

Harmonisation of Occupational Health and Safety (OHS) laws

How will harmonisation be achieved?

Currently, the Commonwealth, States and Territories are responsible for making and enforcing their own OHS laws.

Despite national efforts to make OHS regulations consistent, there has only been limited success. There was no binding obligation to conform.

New approach to harmonisation consists of three elements:

1. Intergovernmental Agreement (IGA)
 - Formalises the commitment of the Commonwealth, States and Territories to work together to implement model OHS legislation
 - Signed by COAG on 3 July 2008 and includes:
 - role of WRMC, including procedural arrangements such as voting at meetings
 - the administrative arrangements, responsibilities and functions, including funding arrangements, of Safe Work Australia
 - the processes and timeframes for development and implementation of model OHS legislation
 - Defines OHS harmonisation to mean "...national uniformity of the OHS legislative framework (comprised of a model OHS Act, supported by model OHS regulations and model codes of practice) complemented by nationally consistent approach to compliance policy and enforcement policy."
 - Commits to OHS harmonisation by the end of 2011. New laws to come into effect on 1 January 2012.
2. National OHS Review
 - Commenced April 2008
 - Advisory panel to report to WRMC on optimal structure and content of model OHS Act.
 - The National OHS Review was undertaken in two stages. A total of 232 recommendations were made by the Review panel.
 - Report One – Completed October 2008
 - Report Two – completed January 2009
 - WRMC formally responded to all the Review Panel's recommendations and released a communiqué on 18 May.
3. Establishment of Safe Work Australia
 - Replaced ASCC. Responsible for developing and maintaining a model OHS Act, regulations and codes.
 - Retains workers' compensation policy role

Harmonisation process

- 18 May 2009, Workplace Relations Ministers' Council (WRMC) made decisions on the optimal structure and content of model OHS Act.
- Safe Work Australia has developed the model OHS Act in accordance with WRMC decisions.
- 25 September 2009, WRMC endorsed the exposure draft of model OHS Act and key administrative regulations for public comment.

What does this mean for the Seacare scheme?

If you are wondering how the WRMC decision affects the Seacare jurisdiction, WRMC agreed to the Review's recommendation that separate and specific OHS laws for high-risk industries should only continue where they have been objectively justified.

Even where separate laws can be justified the Review recommended that the separate laws be consistent with the harmonised OHS laws.

Once the model OHS Act framework and content is endorsed (end of 2009), the Seacare Authority, with input from its stakeholders will need to need to turn its attention to the question of the need for separate OHS legislation for the maritime industry.

This will be conducted once the model OHS legislative framework is settled and in place.

In the meantime, a comparison of the OHS (Maritime Industry) Act with the draft model OHS Act provisions has been prepared (see **Attachment**).

Model OHS legislation

The model legislation will consist of:

- A principal OHS Act
- Model regulations, and
- Model Codes of Practice

How will this affect businesses?

National OHS laws will ensure that businesses can comply with one set of consistent laws regardless of which state or territory they are operating in.

This critical regulatory reform will reduce the costs borne by business in complying with inconsistent OHS laws. Instead of spending time developing systems to comply with each jurisdiction's requirements, multi-state businesses will be able to focus on developing and implementing effective company-wide prevention strategies.

Workplace consultation, participation and representation

Given today's forum is about the role of HSRs, it is appropriate to at least draw out the proposed workplace consultation, participation and representation provisions as set out in the Model OHS Act.

The proposed model OHS legislation will ensure that all types of workers are protected from workplace health and safety risks, because the duties of care will extend beyond the employer/employee relationship that currently exists in most OHS laws.

The model Act will also facilitate the effective participation of workers and the representation of their interests in OHS. Persons conducting a business or undertaking will be required to consult with their workers about matters affecting their health and safety.

For the first time, all Australian workers will have the right to stop unsafe work under OHS laws.

Health and Safety Representatives for work groups

Every worker will have the right to elect health and safety representatives (HSRs) to represent them in health and safety matters. A work group must be established on request from a worker.

All trained HSRs will have the power to issue Provisional Improvement Notices (PINs) and direct others to cease unsafe work. Overall, these provisions will enhance health and safety protection for all Australian workers

Health and Safety Committees

Must be established within 2 months where requested by HSR, or 5 or more workers.

Issue resolution procedures

Principle is to resolve OHS issues in the workplace as far as possible. If the issue cannot be resolved after reasonable efforts have been taken to do so, the issue may be referred to the regulator to arrange for an inspector to attend the workplace to assist in resolving the issue.

