



Chief Executive Officer
Ms Michelle Baxter

Mr Stephen Palethorpe
Committee Secretary
Senate Standing Committee on Education and Employment
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Palethorpe

Inquiry into the work health and safety of workers in the offshore petroleum industry

Thank you for the invitation to provide a submission to the Inquiry into the work health and safety of workers in the offshore petroleum industry. Please find attached Safe Work Australia's submission.

Safe Work Australia would be pleased to provide any further information you may find useful in the course of your inquiry.

Our contact for the submission is Ms Angela Wallbank, Branch Manager, Strategic Policy Branch

Yours sincerely

Michelle Baxter
Chief Executive Officer
Safe Work Australia

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Submission to the inquiry into work health and safety of workers in the offshore petroleum industry

Introduction

Safe Work Australia (SWA) welcomes the opportunity to provide a submission to the Education and Employment References Committee inquiry into the work health and safety of workers in the offshore petroleum industry.

SWA leads the development of national policy and strategies to improve work health and safety (WHS) and workers' compensation across Australia, and assists with the implementation of model WHS laws. As a national policy body, SWA does not regulate WHS laws. The Commonwealth, states and territories have responsibility for regulating and enforcing WHS laws in their jurisdictions.

SWA undertakes research and collects, analyses and reports data to help the Commonwealth, states and territories and employers and workers in Australia achieve the national vision of *healthy, safe and productive working lives*.

SWA was established as a statutory agency on 1 November 2009 under the *Safe Work Australia Act 2008*. SWA is an inclusive, tripartite body, comprised of 15 Members including an independent Chair, nine Members representing the Commonwealth and each state and territory, two Members representing the interests of workers, two representing the interests of employers and the Chief Executive Officer of SWA. Members are supported by the staff of the SWA Agency, and various committees and groups for technical and policy matters.

Overview of the model WHS laws

In 2011, SWA developed a single set of WHS laws to be implemented across Australia. These are known as 'model' laws. The aim is to provide all workers in Australia with the same standard of health and safety protection regardless of the work they do or where they work. The model WHS laws are intended to be broadly applicable to all organisations regardless of their size or industry. The laws are outcomes-based and allow organisations to tailor their approach to safety to suit their circumstances.

The model WHS laws comprise the model WHS Act, model WHS Regulations and model Codes of Practice. The model WHS Act provides a framework to protect the health, safety and welfare of all workers at work and of other people who might be affected by that work.

The model WHS laws cover, among other things, a person conducting a business or undertaking (PCBU), workers and workplaces, which are deliberately broad terms to ensure the Act applies to all types of modern working arrangements. The definition of a PCBU is flexible so as to cover work arrangements that extend beyond the traditional employer and employee relationship (for example, labour hire).

The model WHS Regulations are made under the model WHS Act and cover a wide range of specific WHS matters, particularly managing risks to health and safety posed by hazardous work (for example, work involving noise, confined spaces, demolition) and materials (like chemicals and asbestos), major hazard facilities and high risk industries (for example, construction and mines).



The model Codes of Practice provide practical guidance on how to meet the standards set out in the model WHS Act and the model WHS Regulations. Codes of Practice are admissible in proceedings as evidence of whether or not a duty under the model WHS laws has been met. They can also be referred to by an inspector when issuing an improvement or prohibition notice.

For the model WHS laws to become legally binding, the Commonwealth, states and territories must separately implement them as their own laws. The model WHS laws have been implemented in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania and the Commonwealth. Victoria and Western Australia have not yet implemented the model WHS laws.

The model WHS laws generally do not apply to the offshore petroleum industry. At the Commonwealth level, the Parliament has legislated separately to regulate this industry through the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (see also s 12A of the *Work Health and Safety Act 2011* (Cth)).

Further information on the key provisions of the model WHS Act can be found at [Appendix A](#).

Major hazard facilities safety case and licensing regime

The model WHS Regulations apply a safety case and licensing regime to facilities that are not regulated by the National Offshore Petroleum Safety and Environmental Management Authority, and hold significant quantities of certain hazardous chemicals, or are determined by the regulator to be a Major Hazard Facility (MHF). The model WHS Regulations require operators of a MHF to, among other things, prepare a safety case to demonstrate the adequacy of measures in place to control the risks of a major incident involving the chemicals at the MHF. The safety case must also demonstrate that the MHF's safety management system will control risks that could lead to – and arise from – a major incident. The [SWA website](#) provides more information on the model WHS requirements for MHF's and guidance on preparation of safety cases.

