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Public Comment Response Form Exposure Draft for Model Act and Stage 1 Model Regulations

The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to respond to the draft documents on model occupational health and safety (OHS) legislation. We are the peak business organisation in Queensland, representing the interests of 25,000 businesses and 135 chambers of commerce across the State.

CCIQ is also a founding member of the Australian Chamber of Commerce and Industry (ACCI) and accordingly endorses the ACCI submission. We encourage Safe Work Australia to thoroughly consider the feedback provided in the ACCI submission.

CCIQ's Overarching Position

The Queensland business community strongly supports a nationally consistent model of OHS regulation that will apply across all jurisdictions. A nationally consistent model will reduce red tape, unnecessary complexity and cost especially to employers that operate across jurisdictions. It will allow obligation holders to spend more time and effort on reducing risks and the practical implementation of safer workplace practices and systems instead of having to focus efforts on compliance with complex and inconsistent legislation.

Under current Queensland arrangements, employers have great difficulty in fully understanding their responsibilities. Many employers are perplexed by the system and its requirements and many small to medium enterprises, in particular, are unsure of their obligations. Queensland employers have also expressed significant concerns relating to:

- Workers compensation costs;
- Overall complexity of the State's Workplace Health and Safety (WHS) system;
- Understanding and interpreting Queensland WHS legislation;
- Compliance with Workers Compensation legislation;
- Union use of Health and Safety inspections;
- Availability of information on WHS management; and
- Workplace health and safety inspections.



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Overall, CCIQ is supportive of a WHS system that:

- Has a commonsense and fair approach to determining the obligations of employers;
- Involves consistent enforcement of clear WHS guidelines;
- Incorporates a partnership-based approach to ensuring healthy and safe workplaces in Queensland;
- Encourages employers to provide safer workplaces through incentives;
- Raises awareness amongst employers and employees of the importance of improved WHS;
- Is principle and outcome based and supported by authorities who provide advice in preference to enforcement;
- Is based on legislation that is written in plain English to allow for maximum understanding by all duty holders;
- Has a significant focus on providing support and education to assist duty holders to fully understand the legislation and embrace the principles of:
 - Requiring employers to eliminate or reduce risk so far as is reasonable practicable;
 - Requiring workers to take reasonable care of their own health and safety and the health and safety of others;
- Recognises the obligation on all workplace parties to carry out their work activities in a safe manner and clearly identifies the roles and responsibilities of all workplace parties to encourage a consultative and participative approach in the workplace.

CCIQ believes the Model OHS Act is a step closer to achieving these principles compared to the current Queensland WHS system. We are particularly supportive of duty of care being qualified by the term “reasonably practicable” which is a positive move from the absolute duty of care currently used in Queensland.

CCIQ strongly urges Safe Work Australia to take into consideration the above principles that are supported by the business community when drafting the regulations.

Health and Safety Representatives

Division 2 of the Model OHS Act describes how health and safety representatives are to be appointed if requested by an employee. There are no provisions placing mandatory requirements on the person conducting the business or undertaking to appoint health and safety representatives if they are not requested by employees.



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CCIQ is strongly supportive of the approach taken under the Queensland *Workplace Health and Safety Act 1995* that requires employers to appoint a qualified person as a workplace health and safety officer (WHSO) if 30 or more workers are normally employed at the workplace. This approach must also be incorporated into the Model OHS Act.

CCIQ acknowledges that the Workplace Relations Ministers' Council (WRMC) did not support recommendation 139 of the National Review into Model OHS Laws that recommended the model act should:

- Provide that persons conducting a business or undertaking must, where reasonably practicable, employ or engage a suitably qualified person to provide advice on health and safety matters;
- Address the qualification of persons providing such advice; and
- That the provisions be made along the lines of the Queensland Act for the appointment by persons conducting a business or undertaking of WHSOs and further consideration should be given to how that requirement can be extended to non-traditional work arrangements that normally involve thirty or more workers.

CCIQ does not agree with the WRMC's response that these provisions should not be included in the model Act, as an unintended consequence could be that persons conducting a business or undertaking would be encouraged to delegate their responsibilities. CCIQ believes this concern would be adequately addressed by the clause under the Model Act that states duties are non-delegable. WHSOs in Queensland have not been delegated the responsibilities of employers, however have proved successful in assisting employers to meet their WHS obligations and achieve safer and more productive workplaces.

If an effort to further demonstrate the support for, and the benefits leading from, the requirement for WHSOs in the Queensland business environment, CCIQ undertook a survey focused on this issue.

Survey results

Based on the seriousness of the issue, CCIQ undertook a survey of Queensland businesses for a period of a week (29 October to 5 November 2009) to seek feedback on WHSOs and their effectiveness in the workplace; 700 responses were received.

