

Secure Jobs. Better Future.

Occupational Health Safety Rehabilitation and Compensation

Introduction

1. Congress believes that working life should be enjoyable. Work should give people the satisfaction of using their skills to the fullest measure, and making a contribution to their workplace, their community and the common good. It should provide fulfilling social interactions, freedom, dignity, economic security and equal opportunity.
2. Australian law must ensure there are healthy and safe workplaces and rehabilitation and compensation systems that mandate that no worker is disadvantaged if they are injured at work.
3. This document sets out Policy for workplace health and safety, and rehabilitation, compensation and treatment of injured workers.

Workplace Health and Safety

4. Congress reaffirms its commitment to the Union Charter of Workplace Rights, as set out below, which sets out rights in relation to workplace health, safety, compensation and rehabilitation. Congress also acknowledges that young workers can be at particular risk and reference should also be made to the relevant section of the Young Workers policy.
5. Congress affirms the right of every worker to a healthy and safe work environment.
6. Congress reaffirms its primary position that every worker has the right to go to work and come home safely.

Union Charter of Workplace Rights

This Charter of Rights sets out the rights and responsibilities of all workplace parties in the provision of decent and fair health, safety, compensation and rehabilitation systems and practices within Australian workplaces.

Regardless of jurisdiction, changes to occupational health and safety, compensation and rehabilitation law must not result in a diminution of the rights and entitlements of any worker.

Workers must not be adversely affected by any employer moving between jurisdictions in relation to their OHS and workers' compensation entitlements. Any proposed move between jurisdictions will only occur following genuine consultation and agreement with workers and their representatives and a process of public review, including public tribunal hearings.

Consistent with ACTU OHS and Workers' Compensation Policy and international standards, Australian law must ensure healthy and safe workplaces and a compensation and rehabilitation system which ensures that no worker is disadvantaged should they be injured at work.

All workers have the right to join a genuine trade union. Union organised workplaces are safer workplaces.

Workers

Every worker has the right to:

- A safe and healthy workplace;*
- Travel to and from work in safety and with appropriate protections;*
- Return home from work free of injury or illness;*
- Enjoy retirement without suffering adverse consequences of workplace injury or illness;*
- Enjoy the highest level of protection, representation, compensation and rehabilitation, regardless of the jurisdiction within which they work;*
- The highest level of protection to prevent injury illness and disease;*
- Take collective action over any health and safety matter, including the right to cease unsafe or unhealthy work; and*
- Discuss, negotiate and be consulted and involved in all issues affecting their health, safety and welfare.*

Representation

Every worker has the right to be represented on health, safety, compensation, rehabilitation and return to work issues, by their elected Workplace Health and Safety Representative and their union. Every worker has the right to elect health and safety representatives.

Unions have the right to:

- *Enter workplaces on health and safety issues;*
- *Investigate breaches of health and safety laws;*
- *Represent members and prospective members;*
- *Initiate investigations and prosecutions for occupational health and safety breaches;*
- *Initiate cessation of work in unsafe areas; and*
- *Access all relevant information and reports.*

Workplace Health and Safety Representatives have the right to:

- *Be democratically elected by a process determined by workers, in conjunction with their union;*
- *Utilise legal rights and powers to represent workers on health and safety matters;*
- *Inspect the workplace;*
- *Access relevant information and be informed of all incidents;*
- *Be consulted by the employer before workplace changes occur that may affect health and safety;*
- *Issue notices when breaches are detected;*
- *Call in government inspectors;*
- *Direct workers to cease work where there is a belief of immediate risk to health and safety;*
- *Seek resolution of health and safety issues;*
- *Perform all OHS activities on paid time and have adequate facilities;*
- *Be assisted by any person at any time;*
- *Be protected by law from discrimination, harassment, bullying, intimidation and prosecution;*
- *Access training of their choice in paid work time; and*
- *Appeal any decision of a regulator or court regarding any health and safety, compensation or rehabilitation matter.*

Discrimination and Bullying

All workers (or prospective workers), including health and safety representatives, will be protected by law from discrimination, harassment, bullying or detriment to their employment because they have raised a health and safety issue, lodged a compensation claim been injured at work or involved in consultation on workplace health and safety matters.

Employer Responsibilities

Persons who control, manage or own workplaces have an absolute duty of care without limitation to provide and maintain safe and healthy work environments. Employers will not shift jurisdictions to attempt to avoid their OHS and workers' compensation responsibilities and obligations. Employers are subject to all the obligations and responsibilities contained within this Charter.

Role of Regulator

OHS law must be effectively enforced by regulators in all jurisdictions. The regulator must also consult and provide information, support and advice to all workplace parties, including unions. They must ensure that workplace representatives are supported and protected and bring prosecutions in a timely, appropriate and courageous manner. Regulators will actively monitor self-insuring companies and ensure transparency and fairness of their workers compensation and return to work systems. An inspectorate must be adequately resourced, proactive and willing to fulfil an enforcement role as well as an advisory role.