Like all PCBUs, operators of MHFs must also comply with all other relevant aspects of the model WHS laws relating to the management of health and safety risks at the facility.

Safe Work Australia data

The National Data Set (NDS) for workers' compensation statistics is compiled by Safe Work Australia. It does not distinguish between offshore and onshore oil and gas operations (the relevant industry group is 'oil and gas extraction'), and therefore it is not possible to extract data specifically on facilities regulated by NOPSEMA from the NDS.

NOPSEMA reports injury rates (per million hours worked), collected from facility operators, but these cannot be compared to workers' compensation statistics.

Collaboration with Safe Work Australia

SWA and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) meet from time to time, to discuss WHS issues including on data collection and availability.



APPENDIX A

Key provisions of the model WHS Act

The model WHS Act provides a framework to protect the health, safety and welfare of all workers at work and of other people who might be affected by the work. The model WHS Act aims to:

- protect the health and safety of workers and other people by eliminating or minimising risks arising from work or workplaces
- provide for fair and effective representation, consultation and cooperation to address and resolve health and safety issues in the workplace
- encourage unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices
- encourage unions and employer organisations to assist businesses and workers to achieve a healthier and safer working environment
- promote the provision of advice, information, education and training in relation to work health and safety
- ensure appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act
- provide effective compliance and enforcement measures, and
- deliver continuous improvement and progressively higher standards of work health and safety.

The key provisions of the model WHS Act are outlined below and include the work health and safety duties; incident notification; authorisations; consultation with workers and representation of workers; discriminatory, coercive and misleading conduct; WHS entry permit holders; the functions and powers of regulators, including inspectors; and enforcement.

Preliminary (Part 1)

The meanings of key terms in this part of the model WHS Act are a key element of establishing the broad coverage of the laws. The Act uses person conducting a business or undertaking (PCBU), supply, worker and workplace as deliberately broad terms to ensure the Act applies to all types of modern working arrangements.

The definition of a PCBU is intentionally broad and flexible to cover a range of non-traditional work arrangements that extend beyond the traditional employer and employee relationship (for example, labour hire workers).

Health and safety duties (Part 2)

The model WHS Act sets out work health and safety duties for PCBUs, officers of PCBUs, workers and other people at a workplace. It also sets out broad principles that apply to these duties. Particular types of PCBUs have specific duties (for example, PCBUs with management or control of the workplace or of fixtures, fittings or plant at workplaces).

A person may have more than one duty and more than one person may have the same duty. A duty cannot be transferred to another person or contracted out. If more than one person has a duty for the same matter each person retains responsibility and must discharge their duty to the extent to which the person has the capacity to influence and control the matter. The WHS laws require duty holders with shared responsibilities to consult, co-operate and coordinate with each other to make sure someone does what is needed.



Reasonably practicable

A guiding principle of the WHS Act is that all people are given the highest level of health and safety protection from hazards arising from work, so far as is reasonably practicable (i.e. what could reasonably be done at a particular time to ensure health and safety measures are in place). See the Interpretive Guideline: [The meaning of 'reasonably practicable'](#) for further detail.

Primary duty of care

All PCBUs must ensure, so far as is reasonably practicable, the health and safety of workers by eliminating risks so far as is reasonably practicable, or if elimination is not possible, by minimising risks so far as is reasonably practicable.

A PCBU's duties include that they ensure, so far as is reasonably practicable:

- the provision and maintenance of a working environment without risks to health,,
- the provision and maintenance of safe plant and structures,
- the provision and maintenance of safe systems of work,
- the safe use, handling and storage of plant, structure and substances,
- the provision of adequate facilities for the welfare of workers in carrying out work for the business or undertaking including ensuring access to those facilities,
- the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking,
- that the health of workers and the conditions of the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

Duties of specific types of PCBU

PCBUs that design, manufacture, import or supply plant, structures or substances and PCBUs that install, construct or commission plant or structures can influence the safety of these products before they are used in the workplace. These businesses or undertakings have a responsibility to ensure, so far as is reasonably practicable, that their products are without risks to health and safety when used at a workplace—throughout their entire lifecycle.

