

## Draft model WHS Codes of Practice and guidance - Public Comment Response Form

Complete and submit this form by **5PM AEST FRIDAY 24 AUGUST 2012** to  
[codes@safeworkaustralia.gov.au](mailto:codes@safeworkaustralia.gov.au)

1. Cranes	
Section/page no.	Comment
<b>Impacts:</b> Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so, what are they?	
2. Amusement Devices	
Section/page no.	Comment
<b>Impacts:</b> Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so, what are they?	
3. Industrial Lift Trucks	
Section/page no.	Comment
<b>Impacts:</b> Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so, what are they?	
4. Managing Risks of Plant used in Rural Workplaces	
Section/page no.	Comment
3.2 Page 13	<p><b>3.2 Second-hand plant</b></p> <p><b>R. 199-200:</b> A supplier of second-hand plant must ensure, so far as is reasonably practicable, that any faults that may give rise to health and safety risks are identified. The supplier must provide information in writing about the condition of the plant and any identified faults or, if the plant is supplied only for spare parts or scrap, that it is not to be used as plant.</p> <p>A supplier of second hand plant is someone who sells, exchanges, leases, or hires used plant whether as a principal or as an agent. Examples of a supplier include:</p> <ul style="list-style-type: none"> <li>• a person who sells used plant at a retail outlet</li> <li>• a person who imports used plant for on-sale</li> <li>• a person who conducts an auction or clearing sale to sell used plant, where that person takes possession of the plant.</li> </ul> <p>The supplier must provide you with information in writing about the condition</p>

of the plant, any identified faults and if relevant, that the plant should not be used until the faults are rectified.

Where plant has been in service prior to purchase and information regarding safe use is not available, a competent person should be engaged to assess the plant and develop this information.

**ALPA NOTE:**

The definition of a supplier has previously included auctioneers; ALPA has argued that as auctioneers/agents, we do not have control of the plant.

This has now been understood by Safe Work Australia and is now captured in the ACT and Regulations.

Auctioneers have been confused with and as a Machinery Agent. An agent in this code should be in the sense of the meaning of 2<sup>nd</sup> Hand Dealer of Machinery Agent who takes control or possession of plant, the same as a second hand car dealer.

Auctioneers who conduct clearing sales on the vendor's property do not take control or possession of the plant. It remains in the ownership, control and possession of the vendor until sold when it becomes the property of the purchaser who then takes control of the plant.

Auctioneers who conduct clearing sales are Stock & Station Agents not, Machinery Agents. In most cases the Stock & Station Agent sold the property for the vendor and are now clearing out the vendors livestock, goods and chattels by public auction on the vendors farm/property.

Auctioneers at these clearing sales are a person who does not control the supply and has no authority to make decisions about the supply.

It is our opinion that this Code of Practice needs to reflect what has been written in both the Act and the Regulations.

**Model Work Health & Safety Act 23/6/11.**

**Section 6**

*Meaning of supply:*

- (1) A supply of a thing includes a supply and a resupply of the thing by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.*
- (2) A supply of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied.*
- (3) A supply of a thing does not include:
  - (a) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or*
  - (b) a prescribed supply.**

Subsequently, in the

**Model Work Health and Safety (WHS) Regulations Nov 2011.**  
**Section 8**

*For the purposes of section 6(3) (b) of the Act, a supply of a thing does not include the supply of a thing by a person who does not control the supply and has no authority to make decisions about the supply.*

**Examples**

- 1 *An auctioneer who auctions a thing without having possession of the thing.*
- 2 *A real estate agent acting in his or her capacity as a real estate agent.*

A farm by definition is a workplace under safety legislation. As the vendor is the controller of the workplace they have a legal obligation to make it safe for employees, auctioneers and clearing sale attendees.

The Vendor selling new or second hand plant at a clearing sale are required to inspect equipment, identify faults, and provide purchasers with advice on faults and information in relation to the safe use of the item for sale – not the auctioneer.

In the case of a second hand dealer/agent, plant is taken possession of by the dealer on their property, and subsequently sold. In this case, the second hand dealer is defined (as per above) as a supplier. This dealer/supplier organise to collect the plant and then sell it onwards. They are at all times, in possession and responsible for the safety and forwarding documentation relevant to that plant.

**Impacts:** Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so, what are they?

There is a real safety benefit to consumers/buyers by identifying and having the actual real supplier/owner responsible for providing the information required by this code, on the condition of the plant they are actually selling as the owner.

The supplier of second-hand plant must ensure, so far as is reasonably practicable, that any faults that may give rise to health and safety risks are identified.

This will ensure there is no grey area as to who is responsible for what information that must be provided and to whom. The onus is put back where it belongs and that is with the owner of the plant being sold. Not an auctioneer who has no control over the plant.

The potential cost saving benefit will be increased to the vendor/owner, as it is they that knows their machinery/plant and is declaring any health or safety risks associated with the plant without getting an external person to assess the plant.

There are further cost benefits as the plant is sold and declared by the owner not a machinery dealer. Generally the buyers will pay more buying directly from owners who know the plant and any health and safety risks are identified to the buyer by that owner.

**5. Managing Security Risks in the Cash-in-transit Industry**

Section/page no.	Comment
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<b>Impacts:</b> Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so, what are they?	
<b>6. Managing Risks in Forestry Operations</b>	
<b>Section/page no.</b>	<b>Comment</b>
<b>Impacts:</b> Do you anticipate any potential costs or safety benefits of complying with this code that are different to current requirements in your jurisdiction? If so, what are they?	
<b>7. Guide for Tunnelling</b>	
<b>Section/page no.</b>	<b>Comment</b>
<b>Impacts:</b> Do you anticipate any potential costs or safety benefits of complying with this guidance material that are different to current requirements in your jurisdiction? If so, what are they?	
<b>8. Guide for Managing Risk in Cable logging</b>	
<b>Section/page no.</b>	<b>Comment</b>
<b>Impacts:</b> Do you anticipate any potential costs or safety benefits of complying with this guidance material that are different to current requirements in your jurisdiction? If so, what are they?	