



“Work shouldn’t be dangerous. We should be making things, not making orphans. Our strategy will use the full union rep toolbox – from negotiation, to representation, to action – to organise for decent, safe and healthy work” Sharan Burrow, ITUC general secretary April 2018

Recommendation 1 Introduce “reverse onus” approach in the Model WHS laws.

Recommendation 2 Adopt industrial manslaughter legislation.

Insert “negligence” to Section 31.1 for Category One offences. For a full discussion of this Recommendation see ACTU Submission and the 2017 Queensland Review.

Recommendation 3: Delete WHS Regulations 32 and 33, to ensure that risk management applies to all work related risks, and is not limited to those in the WHS Regulations.

Recommendation 4: Adopt new Section 26A Queensland Work Health and Safety and Other Legislation Amendment Act 2017.

Recommendation 5: WHS Act to require a mandatory review of each Code of Practice in operation every five years.

Recommendation 6: Remove *so far as reasonably practicable* in WHS Regulations and Codes of Practice and use the Victorian approach to language within Compliance Codes.

Recommendation 7: Insert into Section 19(3) addition to (a) – *including the risks to psychological health*. This then creates a clear head of power for the adoption of a Regulation and accompanying Codes of practice for various risks to psychological health: s.

Recommendation 8: Develop a new regulation and supporting codes of practice to address psychosocial hazards, which must include an obligation on PCBUs to assess and control psychosocial hazards.

Recommendation 9: The WHS Act in all jurisdictions to authorise extraterritorial application of the Act, including the ability to obtain records and issue notices outside of the state [as per the June 2017 NSW Statutory Review].

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Recommendation 11: Insert the following into the objects of the Act – *to eliminate at source, risks to health safety and welfare of workers and other persons at work and recommendation at Question 2*.

Recommendation 12: Adopt a WHS Regulation for the Prevention of Heat related ill health. The regulation should use the same approach as Regs 60 & 61.



Recommendation 13: Adopt a WHS Regulation on the Prevention of Occupational Violence [see ACTU submission].

Recommendation 14: Adopt a WHS Regulation and supporting Code of Practice regarding Due diligence [for in depth discussion see Submission 258 to Model WHS Regulations].

Recommendation 15: Adopt a WHS Regulation on Biological Hazards

Recommendation 16: Adopt a WHS Code of practice – Reproductive health, Pregnancy, Breastfeeding, Return to work after giving birth.

Recommendation 17: The review clarify that PCBUs at the head of the supply chain be required to identify those working along the supply chain in order to eliminate or minimise, so far as reasonably practicable, risk to health and safety. Additionally the review clarifies that the duties to consult along the supply chain, apply vertically and horizontally.

Recommendation 18: Adopt a Code of Practice to assist duty holders to identify the major WHS problems associated with each type of working relationship eg labour hire.

Recommendation 19: Amend the Model WHS Act to provide workers the same protection that citizens are afforded under health privacy legislation, except when required by workers compensation law or a court order. Where a worker's private information is collected it must not be used to the detriment of the worker.

Recommendation 20: Amend Section 5.4 to replace 'person' with 'individual'.

Recommendation 21: Amend the Model WHS Act to provide workers the same protection that citizens are afforded under health privacy legislation. Where a worker's private information is collected it must not be used to the detriment of the worker. Information to be kept for 12 months only.

Recommendation 22: A penalty must apply for a breach of Section 14, therefore move section 14 to Division 2.

Recommendation 23: Gig economy workers be a prescribed class of worker under section 7.

Recommendation 24: Adopt Victorian OHS 2004 s.25 as the appropriate duty for workers ie delete section 28 (d). Section 84 insert "of others persons" after would expose the workers.

Recommendation 20:

AMWU reaffirms our previous proposals regarding amendment of the Act and Regulations:

- Amend the Act so that HSR right to issue PIN and direct a cease work for imminently unsafe work to apply from the date of election to the role of HSR
- Amend the Act to ensure the right of HSRs to choice of training provider on the condition that at least 14 days notice is given to their PCBU of attendance at an approved course and the ability for the regulator to assist in any disagreement about the attendance at an approved course [a right which exists in Victoria and throughout the vehicle industry for decades]
- Amend the Regulations to ensure HSR to have the right to 5 days training in the first year, 3 days training in the second year and 2 days training in the 3rd year of their 3 year tenure.



Recommendation 25: AMWU reaffirms our previous proposals regarding the Act and Regulations:

- HSR right to issue PIN and direct a cease work for imminently unsafe work to apply from the date of election to the role of HSR
- the right of HSRs to choice of training provider on the condition that at least 14 days notice is given to the relevant PCBU of attendance at an approved course and the ability for the regulator to assist in any disagreement about the attendance at an approved course [a right which exists in Victoria and throughout the vehicle industry for decades]
- adopt the South Australian approach to HSR - 5 days training in the first year, 3 days training in the second year and 2 days training in the 3rd year of their 3 year tenure.

Recommendation 26: as per AMWU submissions to the Model Panel and WRMC:

- remove the reference to Entry Permit holders in Section 71[4]. The incorporation of this provision was opposed as it confuses the right of assistance to a Health and Safety Representative with the right of workers to request for an investigation or consult with their union about WHS matters
- remove the right of the regulator to make application for disqualification of a HSR - HSRs should not be subject to ambiguous requirements which discourage them from exercising their powers to improve health and safety at the workplace
- Remove the words 'improper purpose' from section 65 and replaced with "intent to cause harm".

