



**EXPOSURE DRAFT**  
**Work Safety Regulation 2009**

**DISCUSSION PAPER**

**June 2009**

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## Foreword

In August 2008 the Legislative Assembly passed the *Work Safety Act 2008*. This Act will come into effect on 1 October 2009 and will replace the existing *Occupational Health and Safety Act 1989*. This will mark the beginning of a new era for the management of work safety in the Territory.

The Act will provide the legal framework for an up to date, modern work safety regime that caters for working and doing business in the Territory today and into the future. It sets out general duties which apply to each person involved in work safety in a clear, concise and comprehensive way. The Act has also been designed to reflect best practice management of risks to health, safety and wellbeing and to cover emerging risks such as bullying, stress and fatigue.

The development of the Act involved continual consultation with all stakeholders and the general public. The Occupational Health and Safety Council, an advisory body representing employees, employers and other individuals, played a significant role in shaping the Act.

Introducing the Work Safety Act represented a major step in improving work safety outcomes. I now intend to introduce the first stage of the work safety regulations which will sit under the Act and provide additional detail on specific work safety issues, such as workplace arrangements, licensing high risk work and manual tasks at work.

This discussion paper sets out what is proposed for the first stage of the new regulations and provides a clear succinct outline to assist you to understand how the new work safety regime is proposed to work and to form your own views. The discussion paper should be read with the exposure draft of the regulation. A further workplace arrangements guide has also been released which provides a detailed explanation of changes which are proposed for consultation with workers and brings together the provisions in the Act and proposed provisions in the regulations.

The Work Safety Regulation 2009 Exposure Draft has been informed by past experience, consultation and continuing work to harmonise work safety laws. Your input is critical in making certain that the final regulation works as well as possible to ensure work safety and is responsive to the needs of workers and business.

I encourage you to make a submission. Your views are valued and appreciated.

John Hargreaves  
Minister for Industrial Relations  
June 2009

## About This Discussion Paper

### 1 How to Make a Submission

Your submission in response to this discussion paper is welcome. In formulating submissions, please refer to this paper, the exposure draft of the Work Safety Regulations 2009 and the workplace arrangements guide.

#### **All submissions may be made publicly available.**

Written submissions will be accepted in any format. Please provide reasons or explanations, wherever possible, to assist us to understand your views. You need not comment on all sections of the proposed Regulations, and are welcome to comment on only those topics that are of interest to you. An optional template has been attached to this paper which covers the major issues and may assist you in preparing your submission.

Oral submissions and questions will also be accepted by prior arrangement. Once you have had an opportunity to review the discussion paper and other relevant documents, please book a face to face session with a staff member of the Office of Industrial Relations. To book a session please phone Canberra Connect on 13 22 81. Please note that we cannot provide you with legal advice.

#### **Submissions will close on Monday 20 July 2009. They may be lodged by:**

Post: Work Safety Policy  
Office of Industrial Relations  
Chief Minister's Department  
GPO Box 158  
Canberra ACT 2601

Email: [worksafetypolicy@act.gov.au](mailto:worksafetypolicy@act.gov.au)

### 2 The Consultation Process

Following this period of consultation, all submissions in response to this discussion paper will be considered. The Minister for Industrial Relations will then consult with the Occupational Health and Safety Council and endorse any necessary changes prior to a final Regulation being issued. We will inform you of the outcomes of the consultation process.

### 3 How to Make Further Inquiries

Please make any inquiries about this discussion paper or making a submission by calling Canberra Connect on 13 22 81 or emailing [worksafetypolicy@act.gov.au](mailto:worksafetypolicy@act.gov.au)

# The Work Safety Regulation 2009

## 4 Overview

The proposed Work Safety Regulation 2009 (the Regulation) will eventually include all regulations which are made under the *Work Safety Act 2008* (the Act) in a single accessible document. This Exposure Draft of the Regulation, however, only deals with priority regulations including:

- provisions of the OHS (General) Regulation remade in line with the terminology and concepts in the new Act;
- further detailed provisions for workplace arrangements;
- implementing the National Standard for Licensing Persons Performing High Risk Work, and retaining those provisions in the OHS (Certification of Plant Users and Operators) Regulation which cover additional load shifting machinery;
- the OHS (Manual Handling) Regulation 1997 remade in line with the terminology and concepts in the Act and a new national standard; and
- a schedule of reviewable decisions for the Act and Regulations.

The development of further work safety regulations are discussed at the end of this paper.

## 5 Preliminary

This part of the proposed Regulation sets out standard matters which are included in all regulations made in the Territory and does not contain any specific policy content about work safety matters.