Overall, it is important to note that 74.1% of respondents stated that even if the WHSO role and associated training requirements were not mandatory, they would still maintain this role within their businesses. This is an absolute reflection of the worth of the WHSO initiative. This result alone represents a compelling argument for the inclusion of WHSOs in the Model OHS laws.



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The effectiveness of the WHSO role in Queensland businesses was rated by the WHSOs themselves, senior managers, other managers and employees. Overall, the WHSO role was rated highly effective in all their main responsibilities under the Act including (see Table 1):

- Advising the business on health and safety issues;
- Identifying any hazards or risks to health and safety within the workplace;
- Reducing health and safety incidents in the workplace;
- Establishing health and safety education programs; and
- Assisting the business in understanding and meeting its obligations under the WHS Act.

Table 1: Effectiveness of WHSOs in Queensland businesses in meeting their responsibilities under the Act

Respondent	Advising business on WHS issues	Identifying hazards and risks	Reducing incidents	Establishing WHS education programs	Assisting business in understanding and meeting WHS obligations
WHSOs	7.9	8.2	8.0	7.3	8.1
Senior Managers	7.4	7.4	7.1	6.5	7.3
Other Managers	7.8	7.9	7.7	6.8	7.7
Employees	6.7	6.8	6.8	6.1	6.6
All respondents	7.7	7.8	7.6	6.9	7.7

Note: 1 = not effective; 10 = highly effective

The high effectiveness across all of these responsibilities provides significant incentive for the inclusion of WHSOs in the Model OHS laws and demonstrates that it is a successful method of achieving improved OHS outcomes.

Survey respondents were asked to describe the advantages that WHSOs have provided to their businesses; the top 5 responses are listed in table 2. Almost 18% of respondents voluntarily stated that the advantage of the WHSO was that it provided the organisation with internal expertise on WHS issues, ensuring that both management and staff had access to expert advice and information when required. Additional advantages of the WHSOs included ensuring that someone was always focusing on WHS issues, that they provided a safer and more productive workplace as a result of their activities and increasing the awareness of WHS issues and obligations amongst staff and management. Another distinct advantage was they ensured that the business and the employer were meeting their obligations under the legislation.



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Table 2: Top five responses on the advantages that WHSOs provide to business

	All respondents	WHOS	Senior Managers	Other Managers	Employees
1	Internal point of call for advice, expertise & info	Ensures focus on safety issues	Internal point of call for advice, expertise & info	Internal point of call for advice, expertise & info	Internal point of call for advice, expertise & info
2	Ensures focus on safety issues	Internal point of call for advice, expertise & info	Ensures compliance with legislation	Ensures focus on safety issues	Increased awareness of WHS issues & obligations
3	Safer & more productive workplace	Safer & more productive workplace	Increased awareness of WHS issues & obligations	Ensures compliance with legislation	Reduces business risks & hazards
4	Increased awareness of WHS issues & obligations	Increased awareness of WHS issues & obligations	Reduces business risks & hazards	Increased awareness of WHS issues & obligations	Greater staff involvement in WHS
5	Ensures compliance with legislation	Reduced incidents & injuries	Ensures focus on safety issues	Safer & more productive workplace	Safer & more productive workplace

The following advantages that WHSOs provide to businesses were also identified by survey respondents:

- Ongoing provision of information, education and workshops;
- Providing an advisory role to management;
- Developing new internal procedures leading to cultural change and improved practices;
- Minimising business risks and hazards;
- Improving staff morale and involvement in WHS;
- Increasing management and employees' understanding of WHS risks and responsibilities;
- Decreasing worker compensation claims and therefore leading to reduced costs and premiums;
- Providing a link from employees to management;
- Enhancing the capacity of the organisation to deal with WHS issues;
- The development of WHS committees and external involvement in WHS initiatives;
- Reducing the workload of managers and/or business owner;
- Ensuring the business was effective in managing emergencies and WHS incidents;
- Knowledge of the organisation is used to tailor WHS initiatives; and
- Ensuring a coordinated and consistent approach to WHS.



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All of the advantages that have been highlighted strengthen the argument for mandatory WHSOs to be included in the Model OHS Act. Ensuring that someone within every organisation is delivering on some or all of these identified advantages can only lead to positive outcomes for government, businesses, the community and the economy. It is also further likely to have a positive impact on Australia’s productivity rates.

