



# HEALTHY, SAFE AND RESPECTFUL WORK

## Introduction

1. Healthy and safe work is a fundamental human right and is essential for decent work. Every worker has an equal right to healthy and safe work irrespective of their employment arrangements or personal attributes. Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.
2. Workers must be protected from all hazards and risks at work, including psychosocial and physical hazards and risks. Workers who are injured at work must be afforded the highest level of support to seek treatment and return to meaningful work.
3. Having a voice at work, and on how work is conducted, is essential to health and safety. Workers who are empowered to act collectively through their unions are safer and healthier at work. Workers and their representatives must be consulted about all matters relating to work including how work is to be organised and allocated in a manner that eliminates exposure to hazards and ensures that work is healthy and safe.
4. Insecure work, in its many forms, is linked with poor safety outcomes and has negative impacts on the physical and psychological health of workers. Conversely, the provision of secure, ongoing work is a key factor in improving health and safety outcomes for workers. Insecure work is both more prevalent amongst, and has greater impact on, vulnerable sections of the workforce, including Aboriginal and Torres Strait Islander workers, the young, women, workers from culturally diverse backgrounds and immigrant workers.
5. Congress notes the prevalence of gendered violence at work and will continue to pursue legislative protections which ensure there are decent, fair and appropriate work health rights for all workers.
6. All parties must ensure there are laws, processes, and systems in place that mandate that no Australian worker be disadvantaged if they are injured at work. Injured workers' benefits or their access to safe working conditions must not be reduced.
7. Injured and ill workers must receive both financial support to ensure no loss of real income throughout their life, as well as the highest possible medical, rehabilitation and vocational support. Safe Work Australia research shows that 77% of the costs are borne by workers along with 18% by the community with just 5% borne by employers. These costs must not continue to be borne by the worker or by the Australian taxpayer and should be funded by levying the businesses and industries which cause harm.
8. Congress notes that the Modern Slavery Act 2018 (Cth) was passed in 2018. Modern slavery practices are a violation of human rights and one of the most serious forms of exploitation creating serious risk to worker health and safety. Modern slavery continues to occur in Australia, in every industry and sector, and it disproportionately impacts women and girls.

9. While the Modern Slavery Act 2018 (Cth) focuses on reporting requirements and identifying risks of modern slavery occurring in international and domestic operations of large companies, Congress affirms that modern slavery is also a serious risk to worker health and safety and should be dealt with as such. Congress commits to working towards the elimination of modern slavery practices in Australia and globally.

## **Voice at work – the role of unions**

10. Congress affirms that it is essential to the dual objective of growing the movement and improving health and safety at work, that workers join and are actively organised through their unions on matters related to health and safety. Representation of workers through their union delegates and elected Health and Safety Representatives (HSRs) are key components to healthy, safe and respectful work.
11. Congress acknowledges that worker elected HSRs are a critical determinant of healthy and safe work. Australian unions commit to improving our organising capacities by increasing the numbers, and improving the density and diversity of, union-trained and democratically elected Health and Safety Representatives (HSRs).

## **Health and Safety Representatives (HSRs)**

12. Congress reaffirms the right of workers to be effectively represented by an elected HSR, taking into account the number of workers in a Work Group, the nature of the work and work arrangements. HSRs must be easily accessible to the workers they represent and the employer must facilitate that access and the time necessary to undertake their representative role. Workers must be supported in their choices of the appropriate organisation of Work Groups, and we call on regulators to support those choices.
13. If a work group is made up of multiple work sites, HSRs should be paid and provided with the means and transportation to physically attend any workplace in the Work Group (WG) at the request of a member of the WG. Congress supports legislative change to allow for regional and roving HSRs.
14. Congress affirms the right of all HSRs to seek assistance whenever desired from the union representative of their choice, to issue Provisional Improvement Notices where an employer is in breach of health and safety laws and where there is an immediate risk to the health or safety of any worker they represent, to order that work cease.
15. The paramount function of HSRs is to represent the health and safety interests of the workers they represent. The focus of HSR training courses should be to provide the necessary knowledge and skills to assist HSRs in their functions and exercising of their powers under health and safety law.
16. Congress affirms that all HSRs have the right to access training as recommended and endorsed by their union in paid work time, without loss of pay and with all out-of-pocket expenses paid by the employer.
17. Completion of, and access to, training should not be a prerequisite for elected HSRs exercising their full range of functions and powers.
18. The minimum days training available to HSRs should be:
  - a) 5 days general introductory training in the first year of the three-year term of office; and
  - b) 7 days over the following two years of the term. This may be refresher training or industry/topic specific training.
19. Congress opposes a competency-based approach for the training of HSRs in accredited training courses under health and safety law.
20. Employers should be given at least 14 days notice of the intention by the HSR to attend the training of their choice, and the employer shall facilitate and pay for this attendance, including travel time.