## 6 Injury and Dangerous Occurrence Reporting and Records

The principal requirements for keeping records in relation to serious events are set out in Division 3.3 of the Act. The Regulation supplements those provisions by providing further detail.

The proposed Regulation prescribes that any event which results in a worker's incapacity for 7 days or more is a serious event. Serious event is defined in section 36(b) of the Act. Any serious event must be notified either by writing, by telephone, by facsimile or by other electronic means, not later than 7 days after the event.

If the serious event results in a death, the proposed Regulation requires that the event be notified as soon as possible and, in writing, within 48 hours. The Regulation also gives the requirements for keeping records and acknowledgements of notifications.

## 7 Facilities

The current *Occupational Health and Safety Act 1989* requires particular facilities to be provided at the workplace. The new Act has similar provisions and requires several duty holders to provide adequate facilities for workers and others. For example, section 21 of the Act requires each person conducting a business or undertaking (such as an employer) to ensure work safety by managing risk. This includes providing adequate facilities for workers and other people.

The facilities that must be supplied depend on the nature of work and of the workplace and on the number and characteristics of the workers involved including, age, gender and special needs. Examples of facilities that should be provided are toilets, seating, eating spaces, drinking water, lockers – all facilities must be kept safe and clean.

Although the changes between the old and proposed Regulation in relation to facilities are minor, the vast majority of the provisions have been changed from general obligations to specific offences. Specific offences can be enforced on a stand-alone basis (rather than just improvement notices or prohibition notices in the Act) and a penalty can apply for not complying with each provision. For example, a person conducting a business may have a duty to provide access to safe drinking water. This would form just one part of their overall duty under the Act. However, if it were a specific offence, as proposed, the duty holder could be subject to a penalty for that failure under the proposed Regulation.

## 8 Workplace Arrangements

Employers (as defined in section 10 of the Act) are required to consult their workers about work safety issues. While consultation is compulsory, there are flexible options for doing so. Part 4 of the Act sets out what employers and workers need to do to consult each other about work safety. It provides a framework of duties and offences which require employers to consult their workers, explains consultation and sets out flexible new options for establishing consultation arrangements.

The Act tells employers and workers about the functions of work safety representatives and committees, and when an employer must use them. However, guidance on who can be a representative or a committee member, elections, powers and duties, required training, disqualification or Provisional Improvement Notices (PINS) is provided in the proposed Regulation.

Part 4 of the Act also sets out the powers and obligations of people who are appointed by registered organisations as authorised representatives. There are also offences which can apply for misbehaviour. The proposed Regulation deals with training and how authorised representatives can be disqualified.

## Work Safety Representatives

### Elections

It is proposed that a worker consultation unit (unit) can have more than one representative and can have deputy representatives. Representatives have a term of up to two years. Only a worker in that unit, or a person with a Certificate IV in OHS, can be a representative. This would change the existing situation where only workers are eligible to be representatives. This change would also facilitate 'roving' representatives across work sites or multiple employers.

The workers of a unit can ask anyone to conduct an election. If they ask an employer to conduct the election it is an offence if the employer does not do so within forty two days. This is to make sure that a long period of time does not elapse without a representative being elected. The person who conducts the election must tell the employer/s, and any existing representative, the result. Once the employer is notified of the result the representative can exercise most of their powers.

### Functions

The proposed Regulation provides further detail on a representative's role to investigate complaints made by a worker about work safety, participate in some interviews about work safety (where the worker consents) and inspect any work safety committee records. These provisions are very similar to those in the existing regime.

Representatives will still be given access to information under the employer's control about the work safety of a worker in their unit **except** for personal health information that identifies a worker or allows them to be identified. In this case written agreement from the worker is needed.

Representatives could also ask for a workplace inspection, accompany the inspector and inspect a workplace if:

- they have given reasonable notice;
- there has been an accident or dangerous occurrence; or,
- they believe on reasonable grounds there is an immediate threat of an accident or dangerous occurrence.

### Training

Each representative must complete a training course, and their employer must take all reasonable steps to ensure this happens within three months of their election. This includes refresher training every two years.

Representatives cannot issue PINS or initiate emergency procedures until they are trained. Employers must allow them time off work that is reasonably

necessary to exercise their functions or undertake training (without loss of pay or entitlement), pay training fees and reimburse reasonable expenses.

### Disqualification

A representative's term ends if they resign, stop being eligible or are disqualified. If a representative is or was acting with the intention of harming the employer or business, using their powers for another purpose (including using or disclosing information) or failing to reasonably exercise their functions then an employer, worker or registered organisation for that unit can write to the Chief Executive of ORS (WorkCover) to have them disqualified.