Compensation

Following a physical or psychological injury, all workers have the right to a fair, just and equitable compensation system, which promotes the best medical and like support, the most effective rehabilitation for injured workers and facilitates a safe return to work that offers genuine job security.

Workers' compensation standards are to:

- Be available to all members of the workforce;
- Provide compensation for all injuries that arise from travel to, from or during work including and during recess breaks;
- Be available upon the death of a worker and for dependants of that worker;
- Be based on the 100% replacement of loss of income;
- Provide total cost of medical rehabilitation and other related expenses;
- Provide lump sum compensation for permanent disability;
- Ensure common law rights
- Support rehabilitation and return to work;
- Ensure that workers are entitled to timely and effective claim determination and dispute resolution processes;
- Ensure the worker has access to the doctor of their choice; and
- Not be eroded by companies seeking to self-insure in order to obtain lower OHS and workers' compensation entitlements for workers.

Rehabilitation

All workers have the right to return to safe, suitable, meaningful and sustainable work, following the provision of quality rehabilitation services, commensurate to need.

Rehabilitation will include the right to:

- Union representation;
- Early intervention of workplace injury and illness;
- High quality, appropriate, effective and timely rehabilitation plans and services;
- Consultation about all aspects of rehabilitation;
- All documentation and information relating to their rehabilitation;
- Fair and equitable rehabilitation plans and services;
- Privacy in the management of all records and information; and
- Personal choice of medical provider and rehabilitation service.

Penalties

Penalties must be commensurate with the degree of the breach, including recognition of gross negligence. Penalties should be sufficient to act as a deterrent. A range of penalties, including but not limited to infringement notices, fines, moieties, imprisonment, enforceable undertakings, and adverse publicity orders must be provided to allow for a range of penalties for breaches of health and safety and compensation laws to be actively applied.

Development of Laws

All occupational health and safety, compensation and rehabilitation laws are to be developed in a tripartite manner. All laws must be developed incorporating but not limited to the ILO Conventions, Protocols and Recommendations concerning health and safety.

Work Health Safety and National Harmonisation

7. The Model Work Health and Safety Act was endorsed by the Workplace Relations Ministerial Council in 2010 for a commencement date of 1 January 2012. Four jurisdictions failed to implement the Model Work Health and Safety Act on that date. This is due, in part, to a campaign by elements of the business community who vigorously oppose sections of the Model law which provide workers and their representatives with rights powers and functions to protect workers' health and safety.
8. An intended outcome of harmonisation of work health and safety laws was a reduced regulatory burden for Australian businesses and the creation of a seamless national economy.
9. Yet the burden of poor work health and safety is disproportionately carried by workers and their families. A recent Safe Work Australia Report estimated that 95% of the costs of work related injury and disease was borne by workers and the community.¹
10. The ACTU and unions will continue to campaign for increased rights and protections in all work health and safety laws, including the model Work Health and Safety Act. Specific issues include:
 - Industrial manslaughter legislation or its equivalent in health and safety or criminal law;
 - Union right to prosecute for breaches of Health and Safety law;

¹ The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community: 2008-09, Safe Work Australia, Canberra, January 2012.

- Improved health and safety representative rights, improved access to union approved training and increased number of training days;
- Regional and roving health and safety representatives;
- Improved protection against discrimination;
- Enhanced union Right of Entry, including effective entry to remote workplaces.
- Ensuring all jurisdictions have specific regulations for the registration of TCF factories, in order to combat exploitation of home based outworkers and workers in sweatshops.

11. Congress recognises the important role that Health and Safety Representatives (HSRs) have in workplace health and safety and that this position needs appropriate support. Congress recognises that one important mechanism for supporting HSRs is in the provision of 'HSR Support Officers', including those funded by Workplace Health and Safety regulators.

Industrial manslaughter

12. Congress affirms that industrial manslaughter should be an offence under occupational health and safety legislation or other legislation as most appropriate. The elements of the offence should be:
- a) A worker dies in the course of employment or at a place of work or is injured or contracts a disease, injury or illness in the course of employment and later dies;
 - b) The conduct (by way of act or omission) of a person caused the death, injury or illness; and
 - c) The person was reckless or negligent about causing serious harm or death to the worker.

Industrial

13. Improved health and safety outcomes are achieved by good workplace organisation with workers represented and supported by their unions.
14. The ACTU and unions will continue to campaign to consolidate and extend workers' health and safety rights and protections beyond the minimums provided in health and safety laws.