Recommendation 27: Move Section 52.5 to the head of Part 5, thus allowing workers the right of access to a worker representative during the

- Negotiation of work groups
- Negotiation of consultation arrangements
- Procedures for election of HSRs
- Establishment of H&S Committees.

Recommendation 28: Amend Sections 76 & 79 to require

- PCBUs to facilitate attendance at H&S committees – this is of particular relevance to shift workers, workers working off site
- H&S committee meeting cannot be cancelled or postponed without a reasonable excuse – failure to provide a reasonable excuse the PCBU be liable to a fine of 100 penalty units.

Recommendation 29: Amend WHS Regulations to include a provision for the Minimum requirements for the constitution of a committee such as functions, timing of meetings, processes, chair and minutes.

Recommendation 30: Adopt facilitative provisions in WHS Act for Roving health and safety representatives.

Recommendation 31: Regulators take a much more proactive and strategic approach to enforcement and compliance along supply chains.

Recommendation 32: Labour hire needs to be defined as high risk work which would require introduction of provision of training that is funded by the host PCBU.



Recommendation 33: Amend section 273 to outlaw the placing of a levy on prospective workers and move this Section to Division 2 or Part 2.

Recommendation 34: Amend Part 6 to allow unions to bring both criminal and civil matters.

Recommendation 35: Amend the Model WHS Act to adopt Section 4 WHS EPH in the Commonwealth WHS Act 2011.

Recommendation 36: as part of a suite of changes include:

- Amend Section 118 to include ability of the EPH to direct a cessation of work which poses an immediate or imminent risk to workers including a requirement to notify relevant PCBUs and the WHS inspectorate
- Amend Section 117 to enable a permit holder who has lawfully entered a workplace under another law to remain on the premises to investigate a contravention of the WHS laws
- Amend Section 118.1.d allows an EPH to require a PCBU to send relevant information or documents electronically or other means by a set date following a request.

Recommendation 37: Amend Sections 230 and 260 to allow for unions to bring both criminal and civil matters.

Recommendation 38: Insert a requirement that PCBUs to have access to suitably qualified advice on health and safety matters which includes training for senior managers in any sixe PCBU. Additionally all regulators and policy makers must address the skill shortage and lack of sectoral assistance available to enterprises – large, small and micro.

Recommendation 39:

- Amend Model Laws to require regulator complies with recommendation from internal review
- Ensure Inspectors activities are in compliance with the Act
- Inspectors must actively support and interact with HSRs
- Amend section 164 to require an inspector to issue their written report of a visit to and HSRs
- Amend Section 165 to clarify that inspectors powers can be used outside of the workplace and are not dependent 'on entry' to the workplace
- Amend Part 12 Division 2 to compel the regulator to take action to address issues raised in and decisions from internal review [pending that there is no external review]
- Amend section 226 to provide for a direction when the regulator has erred
- Regulators to adopt a strategic approach to enforcement activity by targeting those PCBUs that influence supply chain behaviours.

Recommendation 40: Expand the definition of eligible person in Section 223 to include workers representative for all items except 5 and 6.

Recommendation 41: HOWSA must be transparent and include the social partners.



Recommendation 42: The NECP and the approach of Regulators needs considerable revision with particular attention to Victorian Review Recommendations 4, 7, 9, 10, 13 and 14. All Regulators must take heed of the following *“an effective regulator will look at processes for targeting and triaging, with review and reflection and target prosecutions relating risk, not just based on fatalities’ or serious injuries”¹*.

Recommendation 43: If the regulator is considering an Enforceable Undertaking, the family of the deceased or the injured worker must be consulted prior to a decision being made; if consent is not given then the Regulator must go to prosecution. Clarify in the *Guidelines for the acceptance of an enforceable undertaking* the general exceptions and definition of ‘serious injury’.

Recommendation 44: Amend Model Laws to prohibit insurance against fines, based on the New Zealand 2015 Act – see Recommendation 47 of the 2017 Queensland Review.

Recommendation 45: All jurisdictions establish consultative bodies based on the SafeWork SA Advisory Council Schedule 2 of the original 2012 South Australia WHS Act.

Recommendation 46 The SWA commissioned research made numerous suggestions – the AMWU supports the following which have not been discussed in the body of our submission:

- Recos 1, 4 & 6 - *Legal Construction of Key Sections of the Model WHS Act* – June 2016
- Recos: 1, 2, 3 & 4 - *Sentencing of Work Health and Safety Offenders* – June 2016. Given the importance of this Report and the Review of the Model Laws needs to commission an update, prior to making any decisions regarding sentencing guidelines, interpretation of key duties in the Model Laws and that
- All jurisdictions required to respond to all of the Recommendations of *Regulator Compliance Support, Inspection and Enforcement*, July 2015 in an effort to clarify the current approach of regulators, which as observed in these papers is not always transparent or publically available. The AMWU notes that previous projects such as Regulators in Harmony appear to be “past news” and the “closed door” approach of HOWSA means that those who are being regulated are “locked out”.

Recommendation 47: technical amendments to WHS Regulations recommended in Appendix 2 of the AMWU submission

“We must never accept that injury, illness, or death is the cost of doing business. Workers are the backbone of our economy, and no one’s prosperity should come at the expense of their safety. Today, let us celebrate our workers by upholding their basic right to clock out and return home at the end of each shift.”

Proclamation Workers Memorial Day, 28th April 2014, President Obama USA