



AUSTRALIAN ASSOCIATION OF LIVE STEAMERS

AALS Web Site

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AUSTRALIAN LIVE STEAMERS SAFETY COMMITTEE

Chairman: Warwick Allison: 68 Marshall Rd Mt Riverview NSW 2774 Tel: (02) 4739 5921 wallison@pnc.com.au

Secretary: Alf Grigg: 168 Wharparilla Drive Echuca Vic 3564 Tel: (03) 5480 1955 aagricon@bigpond.com

Guideline on Legislation Based on the Model Work Health and Safety Act and Regulations

Previous Legislation

Previously aspects of the live steam hobby were regulated under the States various Occupational, Health and Safety Acts and Regulations. In Victoria, the Plant regulations also applied. In NSW (and other States) these were incorporated in the O,H & S legislation. As a general statement the requirements for all States were very similar, although there were differences.

The legislation required registration for high-risk plant (both design and operation), and also prescribed those areas where competency requirements are enforced.

The areas that impact AALS members operations are amusement devices, boilers (i.e. high risk plant) and certification of operators (ie.high risk work).

Some examples of the differences are:

- Amusement Devices are categorised in different classes (AS3533) based on the hazard level. Some States exempt Class 1 devices from registration, but NSW did not. Note miniature railways would be class 1 except that they would not comply with the fail safe test, thus could not be considered Class 1.(refer to AS3533).
- Some states excluded voluntary groups from the requirements, but others either did not or are unclear.
- Some aspects of boilers were included (such as design registration) and others (such as operation registration) were not.
- Some States had extremely extensive Regulations, other States (Tasmania and ACT) had very brief regulations. Within the one Regulation, in one place AMBSC boilers are defined as boilers and in another section they are excluded from a boiler definition.

Process of Change

Under the Australian Constitution, OHS legislation is the province of the States. The Federal Government Body Work Safe Australia is tasked with coordinating with the States to produce a 'Model' Workplace Act and Regulation. Following agreement and public consultation, each State would then enact the model act and regulation thereby standardisation Workplace legislation across Australia.

As of February 2015 all states except Western Australia and Victoria have adopted the model act and regulations.

Model Workplace Act.

As far as AALS member operations are concerned the Model Act contains the following words:

1. **Page 11 Section 7 (1) h.** Volunteers are workers.
2. **Page 9 Section 5 (7)** A volunteer does not conduct business for this Act
3. **Page 9 Section 5 (8)** A volunteer association is one where none of the volunteers employs anyone to carry out work for the association.

Thus as AALS member societies are non-commercial and voluntary, the Act excludes the scope of AALS operations.

Additionally the following describes the obligations of voluntary workers:

4. **Page 31, Section 29** Others at a workplace must take reasonable care and follow instructions.

Page 34 Section 34 Exceptions for Offences.

(1) A volunteer does not commit an offence under this Division for a failure to comply with a health and safety duty, except a duty under section 28 or 29.

(2) An unincorporated association does not commit an offence under this Act, and is not liable for a civil penalty under this Act, for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.

(3) However, an officer of an unincorporated association may be liable for a failure to comply with a duty under section 27 and a member of an unincorporated association may be liable for failure to comply with a duty under section 28 or 29.

Notes; Section 27 is a requirement for due diligence. Section 28 is a requirement for workers to take due care, and Section 29 is the same for other than workers.

The essence of this is that the normal common law duty of care and due diligence requirements would apply. This would ensure that members would need to continue to comply with established standards and risk assessment methods to provide a safe environment and operation.

Note: The references are to the Model Act. Different states legislation would transcribe this to different page numbers etc.

Model Workplace Regulations.

The Regulations are extremely simple.

Class 1 Amusement Devices are excluded from the definition of high risk plant for design and operation registration. (Schedule 6, Part 1 & 2) NB: It is unlikely miniature railways within the scope of AALS are Class 1. However as Voluntary Associations are exempt, there is no requirement for registration of the amusement device.

AMBSC Boilers Parts 1 & 2 are excluded from the definition of boilers as high risk work. (Part 6 Section 8)
As AMBSC boilers are Hazard Code D they are also exempt from Design and Operation registration.

These simple definitions effectively remove requirements for design registration of boilers and exemptions for operators.

Further Changes.

A revised version of the model regulations dated 9 January 2014 incorporated AMBSC Codes Part 3 & 4 as not being within the definition of a boiler. At this time, this amendment has still to be included in State legislation.

Summary

The Model Act and Regulations would appear to not have any specific requirements on the activities of AALS members apart from the requirement to practice due diligence and exercise a duty of care. This also appears to remove the need for WorkCover to approve AMBSC codes. The AALS codes of practice only deal with the operation of the miniature railway. It is up to Societies to manage their own W, H & S requirements for their other activities. Societies should continue to follow the AALS codes of practice and perform their own risk assessments of their activities including implementing suitable controls as compliance with Sections 27, 28 and 29.

Warwick Allison, Chairman Australian Live Steamers Safety Committee

Alf Grigg, Secretary, Australian Live Steamers Safety Committee
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