15. The ACTU and unions commit to improving our organisation at work by increasing the numbers and improving the density of union trained and elected Health and Safety Representatives (HSRs).
16. The ACTU and unions commit to campaigning for legislative change to reinsert broad health and safety matters into awards and agreements.
17. The ACTU and unions will develop clauses, for insertion in workplace agreements, to support and enhance union activity in workplaces, and strengthen the involvement and protection of HSRs and workers. Key elements of such clauses should include:
 - Role of union delegates in negotiation of work groups and election of HSRs;
 - Improved number of training days for HSRs;
 - HSR right to choose and attend, on paid leave, union approved training courses.
18. Congress opposes the misuse of 'duty of care' by employers' PCBUs as a discriminatory mechanism against workers. Congress opposes the use of medical examination and 'fitness for work' testing or examination - either as a punitive measure or as a means of limiting access to employment.

Secure Work

19. Workers' testimonials and formal submissions to the Inquiry into Insecure Work in Australia have reaffirmed the findings of international organisations such as OECD and WHO - that insecure work, in its many forms, is linked with poor safety outcomes and has negative impacts on the health of workers in the short and long term. Congress notes that the provision of secure, ongoing work is a key factor in improving health and safety outcomes for workers.
20. The Global Union research network notes "One of the more dramatic implications of precarious work is that almost all precarious workers share an increased risk of higher work-related injury or illness". Insecure work is associated with increased risk of injury, more severe injuries and workers experience greater difficulties in returning to work post injury.
21. Insecure work is recognised as a contributor to psychosocial risk factors (stress, bullying, harassment etc.) which are associated with poorer health outcomes, particularly chronic diseases. The mechanism for these health outcomes appear to be both direct, through exposures to risk factors, and indirect through an increased likelihood of poor health behaviours by workers in insecure employment.
22. In this context, Congress applauds the recent passage of the *Road Safety Remuneration Bill 2011* and the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011*. These two pieces of legislation represent major steps towards more secure, safer, healthier jobs for transport workers and outworkers. Workers in these industries have too often been afraid to speak out about exploitation, due to job

security fears. The Bills provide reduced hours and greater job security for transport workers and ensure greater coverage of outworkers by the Fair Work Act as well as ensuring nationally consistent provisions across Australia.

23. The *Work Health and Safety Act 2011*, including the consultative duties held by PCBUs, covers all workers and in some jurisdictions has the potential for improved representation of workers. State health and safety regulators provide industry guidance on how to manage risks associated with contracting out or labour hire, and provide some recognition of the increased risk of exposure to hazards such as bullying for insecure and vulnerable workers.
24. Participation in workplace consultative arrangements is difficult for insecure workers for a variety of reasons, including concerns about job security and not being present at the worksite when arrangements for consultation are made. Many workplaces maintain a culture where there is a false divide between permanent and other workers.
25. Congress notes that there has been no intervention by health and safety regulators to address or recommend changes to regulation of the labour market in order to decrease exposure of workers to these “unhealthy” work arrangements. Additionally there has been the removal of provisions dealing with OHS from industrial awards relying instead on performance based OHS legislation and supporting Codes of Practice. For example, provision of first aid and trained first aid officers was once a standard feature of awards.
26. The tensions between improving health and safety outcomes by removing exposures to unhealthy and unsafe work arrangements and the continuing pressure of capital for a deregulated or atomised regulation of the labour market have not lessened. Consequently negative health and safety effects of insecure work have not been reduced.
27. The Model Work Health and Safety Act 2011 and some State OHS legislation allows for the negotiation of work groups and election of Health and Safety Representatives (HSRs) where there are multiple work sites and/or multiple employers involved. Whilst potentially useful, provisions rely on the ability of workers to negotiate across sites and employers.
28. Therefore Congress supports legislative change to allow for regional and roving HSRs, as found in Sweden (Work Environment Act 1977).
29. Research findings support the experience of unions that insecurely employed injured workers are often denied access to return to work and rehabilitation programs. Many employers, including labour hire agencies, fail to offer suitable duties to these injured workers thus jeopardising their recovery and future employment prospects.

Work Environment Hazards

Asbestos

30. Australia progressively banned the mining and use of Asbestos from the mid-1980s. From 31 December 2003 Australia banned the import, export, manufacture, supply, storage, transport, sale, use, re-use, installation and replacement of products and material containing asbestos. Due to a long latency period, people exposed to this deadly substance are still being diagnosed with asbestos related diseases. The Australian peak asbestos related disease morbidity is predicted for about 2020.
31. Asbestos containing materials, are still abundant and are present in many residential dwellings throughout Australia. Congress confirms its position that asbestos is a known hazard and that to prevent further exposures and hence asbestos related diseases, asbestos must be eliminated from the built environment.
32. Congress calls on the Australian Government to establish a stand-alone National Asbestos Authority that is responsible for the extension and implementation of successful and safe asbestos awareness, control and eradication programs, through:
 - The development of a National Strategic Plan for the elimination of all Asbestos Containing Material from the built environment by 2030;
 - Carrying out a national audit of asbestos containing materials (with government buildings and dump sites a priority);
 - The development and adoption of a Prioritised Removal Program, starting with government –owned buildings;
 - Ensuring asbestos containing materials are only removed by licensed removalists;
 - The adoption of an ‘Asbestos Safety Certificate’, identifying the location and condition of asbestos containing materials, obtainable by the owner of a private domestic residence at the point of lease or sale;
 - Coordinating education and awareness activities; and
 - Coordinating the removal of asbestos containing materials from the built environment.
33. Congress calls on all levels of government to work with the union movement and a broad spectrum of asbestos organisations in the establishment and ongoing work of such an Authority so that we can extend and implement successful and safe asbestos awareness, control and eradication programs across the nation.

