>	Should the model OHS Act include a hierarchy of enforcement measures in order of escalation? What should such measures consist of?	Yes. Provided the actions within the prescribed timeframes are clearly identified and understood by all parties to the notice or undertaking.
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**Prosecutions:**

Nil

**Other Issues:**

<b>The issue of managing the psychological wellbeing of persons in a workplace.</b>	Consider that an explicit reference is required to managing the psychological wellbeing of persons in the workplace is included; it must be defined as a key objective of the Act. Or explicitly defined within the definition of health and safety at work. Whilst it is referred to as wellbeing, in the definition it must include both physical and psychological rather than just focussing on the form suggested.
<b>Definitions</b>	<ol style="list-style-type: none"> <li>1. Consider adopting globally recognised definitions of all key terms so that Australian OHS practices are aligned with global practice. We need clear and standardised definitions of hazards, risk, safety cases, licensing, permits etc. Do not go down the path of focussing on risk management to the detriment of hazard identification.</li> <li>2. You identify hazards first, then undertake risk assessment and adopt risk controls.</li> <li>3. Consider a glossary / dictionary that is comprehensive enough to also capture such things as confined spaces, work at heights, safety professionals, high risk work, high risk worker, suitably qualified OHS advice, volunteers, etc</li> <li>4. Codes of Practice – there is a need to clarify when codes of practice or parts of codes actually apply to business and / or business sector. The operational point at which one gate closes and another opens is</li> </ol>

	often unclear. The proposed national model presents us with an opportunity to clearly define this issue.
<b>Research to promote continuous improvement</b>	<ol style="list-style-type: none"> <li>1. The development of a contemporary statistical database aligned to industry practice (not just to claims data, as it is currently) is a critical element of continuous improvement in OHS performance. It is recommended that priority be given to the establishment of a National OHS Statistical database accessible to all, which provides contemporary information for research and benchmarking purposes.</li> <li>2. Resourcing of research currently appears to be based on funding from premium surplus. Some jurisdictions will therefore have access to more funds than others. In a National model there will be a need for equitable allocation of funds from a centrally controlled financial pool.</li> <li>3. The income derived from the imposition of penalties should be utilised to fund / contribute to OHS research and the implementation of trials / solutions in OHS practice.</li> </ol>
<b>Standardised Regulations</b>	Regulations should be simple, standardised and harmonised across Australia. They should provide the prescription component.
<b>Inspectorate competency</b>	<p>The competency requirements for inspectors should be regulated to stipulate minimum academic qualification and mandatory skill and experience sets such as incident investigation. And standardised across jurisdictions. This is relevant as more sharing of activities and information occurs across jurisdictional and authoritative boundaries. Note – this component may have important implications given that COAG agreed to develop a trade licensing system by the end of 2008 at the COAG Meeting of Fri 4<sup>th</sup> July 08. This system is to include:</p> <ul style="list-style-type: none"> <li>• Air conditioning &amp; refrigeration mechanic operations; and</li> <li>• Occupations such as building, electrical, land transport, maritime, plumbing and property agents.</li> </ul>
<b>Education of practitioners</b>	<ol style="list-style-type: none"> <li>1. This is an important and critical aspect to successful implementation of a national legislation model.</li> <li>2. Consideration should be given to legislating for minimum educational requirements for those practising in OHS, both at practitioner and professional levels. Some guidance might be drawn from the OHS Units of Competency in the BSB07 Training package.</li> <li>3. Consider a nation wide review to draw together the various views, options etc as well as engagement</li> </ol>