PCBUs who have management or control of a workplace also have a duty to ensure that the means of entering or exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

Duties of an officer

The model WHS Act places a duty on individuals who, through their decision making, influence the specific activities and behaviours that determine the success or failure of health and safety initiatives and compliance by the PCBU with WHS laws. These individuals through their decisions and behaviour strongly influence the culture of the business or undertaking and accountability within it. They make important decisions on the resources that will be made available for the purposes of work health and safety and the policies that will be developed to support compliance.



This duty ensures those who have the power to make decisions which influence health and safety within an organisation must be proactive and exercise 'due diligence' to ensure the PCBU meets its duties. If an officer fails to exercise due diligence requirements they can be held personally liable. This duty relates to the strategic, structural, policy and key resourcing decisions that influence health and safety in an organisation.

The Interpretive Guideline - [The health and safety duty of an officer under section 27](#) provides further information.

Duties of workers and others

The model WHS Act also places duties on workers and other people at the workplace to take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions.

Health and safety duty offences

There are three categories of criminal offences for breach of health and safety duties under the model WHS Act. The maximum penalties are different depending on the category of the offence and whether the offender is an individual (e.g. a worker, or a PCBU), an officer or a body corporate.

Category 1 – a duty holder, without reasonable excuse, engages in conduct that recklessly exposes a person to a risk of death or serious injury or illness.

Category 2 – a duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness.

Category 3 – a duty holder fails to comply with a health and safety duty.

Incident notification (Part 3)

The model WHS Act requires the PCBU to notify the regulator immediately about certain incidents to allow the regulator to investigate. Incident notification is required for the death of a person, serious illness or injury or dangerous incidents. What is a serious illness or injury or a dangerous incident is set out in the Act.

The [Incident notification fact sheet](#) provides further information.

Authorisations (Part 4)

The model WHS Act sets out authorisations (for example, licences or permits) which can be established through regulations. This includes authorisation:

- for use of plant or substances
- for specific types of work, and
- requiring specific qualifications or experience.

Consultation with workers and representation of workers (Part 5)

The model WHS Act reflects the important role workers can play in identifying hazards and risk and finding ways to manage them. The Act requires PCBUs to consult their workers before making changes or implementing measures which may affect health and safety.

The Act provides for health and safety representatives (HSRs) and health and safety committees (HSCs) to facilitate consultation. Further information is available in the Guide: [Worker representation and participation](#).



Health and safety representatives

The model WHS Act provides for the appointment, powers and functions of HSRs. HSRs are workers elected to represent their peers on work health and safety matters. They can represent the interests of their work group, monitor risk control measures, investigate WHS complaints and inquire into any perceived health or safety risks. If a work group has chosen to be represented by an HSR any consultation must involve that representative.

HSRs are only required if requested by workers. If requested, the PCBU must facilitate the formation of work groups and the election of HSRs. Workers can elect any member or members of their work group to represent them¹.

Health and safety committees

HSCs are formal committees established under the model WHS Act to facilitate cooperation between a PCBU and workers on health and safety matters. A PCBU at a workplace can establish a HSC on their own initiative, however, they must do so within two months if requested by five or more workers or an HSR.

Discriminatory, coercive and misleading conduct (Part 6)

The model WHS Act aims to protect workers and encourage them to be involved as HSRs or on HSCs and to raise WHS issues as they arise by offering protection from discrimination and coercion because they have been involved in or raised WHS issues. The WHS Act prohibits a PCBU from discriminating against a worker, for example by dismissing a worker or treating a worker less favourably because that worker is, has been or will be a HSR, deputy HSR or a member of a HSC.

The WHS Act also prohibits requesting, instructing, inducing, encouraging, authorising or assisting another person to engage to discriminate against a worker on these grounds.

The Interpretive Guideline - [Discriminatory, coercive or misleading conduct](#) provides further information.

WHS entry permit holder (Part 7)

A WHS entry permit may be issued to a union official who has completed an approved training course and holds a valid and current entry permit under the *Fair Work Act 2009* (Cth) or the relevant state or territory workplace legislation. Subject to certain conditions, a WHS entry permit allows the holder to inquire into a suspected contravention of the model WHS Act and meet with workers to discuss their work health and safety rights and obligations. A WHS entry permit holder can only enter during usual working hours and must comply with any reasonable requests relating to workplace WHS requirements.