34. Congress also welcomes regulations requiring licencing of asbestos removalists and asbestos removalists' supervisors; regulations on demolition and the requirement for removalists to participate in nationally approved training.
35. The ACTU, TLCs, and affiliates will continue to lobby governments for the removal of ACMs from the built environment by 2030 and to raise awareness of the hazards of asbestos amongst members and the broader community.

Chemicals and cancer

36. Australia's regulatory approach to chemicals is not based on the inherent hazards of chemicals themselves. At present there is significant variation between regulatory agencies and regulation of chemical exposure in different settings. This perpetuates a false divide between the work place and the general environment.
37. In order to protect workers the ACTU and unions will campaign and lobby for the reduction in the use of toxic substances at work by:
 - Advocating for the adoption of a Toxic Use Reduction approach;
 - Progressive phase out of IARC Group 1, followed by Group 2A carcinogens linked to occupational cancer²; and
 - Modification of the European REACH to Australian conditions³.
38. The ACTU and unions will also campaign for the development of an effective recognition of occupational cancer by workers compensation systems⁴ and the adoption of ILO Convention 121⁵.

Nano-materials

39. Nanomaterials can be hazardous because of their small size, large surface area and altered toxicity. Substances that are non-hazardous in larger form can pose new risks in nano-form. There is also evidence that some forms of carbon nanotubes that have a similar shape to asbestos fibres can cause the onset of mesothelioma. Concerns regarding the health risks of nanomaterials are greatest for workers, who are most likely to be exposed more routinely, and at higher doses than the general public.
40. Congress affirms it is the right of every worker to know what hazards may be present in the work environment and that this right includes the potential hazards of nanomaterials. Congress calls for products containing manufactured nanomaterials to

²² IARC is the International Agency on Research on Cancer; part of its research is the grouping and classification of chemicals. There are 107 Groups 1 chemicals, being chemicals that are carcinogenic to humans. The 330 Group 2 chemicals are split into two sub-groups: 2A that are probably carcinogenic to humans (of which there are 61) and 2B that are possibly carcinogenic to humans (of which there are 269).

³ REACH is the European Community Regulation on chemicals and their safe use. It deals with the Registration, Evaluation, Authorisation and Restriction of Chemical substances. The law entered into force on 1 June 2007.

⁴ Refer also to the Compensation section of this policy

⁵ Article 8 of ILO Convention 121: *Employment Injury Benefits Convention, 1964*, calls up the ILO list of occupational diseases (updated in 2010) and states that member countries should prescribe a list of occupational diseases.

be clearly identified in both Material Safety Data Sheets (MSDS) and labels, to ensure implementation of effective identification and control measures. Consistent with this, where products are produced in nano form, MSDS must relate to that nano form - rather than to its bulk counterpart.

41. The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) introduced new guidelines for the nano-specific regulation of the health and environmental effects of nano-forms of new industrial chemicals, commencing 1 January 2011. While a welcome development, these new measures apply to a small fraction of the manufactured nanomaterials in commercial use. Therefore Congress calls for the introduction of nano-specific regulation of nano-forms of existing substances by NICNAS and other regulators.
42. Congress calls on government to develop effective legislation incorporating the precautionary principle for nanomaterials. Specifically, the ACTU calls for:
 - a) The classification of nanoscale chemicals as new chemicals under NICNAS;
 - b) The development of new standards for the handling of nanotechnology;
 - c) Mandating the labelling of all commercial products containing nanomaterials;
 - d) Establishment of a federal registry of all entities manufacturing, importing and supplying products containing nanomaterials;
 - e) The establishment of a tripartite body to oversee implementation of this regulatory framework;
 - f) Development and improvement of hazard identification, assessment and control mechanisms for nanomaterials;
 - g) Enforcement of new exposure standards, including via a well-resourced inspectorate;
 - h) Monitoring of the health impacts on Australian workers involved in nanotechnology and investment in related medical research.
43. The ACTU, TLCs and unions will lobby governments for effective protections for people exposed to nanomaterials.

Psychosocial Hazards

Introduction

44. The Union Charter of Workplace Rights provides that every worker has the right to a safe and healthy work environment. The Union movement recognises the damaging

effect that psychosocial hazards (for example, workplace stress, fatigue, violence, and bullying) pose to the mental and physical wellbeing of workers.