	<p>with all industry sectors. It is acknowledged that there are many OHS advisors across Australia who have no valid qualifications for the advice they provide to industry. The legislation has been developed in the past with non-safety professionals in mind ie. for workers and employers. If the way forward is harmonised OHS legislation then a move to develop minimum standards for training &amp; education of OHS practitioners and professionals is essential.</p> <p>4. In the regulations have a statement which prescribes the integration of appropriate OHS training in school, university, professional education in engineering, architects, managers etc. education and training.</p>
<p><b>Expertise of judiciary in managing OHS prosecutions</b></p>	<ol style="list-style-type: none"> <li>1. It appears that the knowledge and skill level of the judiciary in relation to the prosecution of workplace injury and illness produces wide variance in severity of penalty and interpretation of the concept of ‘reasonably practicable’ across jurisdictions.</li> <li>2. The creation of a specialist safety court, such as exists in NSW, has the potential to provide more informed judgement of alleged non-compliance, thus underpinning a continuous improvement approach. If complemented by standardisation of penalties across all jurisdictions this approach would also provide more certainty for employers operating across jurisdictions.</li> <li>3. Must be a nationally based accreditation scheme.</li> </ol>
<p><b>Cross functional information exchange</b></p>	<ol style="list-style-type: none"> <li>1. We note that police officers often attend significant workplace incidents and are involved in preparation of brief(s) for the coroner in the event if a fatality. They also attend incidents which may not immediately be deemed to be workplace incidents (such as rail crossing incidents) and may be present at the aftermath of these incidents when the Workplace Safety Regulator is not. It is not clear how much, if any, of the information about causation and prevention of incidents attended by police but not the safety regulator is then disseminated into the safety community. (eg drink driving)</li> <li>2. Consideration should be given to developing an information database to capture the lessons from these incidents and make it available to those with a legitimate interest in prevention of injury. The Coroner’s database could be a useful source of vital information about causation and prevention if it were made available.</li> </ol>

	<ol style="list-style-type: none"> <li>3. The example also of organisations such as utilities who have multiple reporting requirements to government regulators and Workcover authorities; reports required to separate entities and yet no aggregation of the data and information for safety performance analysis. Other incompatibilities with multiple reporting requirements include incidents that occur below or above ground. This whole area complicates health and safety.</li> <li>4. Public liability information may also be a useful source of information regarding causation.</li> </ol>
<b>High Risk work issues</b>	<p>The subject of high risk work poses a range of issues for Australian workplaces moving forward within a harmonised legislation set.</p> <ol style="list-style-type: none"> <li>1. There is a need to ensure that appropriate controls for high risk work have been identified together with the best way of ensuring those controls are ALWAYS delivered. This may or may not involve the use of licenses and or permits.</li> <li>2. Recommend the establishment of a national register of high risk work and the approved controls to build the body of knowledge around management of such work. On the other hand this might conceivably be achieved by adopting a national code of practice high risk work.</li> <li>3. Where an appropriate control involves permits and certification, the appropriate licensing and certification requirements must be identified. In any proposed harmonised model a license or permit must provide a level of certainty about competency, be portable and have standing/recognition in all jurisdictions.</li> <li>4. Another view might be consideration of a safety case approach for coverage of all high risk work. This introduces some issues/concerns around external review and validation in order to create increased certainty about appropriate controls in this area. This view we believe places unnecessary burdens and admin costs upon government, authorities and business. It may also be difficult to enforce, requiring significant numbers of trained personnel along with difficulties in demonstrating clear benefits of such a proposal. But, might be worth further investigation.</li> </ol>
<b>Tripartism</b>	<p>The issue here is whether at this point – is it still relevant? Currently, it excludes other sources of expertise that should be considered within the whole debate around the totality of workplace safety. Alternate sources of information include the internet, the global business market, and academia. Excluding these aspects in the safety space while being</p>

	<p>reliant upon a ‘declining’ membership of unions and employers bodies, really diminishes the overall value of the tripartite notion and we now need to lift the bar / horizon somewhat higher. What that next step/alternative is I don’t really know, but I think we have matured our thinking from Tripartism and must move on.</p>
<b>Guidance material</b>	<ol style="list-style-type: none"> <li>1. Code of practice and guidance material should be evidence based (where able) and developed through research and resources funded by the regulator. The regulator needs to lead, co-ordinate and facilitate the development of materials by industry sectors and relevant professional bodies. This ensures that known better practice and management of hazards common to particular industries is captured.</li> <li>2. Codes of Practice – there is a need to clarify when codes of practice or parts of codes actually apply to business and / or business sector. The operational point at which one gate closes and another opens is often unclear. The proposed national model presents us with an opportunity to clearly define this issue.</li> <li>3. Involvement and approval of the regulator provides the authority for this material to be enforceable.</li> <li>4. See also Definitions above.</li> <li>5. Development of codes of practice by industry sectors may assist resolution of interpretation and application issues which often arise. An example here is Defence – a large, unique and complex ‘industry’, often taking on multiple obligations of ‘duty holders’. Defence acquisitions of plant and equipment from overseas sources, where the manufacturer has no presence in Australia, often results in Defence assuming a broad range of responsibilities as manufacturer, designer and employer. Advice and guidance in this area does not always cascade down to working levels and may leave operational units (ie the Commonwealth and contractor) vulnerable.</li> </ol>
<b>Notification of incidents</b>	<p>There is wide variation between jurisdictions in the definition of notifiable incidents. Uniformity of notification requirements would simplify compliance for employers operating across multiple jurisdictions.</p>
<b>National Industry Alerts</b>	<p>A system of National Industry Alerts is recommended, whereby an incident is publicised to relevant industry, providing timely information which can be addressed by workplaces. It is not uncommon for a significant incident to go unreported to industry due to pending prosecution (sometimes up to 12 months). Even then, there is no guarantee that information vital to the prevention of a reoccurring /similar incident is disseminated to those who have a legitimate interest. Typically, industry players</p>