While at the workplace to inquire into a suspected contravention, the WHS entry permit holder has the right to inspect work systems, consult the PCBU and workers in relation to a suspected contravention, and inspect or make copies of any documents relating to the suspected contravention, if accessible. If they identify a potential hazard, they have a right to warn any individual potentially at risk.

¹ Unless they have been disqualified as a HSR, see section 65 of the model WHS Act.



The regulator, inspectors and enforcement (Parts 8-13)

Regulators have a broad range of functions including to:

- monitor and enforce compliance with the model WHS Act and Regulations
- provide advice and information on work health and safety to duty holders and the community
- collect, analyse and publish statistics relating to work health and safety.
- foster a cooperative, consultative relationship between duty holders and the people to whom they owe work health and safety duties, and their representatives
- promote and support education and training on matters relating to work health and safety
- engage in, promote and coordinate the sharing of information to achieve the object of the model WHS Act, including the sharing of information with other work health and safety regulators
- conduct and defend legal proceedings under the model WHS Act, and
- promote public awareness and discussion of work health and safety matters in the community.

The model WHS Act provides for the general functions and powers of inspectors. Inspectors are subject to the regulator's directions in the exercise of their compliance powers.

There are a number of enforcement measures available under the model WHS Act, including improvement, prohibition and non-disturbance notices, remedial action, injunctions and enforceable undertakings, in addition to legal proceedings/prosecutions.

The [National Compliance and Enforcement Policy](#) (NCEP) sets out the approach work health and safety regulators take to compliance and enforcement under the model WHS Act and Regulations. Each state, territory and the Commonwealth has its own regulator to administer the WHS laws in its jurisdiction. The NCEP ensures regulators take a consistent approach to enforcing the model WHS laws.

Enforceable undertakings (Part 11)

The model WHS Act allows the regulator and a person suspected of contravening the WHS Act to enter into an enforceable undertaking as an alternative to prosecution.

Enforceable undertakings are legally binding agreements between the regulator and the person requiring the person to carry out specific activities outlined in the undertaking in return for not being prosecuted for an offence. Enforceable undertakings can provide a greater benefit to the workplace, the industry and the community than a prosecution.

Enforceable undertakings cannot be accepted for category 1 offences, which involve reckless conduct by a duty holder exposing an individual to a risk of death or serious illness or injury without reasonable excuse.

Review of decisions (Part 12)

The model WHS Act sets out decisions which are subject to review and who is eligible to request the review. The first step is an internal review carried out by the regulator but the Act then allows for an external review by a review body specified in each jurisdiction.

Legal proceedings (Part 13)

Prosecutions under the model WHS Act can only be brought by the regulator (or an inspector acting with the authorisation of the regulator) or the Director of Public Prosecutions. Proceedings must be brought within two years of the offence coming to the



attention of the regulator, within one year after a coronial enquiry or 6 months after the regulator becomes aware an enforceable undertaking has been contravened or withdrawn. A category 1 offence can still be brought after this period if fresh evidence is discovered.

To provide transparency, if a prosecution has not been brought in six to twelve months after an alleged category 1 or 2 offence, an individual can write to the regulator requesting they bring a prosecution. The regulator must respond providing the status of any investigation and, if complete, whether they plan to bring a prosecution. If the regulator decides not to bring a prosecution the person may request the regulator refer the matter to the Director of Public Prosecutions to consider.

There are a broad range of options available to courts in addition to the fines and prison terms set out for particular offences. A court can impose adverse publicity orders, orders of restoration, project orders, injunctions and training orders.

General (Part 14)

Part 14 includes miscellaneous provisions relating to false or misleading information, legal professional privilege, immunity from liability, confidentiality of information, contracting out and levying workers. It also sets out the role of model Codes of Practice and sets regulation making powers.

Model Codes of Practice play an important role in the model WHS laws. They can be used to demonstrate what is known about a particular hazard or risk and what is reasonably practicable to eliminate or minimise the risk in particular circumstances. Codes of Practice are not strictly mandatory. A PCBU can meet their duties under the Act in another way, as long as it provides an equivalent or higher standard of health and safety. Codes of Practice may be admitted as evidence in a prosecution for a breach of a duty or obligation the model WHS Act.

The regulation making powers in the model WHS Act allow for matters to be set out in greater detail.