45. Health and Safety is a union issue and a basic human right of the utmost importance to Australian workers. The protection and promotion of health and safety is integral to union activity and growth.
46. The ACTU acknowledges that modern working arrangements create a heightened exposure to psychosocial hazards. Outsourcing, privatisation, corporatisation and competitive tendering of previously stable full time jobs has led to a large increase in the number of workers in insecure employment arrangements. Workers lacking secure employment face significant difficulties in raising health and safety complaints due to the nature of their employment arrangements and conditions.
47. The ACTU recognises that workers who develop injuries, or illness, as a result of exposure to workplace psychosocial hazards, are likely to suffer stigmatisation and discrimination. As a consequence, disclosure and discussion of these injuries/illnesses may prove difficult for workers, and Health and Safety Representatives.
48. The continued failure of employers and regulatory agencies to control exposure to psychosocial risks continues to have flow-on effects to workers' families and the general community. This contributes to disparities in health, and over time, to social inequality.
49. To redress this imbalance, the ACTU recognises that Model Work Health and Safety laws present an opportunity to address the hitherto piecemeal approach by employers and regulatory agencies to prevent workers' exposure to psychosocial risks. In this regard, the ACTU calls for:
 - a) Legislation that provides for the control of risks arising from psychosocial hazards;
 - b) An adequately resourced and qualified inspectorate capable of taking action to ensure that employers control psychosocial risks; and
 - c) Decent and ongoing workers' compensation entitlements for injured workers and their families.
50. Workers must be treated with respect and dignity. The ACTU will continue to oppose any program that seeks to shift responsibility onto workers.

Working with State & Territory Governments, Occupational Health & Safety Bodies, Industry and Unions

51. The ACTU recognises that in order to improve the psychosocial work environment for workers, a genuine tripartite approach is needed from all governments, (including OHS and workers' compensation bodies) industry and unions. The ACTU will advocate for:

- a) A regulation and supporting codes of practice to address psychosocial hazards, which must include an obligation on employers to assess and control psychosocial hazards;
- b) Genuine consultation and engagement of workers and their representatives in the identification, assessment and control of psychosocial hazards;
- c) Training of health and safety representatives, workers and supervisors;
- d) Workplace policies and procedures that ensure confidentiality in dealing with individual issues;
- e) Research through Safe Work Australia into the influence of systems of work on psychosocial risks and mental health issues associated with workers compensation processes;
- f) Training to ensure that health and safety inspectorates can address psychosocial hazards; and
- g) The removal of '*reasonable management action*', and like provisions, from all jurisdictions' workers' compensation provisions.

ACTU Action

52. The ACTU acknowledges that the approaches taken by health and safety authorities have predominantly focused on individual cases and have not addressed the root causes of psychosocial risks. The ACTU advocates for a collective approach to psychosocial hazards. The ACTU will:
- a) Encourage the election of health and safety representatives;
 - b) Encourage cross-collaboration between health and safety representatives and union delegates including joint training;
 - c) Assist in developing training module(s) on psychosocial hazard identification, risk assessment and control;
 - d) Produce campaign materials, including factsheets for use in the ACTU Workplace Health and Safety Growth Campaign and the Secure Jobs Campaign. In this regard, the ACTU will use existing WHO, ILO and European Union materials.

Alcohol and other drugs in the workplace

53. Congress notes the increased reliance of business on the testing of workers for the presence of drugs and alcohol under the guise of improving health and safety outcomes. Congress reaffirms its opposition to the use of testing for alcohol and other

drugs (AOD) outside the purpose of risk based management of the health and safety of workers.

54. The above is in addition to current policy, endorsed by ACTU Executive in 2006.

Workplace health and safety for workers – pregnancy, reproductive health , breastfeeding mothers and mothers returning to the workplace

55. Congress acknowledges there are specific health and safety issues which can:

- Constitute a hazard to reproductive health; and/or
- Increase for a pregnant worker; and/or
- Only arise when a worker is pregnant; and/or
- Constitute a hazard to an unborn child; and/or
- Constitute a hazard to a breastfeeding mother and her newborn; and /or,
- Constitute a hazard to a mother returning to work after giving birth.

56. Congress supports the inclusion of a specific reference to reproductive health, pregnancy, breastfeeding mothers and mothers returning to the workplace after giving birth in the Model Work Health and Safety Regulations.

57. Congress supports the development of a Code of Practice which details the specific workplace health and safety hazards and risks which can arise in relation to reproductive health, pregnancy, breastfeeding mothers and mothers returning to the workplace after giving birth.

58. Congress supports the development of a union campaign in relation to the specific workplace health and safety hazards and risks which may arise in relation to reproductive health, pregnancy, breastfeeding mothers and mothers returning to the workplace after giving birth.

