



**Australian Government**  
**Department of Defence**

**Department of Defence – Submission for the 2018 Review of the Model Work Health and Safety Laws**

**What is working**

(a) General observations:

- The introduction of the *Work Health and Safety Act 2011* has seen an improvement in the understanding and application of safety principles by Defence, and as such, the fundamental principles underlying the legislation are generally supported by Defence.

(b) Improving awareness:

- The focus the model Work Health and Safety laws place on officer duties, due diligence and the associated penalty regime has increased the level of awareness of work health and safety in Defence. Communication campaigns conducted by Comcare and Defence have assisted in achieving this outcome. This gradual increase in awareness is working well, and is something that should be maintained through communication as the body of case law develops over time.

(c) Relationship with the Regulator:

- The current legislation has resulted in a more collaborative relationship between Defence and Comcare.

(d) Consultation with stakeholders:

- The current legislation promotes greater consultation with stakeholders across Defence. The legislation makes it clear that consultation is a two-way process between the person conducting the business or undertaking and workers.

**What is not working and what could be done to make it work**

(a) Shared Duties:

- Defence often engages prime contractors who in turn engage sub-contractors to carry out work. In these situations, Defence carries responsibilities for ensuring Work Health and Safety requirements are met. This raises concerns that the application of shared duties can lead to the diminution of the reliance on specialists and technical experts as well as excessive consultation, reporting and auditing. However, in certain circumstances, it may be reasonable to rely on the expertise of the specialist or technical expert to apply safe systems of work to eliminate and minimise risks.

- It is suggested that the review considers the extent to which duties should be shared in situations where specialists and technical experts are able to effectively apply safe systems of work.

(b) Person Conducting Business or Undertaking:

- Under the model Work Health and Safety Act, Defence is accountable to Comcare as its regulator for failures under the legislation, but Defence has experienced instances where the same robust approach has not been taken by state-based regulators in respect of other duty holders (predominantly state-based contractors). This makes it difficult to instil the appropriate level of urgency and importance of ensuring legislative compliance where contractors may be more complacent.

(c) Interplay Between Legislation and Australian Standards:

- The majority of the Australian Standards were written in the context of the *Occupational Health and Safety Act 2004*, coupled with relatively ineffective Codes of Practice, the relationship between the legislation and the standards raises ambiguities in implementation of the standards, codes and legislation.
- It is suggested that in reviewing the model Work Health and Safety laws, Safe Work Australia have regard to relevant Australian and International Standards where appropriate.

(d) Jurisdictional Harmonisation:

- Defence operates in all Australian jurisdictions in partnership with the Defence Industry. The fact that the model Work Health and Safety Act has not yet been implemented in Victoria and Western Australia causes an unnecessary level of confusion and uncertainty to Defence business.
- It is suggested that Safe Work Australia take the opportunity provided by this review to encourage all jurisdictions to harmonise their respective legislation with the Commonwealth legislation. This could also lead to greater consistency in the prosecution of offences.

(e) Extraterritorial Application:

- Defence has a significant number of operations overseas. The clarification of the application of the model Work Health and Safety Act outside Australia is necessary to support Defence compliance with its obligations and duties under the legislation. The absence of clarity increases the risk of non-compliance with legislative requirements from Defence activities and operations outside Australia.
- It is suggested that Section 11 of the model Work Health and Safety Act be enhanced to provide more detail about the application of the model Work Health and Safety Act overseas to enable Defence to more adequately comply with its legislative requirements.

(f) What is Reasonably Practicable:

- The concept of 'so far as is reasonably practicable' is key to the management of work health and safety risk. Defence acknowledges that the definition of 'so far as is reasonably practicable' needs to be broad, however, there is still a great deal of uncertainty about its meaning and the application of section 18 of the model Work Health and Safety Act to decisions about risk controls. This lack of clarity can cause confusion about how and when to control risks, potentially leading to a loss in efficiency and less robust controls being implemented.

