



“Have your say on workplace safety laws.”



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Public Comment Response Form

Exposure Draft for Model Act and Stage 1 Model Regulations

Introduction

The National Electrical and Communications Association (NECA) is the only national industry association representing contractors responsible for the delivery of electrical, voice and data communications systems in Australia. It has approximately 5,000 businesses as its members, which employ approximately 50,000 tradespeople.

NECA welcomes the opportunity to provide comments on the Exposure Draft of the Model Occupational Health and Safety (OHS) Act.

The harmonisation process, which will lead to uniform OHS legislation and Codes of Practice, will provide many economic and practical benefits for our members as contractors and for their workers and clients. Business practices and technologies are changing and even small contractors are finding opportunities to work in bordering states and territories.

NECA represents individual firms and companies whose principal business is the selling and installation, servicing and repair of electrical and communications installations and products. The principal objectives of NECA are the promotion, safeguarding and advancement of members' interests. NECA provides our members with a full range of OHS support services and we also work with our members to enhance and improve management systems and work practices in the industry. Uniformity of legislative requirements will greatly assist in these processes.

We would like to provide comment in relation to some specific issues identified in the exposure draft that will impact on our industry. This has been done by referring to the specific section numbers of the exposure draft. We would be pleased to discuss any issues we have raised.

Part 1	Preliminary
Division 2	Objects
Section 3	Objects
It is noted that the term “health, safety and welfare” is used extensively throughout the draft document.	
Subsection 3(1)(a) is to “protect workers and other persons against harm to their health, safety and welfare ...”	
Whilst “health” and “safety” are well understood “welfare” potentially has a very broad meaning and it might be appropriate to set some	



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boundary through an appropriate definition.

Part 2 Safety duties

Division 4 Officers, workers and other persons

Section 27 Duties of workers

The duties of workers should extend to the proper care and use of equipment and for the worker to present for work in a fit and ready state. The relevant requirement in section 20 in the WA Occupational Safety and Health Act 1984 provides useful input.

Part 5. Discrimination against workers or prospective workers

Division 1. Prohibition on discrimination

Section 94. What is discriminatory conduct

The broadening of the “employee” to the “worker” could have unintended consequences in a number of areas. In relation to discrimination for example, the employment of subcontractors and the management of such persons particularly in relation to dismissal [s94(a)(i)] and termination of contract for services [s94(a)(ii)] as a worker appears to give the subcontractor the same rights as a employee. The test for termination of a contractor, who might for example be employed to undertake a specific specialist task, should be quite different to that of an employee. We need to be able to differentiate between these two classes of worker and this section should specifically relate to employees.

Part 6 Workplace entry by OHS entry permit holder

Division 2 Entry to inquire into suspected contraventions

Section 107. Rights that may be exercised while at workplace

This section gives the relevant union representative the right to undertake certain activities upon entering a workplace. The powers under subsection 107(1)(d) allow the permit holder to undertake activities, including the copying of records and documents, that are more akin to an investigation leading to the mounting of a Court prosecution. Unfettered access to company records and documents would



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lead to concerns for confidentiality and privacy of sensitive information relating to the organisation, its employees, clients, suppliers and contractors. When making reference to computer access, questions such as password protection would arise and the level of access that might be permitted.

This subsection [107(1)(d)] also appears to provide a means for the union representative to obtain immediate access, rather than under notice required in section 109.

Subsection [107(1)(d)] provides for an unreasonable level of access to sensitive information and should be removed.

Section 109. Notice of entry for request for information

Subsection 109(1)(a) is too broad and should be restricted in the same way that records and documents under 109(1)(b) must relate to the suspected contravention. The comments in relation to section 107 (above) also apply.

Part 8 Enforcement powers

Division 3 Powers relating to entry

Subdivision 4 Specific powers on entry

Section 163. Powers to require production of documents and answers to questions

Subsection 163(3)(a) specifically allows the inspector to conduct interviews in private if the inspector considers it appropriate. This appears to limit the person being interviewed from a reasonable level of legal representation and could lead to coercive practices or other unintended or undesirable outcomes and should be deleted.

It is noted that sections 178 and 179 specifically relate to this division and they should be located in this area of the legislation.

Section 242 (Offence to give false or misleading information) might also sit better in this area.

Part 11 Legal proceedings

Division 2 Sentencing for offences



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Section 236 Compensation orders

It is understood that an injured party has the right to obtain or seek compensation for loss or damages by other means, possibly including Workers Compensation.
 Under this section there appears to be no limit as to the level of compensation that might be awarded. A person would not be able to reasonably insure for such an outcome and the financial burden may be beyond their capacity to pay.
 The prospect of a compensation order could potentially change the plea in relation to an offence under the Act and the manner in which the legal defence is conducted.
 This section should be removed.
 If this section is not to be removed then it would be most desirable for compensation to be capped by way of a schedule.

Part 12 General

Division 2 Codes of practice

Section 248 Codes of practice (I)

NECA recognises the value to industry of sensible and pragmatic Codes of Practices and other OHS guidelines and standards.
 We would recommend that, in the interests of efficiency and consistency, this level of document be published as a national document rather than being badged and published by each individual state and territory.

Section 248 Codes of practice (II)

The Objects stated in subsection 3(1)(g) is to be commended:
 “to provide a framework for continuous improvement and progressively higher standards of occupational health and safety”.

We would once again like to present the case for deemed-to-comply codes and or specific practices because it links directly to this objective.

Firstly, a well structured Code of Practice will reflect industry knowledge through an experienced and expert panel that is capable of setting a reasonably practicable and acceptable level of compliance for a given work activity or process. Within a context of hazard identification and risk assessment that level would be the base level of compliance, where appropriate. It sets the ground rules.

We believe that our industry has the ability to pursue Best Practice and to achieve outcomes that are superior to those that might be deemed to



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be an accepted compliance standard. This is achieved by a coordinated industry approach utilising sound and timely performance information, pursuing a strategy of continuous incremental improvement, based on a factual and rational analytical approach. The objective is zero harm.

Such a system requires a base level of compliance that is seen to be reasonably practical in the vast majority of applications or circumstances. The industry will then use experience, learning and developments in methods and technology to make incremental improvements. The recognised base of compliance would follow after a suitable trial period. This is not unlike the ongoing development of the Electrical Wiring Rules which are subject to periodic updates and, at the same time, facilitate ongoing innovation. Such systems provide the smallest of contractors with the ability to participate and benefit in the development of the highest levels of safety.

A deemed-to-comply process also communicates to the PCBU and the workers an acceptable standard that is framed within a context of risk assessment. The likelihood of compliance is likely to be far greater when such a benchmark is set. Deemed-to-comply codes are facilitated in the Victorian OHS legislation and will aid in achieving continuous improvement and progressively higher standards of occupational health and safety.

Section 249. Use of codes of practice in proceedings

Where an organisation sets a process in train to embrace and implement the OHS objective of continuous improvement and progressively higher standards of occupational health and safety, they might be expected to have strong reporting systems and to implement changes as a result of health and safety incidents and ongoing learning. Part of the philosophy is to blame the system, not the man and to initiate system or process improvement by way of change. Such improvements are vital to the process of continuous improvement and should not be discouraged.

An active (and proactive) improvement system can be discouraged where it becomes known that the Prosecution and Courts may use such change as evidence of a failure to meet primary OHS obligations, as measured by the test of reasonably practicality. The actions of the PCBU to improve systems and processes following an incident should not be admissible as evidence of a lack of safety as it would discourage people to pursue Best Practice.