Offshore safety

59. Congress expresses its extreme disappointment that the Second Triennial Review of NOPSAs, conducted during 2011, did not make any recommendations about improving HSR rights or union right of entry of OHS matters. Congress cannot support an offshore work health and safety framework that provides for lesser protections and rights than those for onshore workers.

60. It is Congress' belief that NOPSEMA's effectiveness as a health and safety regulator is hampered by the split between NOPSEMA jurisdiction and that of the Australian Maritime Safety Authority (AMSA) that sidelines AMSA's national responsibility to administer Australia's obligations under various International Maritime Organisation (IMO) and International Labour Organisation (ILO) Conventions regulating maritime safety, crew standards and qualifications.
61. It is the belief of Congress that the unilateral action by the Howard Government to dis-apply from oil-producing ships [FPSOs] the maritime laws and Conventions that empower a Chief Engineer and a Captain to ensure seaworthiness of a vessel and its readiness to sail has reduced the safety of these vessels.
62. Congress expresses its extreme concern that thousands of Australian seafarers who crew ships in the Australian Exclusive Economic Zone off the coast of Western Australia are in a legislative void. The national workers' compensation legislation specifically created by Parliament for seafarers does not apply and they are not covered by either NOPSA or AMSA in respect of OHS jurisdiction.
63. Congress believes that a tripartite approach between governments, industry groups and unions is required to address OHS matters effectively therefore, NOPSEMA needs to involve all key stakeholders including unions.
64. Congress calls on the Federal Government to complete its OHS harmonisation strategy by reconfirming its commitment to retain NOPSEMA as the OHS regulator for the offshore oil and gas industry and the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare) as the independent OHS regulator for the Australian maritime industry. Congress also calls on the Federal Government to extend the model WHS law to the NOPSEMA and Seacare schemes to the extent applicable in these industry sectors.
65. Congress calls on the government to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the *Occupational Health and Safety (Maritime Industry) Act 1993*: to improve the protections to be at least comparable to those in the Model Work Health and Safety Act, including improving HSR training rights, discrimination provisions, union right of entry, minimum standards through regulation, improved enforcement and compliance powers and the increase in penalties for breaches.
66. Congress urges the Federal Government to take practical steps to eliminate regulatory uncertainty and dual jurisdictional regulation in the maritime and stevedoring industries by ensuring that all vessels/facilities in the Australian EEZ are covered by seamless and uniform Australian OHS laws.

Shifting Health and Safety Duties to Workers

67. Congress rejects programs, legislation and developing FWA decisions which attempt to transfer employer responsibilities to provide a safe and healthy workplace onto individual workers, by introducing programs which result in blaming workers' behaviour

and/or their lifestyle choices for poor OHS outcomes. Employment arrangements, such as 'sham contracting' and other employment arrangements which shift responsibilities to workers, are viewed with similar concern

Health and Wellbeing

68. Congress believes that unions have a role in improving people's lives so improving work, workplaces, and encouraging healthy lifestyles are legitimate union roles. However, Congress objects to programs that transfer employers' duty of care to individual workers. Such programs, including 'Wellbeing' programs, may discriminate against groups of workers or limit people's access to employment (via for example, physical fitness tests, drug and alcohol testing programs), or excluding workers with injuries or illness not related to employment requirements.
69. The introduction of any 'Wellbeing' program must be voluntary and in consultation with, and participation by, union members – from design to implementation to evaluation of a program. A program must guarantee worker confidentiality; provide individual workers with access to any information gathered and must not result in discrimination. A program must be complementary to, not a substitute for, work health and safety duties. A program must also consider the impact of work itself on worker health – not just the health of workers in isolation from their working environment.
70. Regulators who are involved in wellbeing programs must ensure that these programs are not regarded as a substitute for their legislative role to ensure that known hazards are controlled.

Behavioural Based Safety

71. Congress opposes the increased use in all industry sectors of Behavioural Based Safety programs which are based on an approach of focussing on worker behaviour rather than effectively controlling risks in the work environment.
72. Behavioural Based Safety (BBS) programs aim to shift responsibility for workplace health and safety from employers onto workers. Programs have their origin in management practices aimed at increasing managerial prerogative and pitting worker against worker, not in health and safety prevention.

Rehabilitation and Compensation

Introduction

73. With extremely high levels of work-related injury, disease and death a shameful reality in Australia, Congress reaffirms its position that the rights of injured workers are of fundamental significance.