- It is suggested that section 18 of the model Work Health and Safety Act be revised to provide more clarity on its application, in particular, in relation to paragraph 18(e) of the model Work Health and Safety Act and the consideration of costs. This will provide more certainty about control implementation and increase the quality of risk management.

(g) Appropriateness and Usability of the Codes of Practice:

- The current model Codes of Practice are either too similar to the model Work Health and Safety Regulations that they are not useable or are broad and general to the point that they are unhelpful in determining what legal rights and obligations different duty holders have under the legislation.
- It is suggested that the model Codes of Practice be reviewed for relevance, usability and clarity such that they are useful in articulating the intent and requirement of the Regulations to business operations.

(h) Alignment of the Model Work Health and Safety Regulation and the *Poisons Standard* (March 2018):

- The model Work Health and Safety Regulations consider a lead process to include the use of lead based paint containing more than 1% by dry weight of lead. This is inconsistent with the *Poisons Standard* (March 2018) which prohibits the manufacturing, sale, supply or use of a paint or tinter containing more than 0.1% by dry weight of lead.
- It is suggested that the model Work Health and Safety Regulations be brought into alignment with the *Poisons Standard* (March 2018).

(i) Harmonisation of the *Occupational Health and Safety (Maritime Industry) (Commonwealth) Act 1993*, *Occupational Health and Safety (Maritime Industry) (Commonwealth) Regulations 1995* and the Model Work Health and Safety Act:

- The Royal Australian Navy works closely with the commercial shipping sector, with some of Defence's capability delivered by commercial ships operating under the *Occupational Health and Safety (Maritime Industry) Act 1993* and the *Occupational Health and Safety (Maritime Industry) Regulations 1995*, but with Defence personnel on board operating under the *Work Health and Safety Act 2011*. This legislation has not been harmonised which creates a significant burden on defining how multiple organisations work under the differing regulatory regimes.
- It is suggested that the *Occupational Health and Safety (Maritime Industry) Act 1993* and the *Occupational Health and Safety (Maritime Industry) Regulations 1995* be harmonised with the model Work Health and Safety Act.

(j) Diving Regulations:

- In response to a Safe Work Australia review of diving work regulations in 2016, Defence advised Safe Work Australia that diving regulations remain problematic as confusion over competency and qualifications for different types of diving require Defence to request exemptions for general diving work. Parts of the Australian Standard relating to the training and certification of recreational divers is not the best standard to be applied to general diving work by Australian Defence Force members.
- It is suggested that this review consider modifying the model Work Health and Safety Regulations in accordance with recommendations made in Defence's previous submission to the 2016 Model Work Health and Safety Regulations for Diving Work Review.

(k) Registration of Plant Designs and Items of Plant:

- Defence manages around 10,000 items of plant that require registration. Defence is the only organisation in Australia that manages plant under a Joint Special Plant Licence. This licence was originally issued under the authority of Part 4, Division 8 of the *Occupational Health and Safety (Safety Standards) Regulations 1994* and is maintained under authority from the *Work Health and Safety Regulations 2011*. It allows Defence to continue operating with a Special Licence subject to the conditions of Part 4, Division 8 of the *Occupational Health and Safety (Safety Standards) Regulations 1994*. These regulations are no longer in force and this anomaly causes an unnecessary overload and confusion for Defence.
- It is suggested that the model Work Health and Safety Regulations are amended to remove the requirement for registration of design of plant or items of plant.

(l) Inorganic Lead:

- The National Code of Practice for the Control and Safe Use of Inorganic Lead at Work was last updated in 1994, and a new Code of Practice was not created for the model Work Health and Safety Act. Due to increased awareness of inorganic lead health hazards and prevention of these hazards, the extant Code of Practice is no longer adequate to guide safe work practices including inorganic lead.
- It is suggested that a model Code of Practice for inorganic lead be developed in line with more contemporary standards to ensure awareness of its health hazards are maintained.