



Submission to:

National Review into Model Occupational Health and Safety (OHS) Laws

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Executive Summary

Santos welcomes the opportunity to provide recommendations to improve OHS legislation in Australia and supports a National OHS legislative model.

In addition Santos encourages the achievement of the outcomes defined in the terms of reference, which are to:

- Achieve national consistency and better health and safety;
- Improve efficiency;
- Reduce administrative burden on business without reducing safety standards;
- Achieve performance based regulations with identifiable outcomes unless prescriptive requirements are unavoidable to ensure safety in high risk situations.

The key to national OHS legislation is a consistent framework. National OHS legislation should be based on the principles of effective safety management system. Such systems are employed by many leading Australian organisations and are specifically guided by the Australian Standard 4804 (AS4804) "Occupational Health and Safety Management Systems – General guidelines on principles, systems and supporting techniques".

Santos has responded in this submission to key principles raised in the Issues Paper rather than each individual question. Key areas discussed in the submission include:

- Support for a national OHS legislation with industry specific OHS legislation where required
- Performance based approach to legislation
- Clear definition of "reasonably practicable"
- Compliance issues and burden of proof for a prosecution to be dealt with by the Regulator
- Flexibility of the consultation process and a consistent resolution process
- Support for national Workers Compensation laws with the ability to self-insure at a national level.

Key principles for consideration in this submission

1. Industry Specific

- There are a number of Commonwealth, State and Territory OHS laws that regulate the offshore and onshore upstream oil and gas industry. Some OHS laws are general in application and others are industry specific.
- For example, the Commonwealth has specific OHS laws regulating offshore oil and gas activities administered by a national regulator (NOPSA), South Australia, New South Wales and the Northern Territory have general OHS laws covering all industries, and additional specific OHS laws governing the onshore oil and gas industry. Queensland and Western Australia have specific OHS laws regulating onshore oil and gas activities, which are exempt from those States' general OHS laws.
- Inconsistent Commonwealth, State and Territory OHS laws presents a lack of guidance for business to set standards for how health and safety outcomes are to be achieved across all jurisdictions.
- When business is subject to OHS laws of both general and specific application, this creates a significant administrative burden for business that is required to report to two different regulatory bodies in the same State.

- The preferred Model Act should also promote single national OHS laws, with national industry specific regulation for the offshore and onshore oil and gas industry where required. This will ensure consistency and certainty for the offshore and onshore oil and gas industry across all jurisdictions.

2. Prescriptive v Performance Based

- The preferred model Act should promote, largely, a performance based legislation that specifies outcomes to be achieved, therefore providing business with flexibility to set standards for how health and safety outcomes are to be achieved.
- It is recognised that some prescriptive legislation is valuable and should be provided for high risk activities by way of regulation, codes of practice, or guidance material with relevant International and Australian Standards referenced appropriately.
- The preferred model Act should ensure consistency between regulations, codes of practice, guidance material and relevant International and Australian Standards.

3. Definition of “Reasonably Practicable”

- Commonwealth, State and Territory OHS laws impose a duty of care on business to provide a “safe work” or “safe environment” to a standard that is “practicable” or “reasonably practicable”. Most OHS laws (with the exception of Victoria and Western Australia) do not define “practicable” or “reasonably practicable”.
- Where a standard of care is defined it is with reference to a number of factors such as, “likelihood”, “degree of harm”, “universal knowledge of hazard”, and “the availability, suitability and cost of eliminating or reducing the risk”.
- Inconsistent definitions of duty of care and standard of care in OHS laws present a lack of guidance for business to understand and conduct risk analysis to prevent breaches of OHS laws.
- The preferred model Act must clearly define duty of care and standard of care, and provide guidance (by way of clear examples or otherwise) of those definitions to ensure certainty for business.
- The Maxwell Review¹ of the Victorian OHS law in 2004 recommended that “control” should be a factor taken into account when determining what is “practicable”. The reason given was that this will enable the law to differentiate between the safety duty of a labour hire provider in comparison to a host employer, and their respective capacities to control risk.
- The Maxwell Review also recommended that guidance should be given in the Victorian OHS law on how to balance risk and cost. For example, if risk is identified and severity assessed, business would be obliged to undertake risk prevention measures unless the cost of doing so was so “grossly disproportionate” to the risk.
- The preferred model Act should include “control” in the definition of standard of care, and guidance should be given to business on how to balance risk and cost.

4. Compliance

- Commonwealth, State and Territory OHS laws penalise business for a breach of the duty of care. However, there is inconsistency in OHS laws as to who has standing to prosecute a breach of the duty of care, and who has the onus of proving a breach.
- For example, in New South Wales and Queensland the defendant employer has the onus of proving that it was not “reasonably practicable” to take the necessary safety

¹ Chris Maxwell, “Occupational Health and Safety Act Review”, State of Victoria, March 2004.

precautions to meet the required duty of care. In New South Wales Unions have standing to commence prosecutions for a breach of OHS laws.

- The preferred model Act should penalise a breach of the duty of care under OHS laws, however, only the regulator should have standing to commence a prosecution and the onus of proving a breach.

5. Consultation Processes

- An important process in Commonwealth, State and Territory OHS laws is consultation with employees. However, there are numerous inconsistencies in OHS laws as to what the term “consultation” means, how the process of consultation is to occur, and mandatory requirements for business to consult with employees, for example, to establish health and safety representatives and health and safety committees. Many of the requirements are prescriptive and do not allow business any flexibility.
- Inconsistent consultation processes in OHS laws presents a lack of guidance for business to understand and conduct risk analysis to prevent breaches of the OHS laws.
- The preferred model Act should outline a general requirement of consultation with employees, with flexibility as to the consultation process.
- Further, the preferred model Act should support a consistent resolution process framework for OHS issues within business, which includes reporting to line managers, OHS representatives, OHS committees, and if the issue has still not been resolved, the government regulator. Rights of entry by the government regulator where there has been a breach of OHS laws and the business has failed to remedy the breach after notification should fall within the resolution process framework.

6. Workers Compensation and Self-Insurance

- Santos supports consistent national Workers Compensation laws across all industries and all jurisdictions, which Santos considers to be closely connected to national OHS laws.
- Santos is a self-insurer for Workers Compensation laws in South Australia. Santos supports the opportunity to become a self-insurer across all jurisdictions. To qualify as a self-insurer, a business in South Australia must excel in OHS and the management of OHS claims within its business.