	<p>exercise their networks and actively see information from the entity involved in the event of a significant incident. This is an area where the regulator could and should play a role ensuring that relevant information is distributed in a timely manner.</p>
<p><b>Corrective Action Plans (CAP)</b></p>	<p>Consider within the totality of any requirement for a OHS management system (either within the Act or subordinate Regulations) that the <u>notion of employers</u> (of any persuasion under the proposed model OHS Act) <u>documenting and maintaining their corrective action plans (CAP)</u> following their own internal or external inspection/survey/audit regimes, <u>is a mandated requirement within the legislation</u>. This provides not only the Regulator with specific evidence of proactive safety approaches to hazard and risk reduction should the question be asked, but also reinforces the ‘business does care’ model to employees, contractors and the wider community.</p>
<p><b>Fostering Harmony</b></p>	<p>Consider the appointment of a National OHS Ombudsman to promote OHS excellence and to ensure the highest possible standards of public sector service delivery to all jurisdictions. The establishment of such an office would provide a forum for all parties to seek guidance, mediation or question a regulator’s decision(s) in a non-adversarial environment and provide constructive operational feedback to regulators.</p>

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

## GENERAL COMMENTS

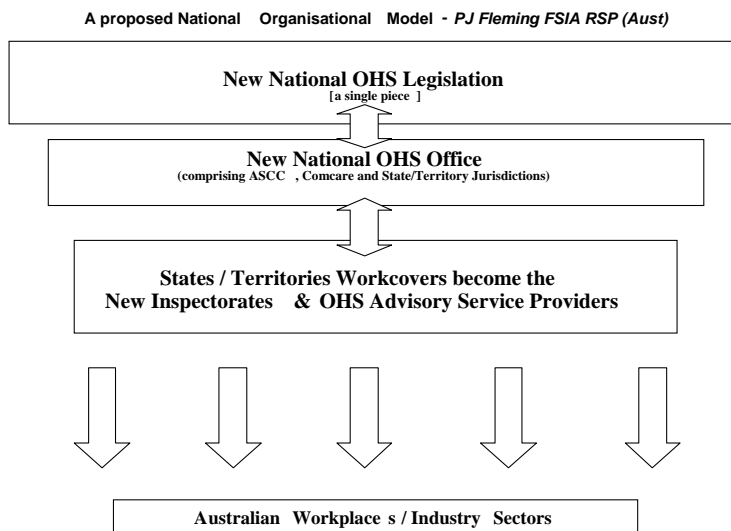
Please list any general comments you would like to make on any other matters not already highlighted in the Issues Paper. Ensure your general comments fall within the Terms of Reference of the National Review into Model OHS Laws (refer to Appendix A of the Issues Paper).

### General Comments:

I commend the Federal Government for undertaking this review and proposing a national model OHS laws. A Greenfield approach such as that being undertaken will enable component parts of OHS to be clearly identified through examination of national and international benchmarks and trends as well as potential or real areas of conflict and / or concern. The end product should provide a fresh new approach to achieving best OHS practice across Australia.

### A Proposed Organisation Model:

A key objective of any proposed nationally harmonised legislation is a consistent and standardised organisational model. Current 'structures' and approaches are significantly fragmented and resource intensive. I would also suggest they are inefficient and viewed by many in industry and business as simply 'box ticking'. There is still much confusion about what OHS obligations really apply and are often merely seen as an 'administrative add on' to real business and not viewed as a business driver. A set of harmonised laws will provide much needed improvement. A proposed national organisational model / approach is attached below.



### Closing Comment:

There is a need for bold, visionary thinking to inspire governments (Federal & State / Territories) to get on with the job of harmonising national OHS legislation. The creation of a resonant federal OHS law can be achieved with State/Territory variations. This review is to be lauded.