Provisions to protect workers or prospective workers against discrimination

The model Act confers protections against discrimination of workers or prospective workers who engage in certain OHS-related activities. Provisions are designed to ensure that persons are not deterred from being involved in activities or exercising rights that important to OHS.

Right to cease unsafe work

Where to from here?

September 2009/November 2009

- Public comment closes on 9 November 2009

December 2009

- Model OHS legislation submitted to WRMC for agreement

September 2009 – September 2010

- Development of model OHS Regulations

October 2010 – January 2011

- Model regulations released for public comment

June 2011

- Model regulations submitted to WRMC for agreement

December 2011

- All jurisdictions to have adopted model laws

In committing to the harmonisation process, all levels of government recognise that each jurisdiction will face some changes in their current OHS arrangements.

The fundamental objective is to produce the optimal model for a national approach to OHS regulation and operation which will:

- enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;
- address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
- create efficiencies for governments in the provision of OHS regulatory and support services; and
- achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

Further information

Websites:

www.safeworkaustralia.gov.au

www.seacare.gov.au

**Key differences between current Commonwealth OHS(MI) arrangements and
proposed model OHS laws
(draft as at 19 October 2009)**

Subject	Current arrangements under the <i>Occupational Health and Safety (Maritime Industry) Act 1993</i>	Draft model OHS Act
Primary duty of care	The OHS(MI) Act 1993 assigns the primary duty of care to an 'operator' in relation to a prescribed ship or prescribed unit, qualified by what is reasonably practicable. An 'operator' is a person who has the management or control of the ship or unit.	The draft model OHS Act assigns the primary duty of care to a person conducting a business or undertaking, qualified by what is reasonably practicable. The draft model OHS Act assigns a separate duty on persons with management or control of a workplace.
Definition of worker	Under the OHS(MI) Act 1993, the primary duty of care is owed to 'employees'. An operator also owes a duty of care to contractors but only in relation to matters over which the operator has control (or would be expected to have control).	The draft model OHS Act adopts a broad definition of 'worker' that extends beyond the traditional employment relationship to include any person who works, in any capacity, in or as part of the business or undertaking. Includes (but is not limited to) a contractor, sub-contractor (or an employee of both) and an employee of a labour hire company who has been assigned work in the person's business or undertaking.
Definition of workplace	The OHS(MI) Act 1993 limits a workplace to anywhere on board a prescribed ship or prescribed unit where: an employee or contractor works or under the control of the operator to which an employee or contractor has access.	The draft model OHS Act has a much broader definition that is more aligned to the concept sometimes used in the OHS(MI) Act of 'at work'. The draft model OHS Act provides that a workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.
Duties on officers	The OHS(MI) Act 1993 places various duties on the 'person in command' who is the 'the master, or in the absence of the master, the person on board responsible, as agent for the operator, for the operation of the ship, etc'.	If a person other than an individual (the body) has a duty under the draft model OHS Act, an officer of that body must exercise due diligence to ensure that the body complies with that duty.
Duties on designers	The OHS(MI) Act 1993 does not place specific duties on designers. (It only places duties on manufacturers to ensure plant is designed and constructed to be safe when used properly.)	The draft model OHS Act places a duty on designers of plant, substances and structures, manufacturers, suppliers and installers, etc of plant and structures consistent with the principle that duties of care should be imposed on those who are materially involved in or materially affect the performance of work.

Subject	Current arrangements under the <i>Occupational Health and Safety (Maritime Industry) Act 1993</i>	Draft model OHS Act
Duties of other persons	The OHS(MI) Act 1993 provides for a duty on operators in regard to third parties but does not provide for a duty on third parties.	The draft model OHS Act provides for a duties of other persons (ie who are not workers etc, eg visitors) to take reasonable care of their own safety, take reasonable care not to do anything that could adversely affect others and to co-operate with reasonable instructions whilst at a workplace.
OHS offences	The OHS(MI) Act 1993 provides that all breaches of duties are criminal offences. There is no civil regime.	The draft model OHS Act provides that all breaches of duties of care are criminal offences.
Limitation period for prosecutions	The OHS(MI) Act 1993 does not provide for any time limitations in which an offence against the Act can be brought.	The draft model OHS Act provides that an offence against the Act may be brought: within two years after the offence was committed or the regulator becomes aware the offence was committed; or within one year after a finding in a coronial or an official inquiry that the offence has occurred.
Penalties	The OHS(MI) Act 1993 provides for 6 months imprisonment for serious breaches and a maximum penalty of \$110,000.	For the most serious breaches, the draft model OHS Act provides for a maximum fine for a corporation of \$3 million, \$600,000 for an individual as well as imprisonment of up to five years.
Infringement notices	No provision exists under the OHS(MI) Act 1993 for infringement notices (on-the-spot fines).	The draft model OHS Act provides for infringement notices for minor offences.
Sentencing options	The OHS(MI) Act 1993 only provides for imposition of a penalty or imprisonment.	In addition to fines and custodial sentences, the draft model OHS Act provides for remedial orders, adverse publicity orders, training orders, injunctions, compensation orders, community service orders and corporate probation.
Consultation	The OHS(MI) Act 1993 places a duty on employers to develop, in consultation with involved unions and other persons the operator considers appropriate, an occupational health and safety policy.	The draft model OHS Act places a duty on the person conducting a business or undertaking to consult, as far as is reasonably practicable, with workers (as broadly defined). The draft Act also prescribes what is required for consultation purposes and when it is required – it does not have a specific requirement for the development of an occupational health and safety policy document.
Establishment of work groups	The OHS(MI) Act 1993 provides that a designated work group is only comprised of employees of an operator employed on a prescribed ship or a	The draft model OHS Act provides that a work group may be determined for workers engaged in two or more businesses or undertakings. For