### **Provisional Improvement Notices**

As is the case now, representatives will be able to issue a PIN requiring a person to rectify a matter where there is an actual or likely breach of the Act. A PIN must state the circumstances, the reasons and the action requested to address the issue within at least seven days (or twenty four hours in limited circumstances).

Before issuing a PIN, the representative must have exhausted all other avenues to resolve the situation. A person who receives a PIN must ensure that the notice is complied with to the extent of their control and take reasonable steps to inform the representative of their actions.

### **Emergency Procedures**

Representatives will still be able to implement emergency procedures if they believe, on reasonable grounds, there is an immediate threat to a worker unless they stop particular work. They would first tell the worker's supervisor who would be required to do what they consider appropriate to remove the threat, which might include directing the worker to safely stop work. If the supervisor cannot be contacted immediately, the representative could direct the worker to safely stop work. The employer could still require the worker to do alternative work.

### **Work Safety Committees**

Workers, representatives, management and officials of registered organisations would be eligible committee members, provided that at least half of the work safety committee is comprised of workers. A unit can ask anyone to conduct an election. If an employer is asked to conduct the election, it is an offence if they do not do so within forty two days. Amendments are also proposed for the Act to allow the Chief Executive ORS (WorkCover) to require committees in high risk industries.

It is proposed that each committee have the power to give information, ideas and feedback about implementing best practice, provide a forum for the employer to raise concerns, encourage workers to take an interest in work safety, review incidents injuries and diseases in the workplace, make recommendations and other suitable agreed activities. These functions



underpin the role of a committee, which is to oversight the improvement of work safety at a high level, particularly for large employers.

Each employer will be required to give the committee any information they have about risks to work safety of the workers in that unit. Each member's employer will have to allow them time off that is reasonably necessary to attend committee meetings and exercise approved committee functions (without loss of pay or entitlement).

While training will not be compulsory for committee members, a committee could decide that a member should undertake training. The employer would be required to allow them time off work to undertake an approved course determined by the committee (also without loss of pay or entitlements).

### **Authorised Representatives**

Section 62 of the Act requires that a person must have completed prescribed training to be eligible for appointment as an authorised representative. The proposed Regulation specifies that this is a Certificate IV in OHS. To disqualify or suspend an authorised representative, an affected employer worker or registered organisation can write to the Chief Executive ORS (WorkCover) where the authorised representative has, or is likely to, contravene Division 4.4 of the Act (entry to workplaces), or has intentionally hindered or obstructed an employer or worker or acted improperly.

## **9 Particular Safety Measures**

It is proposed that the Regulation will continue to set out provisions with further detail on managing specific risks and how to use particular safety measures. In practice, this will mean making sure there are safe entries and exits, lighting, floors and surfaces at premises. Where they are needed, the Regulation will deal with how to supply effective personal protective, safety and respiratory equipment, and how to prevent falls. The Regulation will also set out how to work safely with ladders, in isolated situations and in confined spaces. With respect to workplace conditions, the Regulation will continue to cover managing ventilation, noise and heat and cold. The Regulation will also provide detailed measures which must be followed to prevent risks from electricity, fire and explosions, as well as general emergency procedures.

These provisions will cover the same work safety matters as the current OHS (General) Regulation 2007, but will be set out as specific offences which sit together with each duty holder's obligation to ensure work safety by managing risk. As is the case for facilities, while there will be very few changes to the content of what is required of duty holders, the provisions have been changed from general obligations into specific offences. Specific offences can be enforced on a stand-alone basis (rather than just improvement notices or prohibition notices in the Act) and a penalty can apply for not complying with each provision. For example, a person in control of premises may have a duty to make sure that there is reasonable ventilation. This would form one part of their overall duty under the Act. However, if it were a specific offence as

proposed, they could be subject to a penalty for the failure to ensure reasonable ventilation under the Regulation.

## **10 Licensing High Risk Work**

Part 3 of the Act sets out the work safety duties. In particular, section 21 (3) (c) of the Act requires a person conducting a business or undertaking to ensure the plant is operated only by workers at the business or undertaking who are qualified to operate the plant. This is a wide ranging duty that covers all plant that may be used. The proposed Regulation introduces specific requirements for certain high risk plant.

In 2006, the Australian Safety and Compensation Council issued the *National Standard for the Licensing of Persons Performing High Risk Work* (the Standard). The overall aim of the Standard is to ensure consistency across Australia in terms of the training and assessment of persons seeking to use and operate high risk plant, so that qualifications obtained in one State or Territory are recognised Australia wide.