74. Congress notes extensive research, which documents that workers in insecure employment are less likely to know their compensation rights, less likely to exercise them and more likely to face negative consequences if they do.
75. Congress recognises that effective rehabilitation and return to work programs, as well as the provision of economic security through workers' compensation arrangements, are critically important to injured workers, their families and the wider community.
76. Accordingly, Congress reaffirms its position that after sustaining a physical or psychological work-related injury, all workers are entitled to comprehensive and quality rehabilitation services and to return to suitable and decent employment. Further, injured workers are entitled to compensation that restores them to the position they enjoyed prior to their injury.
77. Congress reaffirms its position that improvements and consistent arrangements are needed for all injured workers in terms of rehabilitation, return to work programs and compensation. While the long standing Congress aim of establishing a national scheme to deliver these outcomes remains valid, Congress acknowledges that this is not the only way to achieve this objective. As such, Congress affirms that achieving national consistency and world's best practice in these areas is of paramount importance.
78. Congress calls upon employers and governments to work with unions to provide rehabilitation services that achieve maximum recovery and prepare injured workers, wherever possible, to return to their previous position. In cases where this is not possible, then workers must be redeployed to the most suitable position in respect of their aptitude and capacity.
79. Congress calls upon governments to work cooperatively to ensure that existing rehabilitation services are properly accredited, coordinated and expanded so that they are accessible to all injured workers.
80. Congress recognises that in many cases the rehabilitation of injured workers does not facilitate their return to suitable and meaningful employment. As such, effective rehabilitation services must also deliver genuine retraining programs to meet this objective.
81. Congress believes that for rehabilitation services to be effective they must:
 - a) Be implemented properly and without regard to the insurers' cost assessments;
 - b) Ensure that employers health and safety management systems enable the immediate reporting of injuries;
 - c) Return workers to their full capacity in their workplace, community, family and life;
 - d) Return workers to safe, meaningful and durable employment as early as possible;
 - e) Actively involve unions and their members in consultation and decision making;

- f) Have the commitment of the employer to the above aims; and
- g) Be independent of the employer or insurance company.

82. Congress supports the development by unions and employers of rehabilitation policies and programs that are based on the following principles:

- a) Voluntary participation by the injured worker;
- b) Respect for the worker's privacy;
- c) No loss of income while participating in the program;
- d) Eliminating or controlling the hazard that caused the injury;
- e) Consistency with the medical advice of the worker's own doctor;
- f) Employer cooperation in the provision of suitable duties, modified work stations and retraining or redeployment opportunities;
- g) Access to the advice and assistance of multi-disciplinary professional teams;
- h) The injured worker's right to choose their rehabilitation provider;
- i) That rehabilitation be provided to the injured worker at the closest possible location to their home or workplace;
- j) The development of appropriate and effective individual return to work plans;
- k) An individual assessment of the injured worker and their workplace;
- l) The adaptation of the workplace to suit the injured worker's capacity;
- m) The development of an appropriate timetable for returning the injured worker to their previous position, or the most suitable alternative, that is consistent with the level of their capacity;
- n) The involvement of union representatives and injured workers in decisions concerning alternative duties, rehabilitation programs and retraining; and
- o) The commitment by all parties to provide an environment in the workplace that is supportive of the injured worker with adequate training of employees, supervisors and management in the rehabilitation policies and procedures adopted.

83. The employer must ensure that participation in a rehabilitation program or the rehabilitation program itself will not prejudice an injured person. Furthermore, an

injured employee must not be dismissed or have their employment damaged because of a work-related injury or any resulting temporary impairment

84. In the event of dismissal of the injured employee or damage to their employment the applicable tribunal will be empowered to review and remedy the situation.
85. Regulatory authorities must enforce workers' rights to rehabilitation and to return to work.
86. All workers must be provided with a comprehensive statement detailing their entitlements regarding rehabilitation and return to work.

Workers' Compensation

87. Congress believes that nationally consistent workers' compensation standards must:
 - a) Be available to all members of the workforce regardless of the retirement age (including the self-employed) and provide compensation for all injuries that arise out of, or in the course of work, including:
 - Travel and recreation breaks;
 - All diseases caused by, exacerbated or accelerated by employment; and
 - Be available upon the death of a worker to their dependants.
 - b) Be primarily an income replacement scheme that provides 100% of lost earnings. This must take into account any progression or promotion that would have been available to the worker had they not been injured. Unions oppose schemes that: do not recognise overtime and penalty rates; have a financial ceiling or a maximum period of payment; are inequitable and/or inadequate.
 - c) Be based not only on physical or psychological impairment, but also on an assessment of the potential of the injured worker to be re-employed. Factors such as the age, abilities, place of residency, language and literacy skills, and the experience of the worker must be considered in relation to the injury sustained.
 - d) Provide for the total cost of all medical, rehabilitation and other expenses including special aids, childcare, domestic assistance, motor-vehicle and house alterations incurred by the worker.
 - e) Provide lump-sum compensation for any permanent disability sustained including pain and suffering associated with the disability.
 - f) Ensure that unfettered common law rights for workers to sue their employer for negligence are enshrined in legislation in addition to other forms of statutory compensation.