Subject	Current arrangements under the <i>Occupational Health and Safety (Maritime Industry) Act 1993</i>	Draft model OHS Act
	prescribed unit.	example, there could be one work group to represent the employees of different operators. The draft model Act also provides for the costs of an HSR representing more than one business to be shared equally between the persons conducting the businesses or undertakings unless otherwise agreed.
Health and Safety Representatives (HSRs)	The OHS(MI) Act 1993 provides that only one HSR can be elected per designated work group.	The draft model OHS Act does not limit the number of HSRs that can be elected by a work group.
Provisional Improvement Notices (PINs)	The OHS(MI) Act 1993 provides HSRs with the power to issue Provisional Improvement Notices and direct the cessation of unsafe work. While HSRs must be trained, they are able to exercise these powers prior to training being undertaken.	The draft model OHS Act will provide HSRs with the power to issue Provisional Improvement Notices and direct the cessation of unsafe work but only after the HSR has completed relevant training.
Training of HSRs	The OSH(MI) Act 1993 provides that a HSR must attend training that is accredited by the Seacare Authority and that the operator must permit the HSR time off work, without loss of remuneration and other entitlements to undertake the training.	The draft model OHS Act provides that the training must be approved by the regulator, a course the HSR is entitled to attend under the regulations and chosen by the HSR in consultation with the person conducting the business or undertaking. The draft model Act further provides that the operator must pay reasonable costs associated with the training and that the time given off work to attend the training is with pay.
Cessation of unsafe work	The OHS(MI) Act 1993 prescribes that HSRs may direct that unsafe work cease.	The draft model OHS Act provides that HSRs may direct that unsafe work cease but also provides workers with the right to cease unsafe work.
Health and Safety Committees (HSCs)	The OHS(MI) Act 1993 provides that an employer must establish a HSC if the employees are included in one or more designated work groups, and the operator is requested to establish the committee by the HSR or an involved union.	The draft model OHS Act provides that the person conducting the business or undertaking must establish an HSC for the workplace, or part of the workplace, within two months of being requested by: an HSR for that workplace; or five or more workers at that workplace.
Issue resolution		The draft model OHS Act provides for parties to an OHS issue to make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with an agreed procedure or, if there is no agreed procedure, the default

Subject	Current arrangements under the <i>Occupational Health and Safety (Maritime Industry) Act 1993</i>	Draft model OHS Act
		<p>procedure prescribed in the regulations.</p> <p>The draft model OHS Act provides that where an issue cannot be resolved after reasonable efforts have been taken, the issue can be referred to the regulator to arrange for an inspector to attend the workplace to assist in resolving the issue.</p>
Union right of entry	There is no union right of entry.	The draft model OHS Act confers powers on authorised representatives of union to enter workplaces for OHS purposes.
Inspector powers	The OHS(MI) Act 1993 confers a number of functions and powers on investigators but these may only be exercised in connection with the conduct of an investigation.	<p>The draft model OHS Act confers a wide range of functions and powers on inspectors. The functions and powers of inspectors are not limited to the conduct of an investigation.</p> <p>The OHS Act uses the term ‘investigator’ rather than ‘inspector’. This Act confers functions and powers on investigators but these may only be exercised when an investigation has commenced.</p>
Internal review of statutory notices	The OHS(MI) Act 1993 does not provide for internal review. Appeals on specified matters must be made to the Australian Industrial Relations Commission.	The draft model Act provides for a two-stage review process of certain decisions (for example, the issue of statutory notices by an investigator), starting with internal review, followed by external review.