The proposed Regulation introduces the Standard into ACT legislation as part of the Work Safety Regulation 2009. The Regulation will impose a number of obligations on duty holders. Many of the requirements under the Standard mirror the present arrangements that exist in the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000*.

### **Classes of Work**

The Standard amalgamates the classes of work requiring a licence into five, those being:

- Scaffolding Work;
- Rigging Work (including dogging);
- Crane and Hoist Operation;
- Forklift Operation; and
- Pressure Equipment Operation.

A critical difference between the Standard and what now exists is that not all load-shifting plant is included in the Standard. Only Forklift trucks and Order-picking Forklift trucks remain under the general category of Forklift Operation. However, the load-shifting classes in the ACT that currently require a certificate of competency will continue to require a certificate before a person can operate that equipment.

### **Licences**

All people operating high risk plant must be assessed as having the competency to undertake that work. The proposed Regulation introduces the concept of a licence, as opposed to what is now a national certificate of competency.

Another significant change relates to the currency of licenses. Under present arrangements, a national certificate is issued once and is valid for the life of the holder. The new licence provisions will limit the validity to five years, after which time the licence holder will be required to renew their licence. The new licence will show the photograph of the licence holder and licences cannot be issued to persons under eighteen years of age. Any person undertaking high risk work without a licence commits an offence.

A person conducting a business and undertaking will also be responsible for ensuring workers hold a licence before the worker commences the high risk work. If they do not do so they will commit an offence. In addition, the Regulation will provide that the duty holder must not direct a worker to perform high risk work unless the worker holds an appropriate licence. They commit an offence if they do so.

The requirement to hold a licence will not apply to a trainee who is undertaking high risk work under the direct supervision of a licence holder. As is currently the case, employers and supervisors must ensure that direct supervision occurs.

The proposed Regulation will allow for the recognition of licenses issued by other States and Territories under their respective legislation.

### **Application for licence**

A person wishing to operate high risk plant must have a license. The proposed Regulation will require that applicants provide evidence of their age and evidence of their competency to use the high risk plant at the time they make their application. An application that is received without all the required information will not be a valid application, and will not be processed.

### **Assessment of Competency**

Under the proposed Regulation, a person seeking an assessment of their competency will be required to apply for a Statement of Attainment from a Registered Training Organisation (RTO) operating under the Australian Quality Training Framework (AQTF) standards.

Assessors will be required to have the workplace assessor competencies required under the AQTF, have held a licence in the high risk work being assessed for at least two years and be approved by ORS (WorkCover).

Private assessors, who are undertaking assessments under the present system, will need to transition either to be an RTO themselves, be employed by an RTO, or work in partnership with an RTO to continue to undertake assessments.

Under the proposed Regulation, RTO's will be required to provide training and assessment using nationally endorsed competency units and assessment

tools. They will be required to keep records of all training and assessments for competency and make those records available to ORS (WorkCover).

The Regulation will provide for the exchange of information between State and Territory regulatory bodies in respect of people applying for a Statement of Attainment or applying for a licence, in respect of people who have obtained a licence, and of people and organisations conducting assessments for the performance of high risk work.

### **Suspension or Cancellation of Licences**

As with the current regime, there will be wide-ranging provisions in the Regulation to allow for the suspension or cancellation of a high risk licence where:

- a licence was based on false or misleading information;
- the licence holder has not complied with any licence conditions;
- the licence holder no longer has the competency to carry out the high risk work; or
- the Statement of Attainment was not issued in accordance with the Regulation.

A person must still be advised of the intention to cancel or suspend a licence and be allowed to respond. The provision to immediately suspend or cancel a licence is available where there is an immediate risk to work safety.

### **Trainees**

The requirement that trainees undertaking high risk work be strictly supervised remains. There are offences if this does not occur.

### **Transitional Arrangements**

Under the transitional arrangements, people who presently hold a national certificate (including 'old style tickets') will be able to transition to the new licence over time, depending on when they were issued with their certificate.

The transitional arrangements also allow for certificates of competency to be issued, under the present arrangements, for a period of two years to allow for the transition of present assessors to the RTO arrangements.

The effect of the transitional provisions will be that all classes of work that now require a certificate of competency, including those loadshifting classes not included in the National Standard, will continue to require a certificate before a person can operate that equipment.

## **11 Carrying out Manual Tasks**

A manual task is any activity that requires a person to use any part of the musculoskeletal system to perform the task. This includes a wide range of

activities such as lifting, lowering, pushing, pulling, carrying, holding, restraining, repetitive actions, sustained postures and being exposed to vibration. Performing some manual tasks can be hazardous, potentially causing disorders which can lead to death, injury or disease.