CCIQ also asked survey respondents that, if their business did not have a WHSO, how would they ensure that workplace safety risks were minimised and that the business remained compliant with WHS legislation; the top 5 responses are outlined in table 3 below. CCIQ views the alternatives for not having a WHSO as unsatisfactory in most instances. 19% of respondents stated that the responsibility would fall onto the business owner, senior managers or the HR Department, however it was commonly stated that this would not be as effective as the current mandatory WHSO approach, particularly as these identified people were already time-poor in their occupations.

Table 3: Top five responses on how businesses would ensure workplace safety risks were minimised and their business remained compliant with WHS legislation if they did not have a WHSO

	All respondents	WHOs	Senior Managers	Other Managers	Employees
1	Responsibility of business owner / Managers / HR	Responsibility of business owner / Managers / HR	Responsibility of business owner / Managers / HR	Responsibility of business owner / Managers / HR	WHS Committee / regular staff meetings
2	Appoint a Safety Manager / advisor / WHS reps	WHS would no longer be a priority / wouldn't happen	Would always have a WHSO	Appoint a Safety Manager / advisor / WHS reps	WHS would no longer be a priority / wouldn't happen
3	WHS would no longer be a priority / wouldn't happen	Engage an external consultant / business	Staff training / awareness and accountability	WHS would no longer be a priority / wouldn't happen	Appoint a Safety Manager / advisor / WHS reps
4	Would always have a WHSO	Appoint a Safety Manager / advisor / WHS reps	Appoint a Safety Manager / advisor / WHS reps	Would always have a WHSO	Responsibility of business owner / Managers / HR
5	Engage an external consultant / business	Would always have a WHSO	Engage an external consultant / business	Staff training / awareness and accountability	Staff training / awareness and accountability



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Overall, it was determined that on average, each WHSO spends only 17 hours a week on their related WHSO activities with the remainder of their working week available for other delegated duties determined by the employer. Secondly, a consistent theme in the feedback to CCIQ is that WHSOs ultimately, in net terms, save the employer money through lost time injury frequency rates (LTIFR) and reduced workers compensation costs and premiums. This in turn leads to safer, more productive and happier workplaces. Overall, the survey results strongly reinforce CCIQ's position that the WHSO role must be maintained in the Model OHS Act.

Quotes from survey respondents

“WHOs play an important part in WHS in the workplace. Not having a WHSO will be going backwards, not forwards.”

“I have worked as a WHSO, and I honestly feel that without us, businesses would struggle to keep abreast of all the legal requirements, tasks and activities involved in managing workplace health and safety risks.”

“Previously we operated without a WHSO and found ourselves in a situation where we could have potentially been no longer viable. It is not practical to meet such extensive requirements without one. Our incidents as a result of our actions of employing a WHSO have been greatly reduced.”

“Queensland WHOs should be the standard adopted throughout Australia. I work in Queensland and NSW and have found the training and application in Queensland easier to comply with, and the level of training more relevant and practical.”

“The advantages of the WHSO is that they ensure no one takes their eyes off the ball when other business requirements take over.”

“Of all the issues in the Queensland WH&S Act, the requirement for WHOs is not the problem.”

“WHOs' create an environment that ensures everyone gets to go home at the end of the day.”

“It is a great marketing tool – major clients will not do business with us unless we have a WHSO.”

“We now have the confidence that we are ensuring the safety of all who enter our property.”

“WHS would not be managed in such an efficient manner without WHOs.”



“Have your say on workplace safety laws.”



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Penalties

The Model OHS Act outlines three categories of offences, with category one proposed to lead to a penalty of \$3 million for corporations and \$600,000 for individuals or 5 years imprisonment.

CCIQ is concerned that the penalties proposed are approximately three times higher than current Queensland penalties, and are also substantially higher than any other state or territory’s current penalty systems. In our view, the case for increasing these penalties has not been made and accordingly, there exists strong opposition to the proposed penalties. Furthermore, we are greatly concerned that this level of penalties is proposed without the incorporation of the mandatory WHSO role within the Model OHS Act.

Transition period

CCIQ is strongly supportive of moving to a nationally consistent OHS legislative framework. However, this move will represent significant change for many Queensland businesses. As a result, it is important that appropriate transition measures, including information and education campaigns, are put in place to ensure a smooth transition to the new system. Activities throughout this transition period should also incorporate a cooperative approach between government and industry to ensure the most beneficial outcomes can be achieved for industry, communities and the economy.

CCIQ appreciates the opportunity to respond to the exposure draft of the Model OHS Act and urges Safe Work Australia to take into consideration the issues raised in this submission. If you have any questions or would like further clarification on any of the points raised in this submission, please contact myself or CCIQ Policy Analyst Leanne Usher on (07) 3842 2237.

Yours sincerely,

Nick Behrens
CCIQ General Manager - Policy