- g) Achieve the physical, social and psychological rehabilitation of injured workers, as well as attempting to equip them to return to their pre-injury employment. Where this cannot be achieved, the aim must be to provide genuine retraining to achieve meaningful and productive alternative employment.
- h) Ensure that the employer provides suitable employment for injured workers, and in the absence of this, that the injured worker maintains full and ongoing benefits.
- i) Ensure that the delivery of benefits is speedy, efficient and fair. Delayed payment and treatment will result in physical, psychological and financial hardship to injured workers.
- j) Congress also notes the provision elsewhere in the Chemicals section of health and safety policy calling for recognition of occupational cancer by workers' compensation systems and the adoption of ILO Convention 121.
- k) Provide for the establishment of Dust Disease Tribunals (based on the current NSW model) in all jurisdictions to administer the delivery of benefits to workers suffering dust diseases.
- l) Ensure that the administration and funding of workers' compensation (except for the administration of dust disease benefits) is carried out by a single public body, which is controlled by a board or council comprising of equal numbers of government, union and employer representatives.
- m) Provide an independent appeals tribunal that has the power to arbitrate on disputed claims. This tribunal should be cost neutral to the appellant.
- n) Ensure the receipt of workers' compensation by a worker does not preclude them from accessing any social security benefit, to which a person in receipt of another type of income support, such as benefits from an insurance policy, would be entitled to receive. Further, a worker's superannuation or redundancy payment should not impact on the timing, or the amount of their compensation payment.
- o) Ensure that every worker has access to a doctor of their choice and that if their doctor recommends medical treatment the worker can choose the medical provider.
- p) Ensure that disputes over workers' compensation claims are dealt with expeditiously and with minimum impact on injured workers. Dispute settlement processes must be quick, accessible and low cost for workers.

Self-Insurance

88. Congress opposes self-insurance for employers as it generally limits access to benefits, compromises privacy, undermines the premium pool and discourages workers from exercising their rights. However, Congress recognises that self-insurance currently

exists in all jurisdictions. Therefore, Congress believes that self-insurance should only be available to employers who have an exemplary record in health and safety and a demonstrated commitment to workers' rights. Further, self-insurance licenses must be automatically revoked in cases where there is a workplace death or serious injury.

89. Congress believes that the administration of workers' compensation by self-insurers must be conducted by arrangements that separate the insurer from the employer, in the same manner as the relationship between a private insurer and the employer as a client, to fully protect employee privacy.
90. Congress calls for workers to have access to an independent body which can review an employer's self-insurance status. Further, employers seeking to become, or to remain, self-insurers must be able to demonstrate that the majority of their employees genuinely favour this option.

Achieving National Consistency and World's Best Practice in Rehabilitation and Workers' Compensation

91. Congress reaffirms its position that the ACTU and unions must work towards the achievement of nationally consistent standards in rehabilitation and workers' compensation, which constitute a best practice scheme to be delivered by each jurisdiction.
92. The ACTU will:
 - In consultation with TLCs and affiliates continue the development of best practice elements of a rehabilitation and compensation system to be used as the benchmark for national and state based negotiations and campaigning.
 - Work with TLCs and affiliates to coordinate lobbying and activity at the State and other jurisdictional level to keep and raise standards in each jurisdiction.
 - Coordinate a campaign at the national level in partnership with TLC's and affiliates in each jurisdiction to promote and win fairer workers' compensation laws and policy. The campaign will be properly resourced, with budgetary provision made for its effective implementation.
93. Congress calls on the Federal Government to return Comcare to its original function as the scheme applying to Federal public servants and to return all private sector participants to the applicable State or Territory run scheme(s).
94. The ACTU and unions commit to supporting injured workers and to ensure that education about rehabilitation, return to work arrangements and compensation issues, are included in training for delegates, health and safety representatives and union members.

95. Congress calls for improvements to be made in the form of:
- a) Comprehensive coverage of the work relationship, including on journeys to and from work;
 - b) A return to a basis of 'no-fault' compensation for all workplace injury and diseases;
 - c) Abolition of the illegitimate use of 'whole of body assessments', which act to reduce compensation and limit access to statutory lump-sum payments and common law remedies via legislated minimum thresholds;
 - d) Introduction of genuine rehabilitation options, including full technical or tertiary retraining;
 - e) Removal of time limits and step downs on weekly payments that effectively shift the injured worker onto social security benefits;
 - f) Maximising the resources in a scheme by removing profit incentives to third parties, thus ensuring that benefits are distributed to workers; and
 - g) Fast and effective conciliation and arbitration of any workers' compensation matter in dispute by an independent tribunal.
96. To properly achieve this aim, research needs to be undertaken to provide an injury profile for the entire Australian economy upon which an appropriate workers' rehabilitation, return to work and compensation package can be developed. Congress calls on the Federal Government to commission this research as a matter of urgency.
97. Congress calls on the Federal Government to establish an inquiry as a matter of urgency to examine the extent of cost shifting by workers' compensation schemes onto injured workers and government services, including the public health system and social security.