All duty holders under the Act, such as people who conduct a business or undertaking, have a duty to ensure work safety by managing risk. Against that background, a part of the Regulation will continue to include up-to-date, specific provisions on managing risks that arise from manual tasks. Since the current regulations were introduced in 1997, the Australian Safety and Compensation Council declared a National Standard for Manual Tasks in August 2007. The ACT has agreed to implement this Standard.

### **Proposed Changes**

The mandatory process of risk assessment for manual tasks in the existing regulations under the *Occupational Health and Safety Act 1989*, has been retained in the new Act. There is still a duty on employers and people in control to manage these risks to the extent of their control, and a duty on employers to consult their employees and any work safety representative about these issues.

Proposed minor changes will make managing risks relating to manual tasks consistent with both the National Standard for Manual Tasks and the process for managing all other work safety risks. The Act and National Standard place duties to manage risk on other relevant people, such as designers and manufacturers of plant. This will be reflected in the proposed Regulation. For the purposes of consistency, the duty to consult will also be changed - principally, employers (as defined in section 10 of the Act) will have to consult all of their workers not just employees.

With regard to enforcement, there will no longer be separate offences that relate to each stage of the risk assessment process. However, there will be increased maximum penalties for the offences that are set out. Finally, there will no longer be a detailed list of factors that must be taken into account just to manage risks about manual handling. The same risk management process (of eliminating and minimising risks) applies for all risks and hazards, as set out in section 14 of the Act. Duty holders will be able to refer to Codes of Practice and other approved Guides for more detail.

## **12 Incorporated Documents**

This Part provides for the incorporation of documents into the Act and proposed Regulation, by use of a formal process of notifying instruments signed by the Minister, as well as for other ancillary matters.

## **13 Reviewable Decisions**

The proposed Regulation establishes which decisions, made under the Act and the proposed Regulation, are internally or externally reviewable. External review is now undertaken by the ACT Civil and Administrative Tribunal.

From the perspective of duty holders, the Act also outlines where administrative review is available for decisions made under the Act and provides further administrative detail and mechanisms for regulatory review and input by industry stakeholders and by the general public.

## **14 Transitional Arrangements**

This Part sets out transitional arrangements with respect to certificates and other documents held under the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000*, which will be repealed. For further information please see Part 10 (Licensing High Risk Work).

## **Future Directions**

### **15 Work Safety in the Territory: Further New Regulations**

It is anticipated that the National Code of Practice for Induction for Construction Work will be implemented in time for the commencement of the Act on 1 October 2009. This will become part of the Work Safety Regulation 2009 and will mean that a person must hold a Construction Induction Card to work in the construction industry. These cards can only be issued to a person who has successfully completed the national competency unit supporting the Code.

Work has begun on further provisions to add to the Work Safety Regulation 2009 that focus on plant and the construction industry. The impetus for these new provisions has flowed from the ACT Occupational Health and Safety Council's 2005 review of the *Occupational Health and Safety Act 1989*, which noted that existing legislation is in need of updating to reflect new National Standards and contemporary best practice. This work will involve extensive consultation to take into account the needs and views of stakeholders in the Territory. It is hoped that interested organisations and individuals will, again, take the opportunity to contribute to ensure that work safety regulation in the Territory continues to lead the way for all Australian jurisdictions.

# Work Safety Regulation 2009: Exposure Draft

## SUBMISSION

**All submissions may be made publicly available.**

**Submissions must be received by close of business on 20 July 2009.**

Post: Work Safety Policy  
Office of Industrial Relations  
Chief Minister's Department  
GPO Box 158  
Canberra ACT 2601

Email: [worksafetypolicy@act.gov.au](mailto:worksafetypolicy@act.gov.au)

Name:

Organisation:

Postal Address:

Contact (phone/email):

You need not comment on all the Parts of the proposed Regulation, and are welcome to comment on only those topics that are of interest to you. Please provide reasons or explanations, wherever possible, to assist us to understand your views.

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### **Overall Comments**

### **Parts of the draft Work Safety Regulation 2009**

#### **Part 1 – Preliminary**

#### **Part 2 - Injury and Dangerous Occurrence Reporting and Records**

#### **Part 3 - Facilities**

**Parts 4 to 6 - Workplace Arrangements**

**Part 7 - Particular Safety Measures**

**Part 8 - Licensing High Risk Work**

**Part 9 - Carrying out Manual Tasks**

**Part 10 - Incorporated Documents**

**Part 11 - Reviewable Decisions**

**Part 12 - Transitional Arrangements**