21. Approval of an HSR training provider to deliver an HSR course in one jurisdiction should be mutually recognised in other jurisdictions (so that the provider does not need to obtain approval from each jurisdiction to deliver the same training course).
22. The mode of delivery of HSR training must be face-to-face, except in limited circumstances (such as during a pandemic and where restrictions apply on face-to-face meetings) as this is the only mode that ensures networking which promotes learning and knowledge transfer between participants with similar experiences from similar industries.
23. If face to face training is not possible, HSR training needs to be via “connected real-time delivery”:
  - a) Live video streaming/conferencing using platforms such as Zoom, Skype, Teams with investigation of platforms used in online educational settings;
  - b) Involves real-time interaction between learner and trainer;
  - c) Active participation of learners and trainers;
  - d) Verification of learner Evidence of Identity (EOI) can be done one-on-one (or face to face) via video conference;
  - e) Direct observation or verbal interaction can be undertaken to verify understanding/comprehension.
24. HSRs right to access information must not be obstructed by employers misusing the concept of ‘privacy’ and ‘confidentiality’ as a means to prevent access to deidentified information relevant to health and safety.
25. Australian unions commit to campaigning for legislative change to reinsert broad health and safety matters, particularly in relation to HSRs, into awards and agreements.
26. Australian 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:
  - a) The role of union delegates in negotiation of work groups, election and support of HSRs;
  - b) Improved number of training days for HSRs;
  - c) HSR’s right to choose and attend, on paid leave, union approved training courses.

## **The work health and safety system**

27. Australian unions are supportive of a nationally consistent legislative scheme for work health and safety matters, with the highest level of protection ensuring that all workers are able to exercise their rights and entitlements, regardless of where they live and the location of their work.
28. Congress reaffirms that consistent arrangements are needed for all injured workers in terms of rehabilitation, return to work programs and compensation. While the long-standing 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.

## **Tripartism and Governance**

29. Congress acknowledges the importance of tripartism and genuine consultation with workers’ representatives. All work health and safety, compensation and rehabilitation laws must be developed, reviewed and maintained in a tripartite manner. Changes to work health and safety (WHS) and workers’

compensation entitlements should only be made following genuine consultation and agreement with workers and their union representatives.

30. Union representatives must be fully included in all governing and regulatory bodies that provide oversight and compliance into health and safety matters. Representation is best achieved through membership on relevant boards or committees, so that workers have a voice in the procedures and administration that govern their health and safety at work.
31. The tripartite approach in many jurisdictions does not meet the requirements of ILO Convention 155 and does not extend to other bodies with similar, industry-specific roles. To this end, Australian unions shall seek legislative change to guarantee union representation on all relevant WHS bodies, or where relevant bodies do not exist their formation, including the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), Safe Work Australia (SWA), the Seacare Authority, the Australian Maritime Safety Authority (AMSA) and the Australian Industrial Chemicals Introduction Scheme (AICIS).
32. To improve governance arrangements and transparency, and to encourage best practice and information sharing, a properly constituted and national tripartite body should play a role in coordinating policy across all of the WHS regulators and departments.
33. Congress endorses the Person Conducting a Business or Undertaking (PCBU) definition when dealing with the chain of responsibility as required under the model laws. Congress urges States and Territories, to prosecute breaches of health and safety legislation in extended supply chains including chains with overseas elements, where the person conducting a business or undertaking is based within Australia. Where the model laws are not applied within the jurisdiction inspection powers of Australia's health and safety laws, regulators must be matched to the overseas reach of the duties of the relevant Work Health and Safety Act.
34. In order to deal with the unique risks associated with electrical work, States and Territories should ensure there is separate legislation for dealing with electrical licensing and electrical safety with a standalone electrical safety regulator which is adequately resourced with appropriately trained and qualified electrical safety inspectors. Federal safety regulators should ensure that distinct electrical safety divisions are created within the regulator which are adequately resourced with appropriately trained and qualified electrical safety inspectors.

## **Injury, illness and disease in Australian workplaces**

35. Congress notes that despite progress there are still around 200 work related fatalities every year. A further 5,000 people will die from diseases caused by their work and more than 100,000 workers will have an accepted workers' compensation claim for over one week off work. In addition to this 1 in 5 workers will take time off for poor mental health and this doubles for mentally unhealthy work. Psychological injuries now represent the fastest growing injury type in our workers' compensation system.
36. It is estimated that up to 1 in 10 cancers in men are linked to work exposures and in recent years there has been a large increase in work-related lung disease, associated with old and new industries.
37. In 2019 27,000 workers responded to the ACTU Work Shouldn't Hurt survey – of the respondents:
  - a) 79% had suffered a mental or physical injury caused by work;
  - b) 61% had experienced poor mental health because their employer did not manage hazards at work;
  - c) 55% were aware of an existing hazard at work that would cause serious injury or illness;
  - d) 16% knew someone killed at work or who has died from a work-related disease.
38. On almost every indicator Aboriginal and Torres Strait Islander workers reported higher levels of exposure to risks and lower levels of employer action to protect their physical and psychological health.

## Increased risks due to insecure work

39. 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. Insecure work, in its many forms, is linked with poor safety outcomes and has negative impacts on the physical and psychological health of workers. Conversely, the provision of secure, ongoing work is a key factor in improving health and safety outcomes for workers.
40. Congress notes that workers without secure employment face significant difficulties in raising health and safety complaints due to the stance taken by their employers, their employment arrangements, and working conditions. Community Development Program participants are also included in this category and have difficulties raising health and safety concerns.
41. Congress notes that insecure work disproportionately affects women and contributes to creating an environment in which gendered violence can thrive and remain unaccountable as insecurely employed workers are less likely to make a complaint or challenge incidents of gendered violence. Therefore, injuries at work caused by workplace gendered violence are able to occur without those workers having any recourse.
42. The rise of 'gig' work has seen the transfer of risk from employers to workers; the risk includes threats to workers' health and safety and the capacity to enjoy a safe and healthy work environment.
43. Congress acknowledges that insecure work and modern working arrangements create a heightened risk of injury and diminution of the capacity of workers to organise and elect HSRs and access to workers' compensation and rehabilitation for work-related injury and illness.

## Law reform

44. Congress acknowledges the 2018 Review of Model WHS Laws and its thirty-four (34) recommendations to improve the rights and protections afforded to workers and their representatives.
45. In March 2020 the Sex Discrimination Commissioners report, Respect@Work, highlighted the scourge of sexual harassment in Australian workplaces and also called on governments to amend the model WHS Regulations to deal with psychological health and develop guidelines on sexual harassment, with a view to informing the development of a Code of Practice.
46. Congress reaffirms unions support for all 34 recommendations of the 2018 Boland Review with priority given to the following key areas of reform:
  - a) Dealing with work-related risks that impact psychological as well as physical health:
    - A regulation on all psychosocial risks – bullying, harassment, gendered violence including sexual harassment, work overload, understaffing, customer aggression etc;
    - Require employers/PCBUs to notify H&S regulators when there has been a psychological injury;
    - Apply risk management principles to all risks, not just the limited number of physical risks covered by the 2011 WHS Regulations.
  - b) Workers and their HSRs need clear rights:
    - To choose the course of HSR training, in consultation with their employer/PCBU regarding the timing and administrative arrangements only;
    - When seeking assistance HSRs must not be restricted by unnecessary red tape.

- c) Deliver justice to victims and their families:
- An offence of industrial manslaughter should be included in work health and safety legislation. The elements of the offence should include:
    - o Where 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;
    - o Where the conduct (by way of act or omission) of an employer or PCBU caused the death, injury or illness.
  - Prohibition on the insurance for fines as a result of breaches of health and safety laws.
47. Congress affirms that in order to ensure compliance with work health and safety laws, there needs to be effective enforcement of the legislation, including a more active approach to prosecutions by the relevant WHS regulators. To this end, Congress supports the right of unions to initiate prosecutions for breaches of work health and safety laws in all jurisdictions, as existed in the Occupational Health and Safety Act 2000 (NSW).
48. As a further deterrent, Congress reaffirms the need for Industrial Manslaughter laws in all health and safety legislation, delivering higher penalties for corporations and company directors found guilty of wrongdoing leading to the death of a worker, with penalties tied to the company's size and turnover in such a way that it acts as an effective deterrent to wrongdoing and is linked to restitution to the worker, the worker's family, and fellow workers.
49. Congress supports legislative change that would require Safe Work Australia to hold a register of corporate offenders under these provisions and to refer to the Australian Securities and Investments Commission or other corporate regulator, details of companies and their directors charged with offences under the various WHS Acts and other OHS Acts for disqualification.
50. Congress calls for the Corporations Act (2001) (Cth) to be amended to require that upon notification to a state regulator of a charge under health and safety legislation, or upon notification of a death, serious injury or disease, no corporate changes to the relevant employing entity or entities can be made, without an order of the relevant court of superior record, approving such change as having no bearing on potentially liable officers or potential corporate liability.
51. Further, the model WHS legislation should be amended to include a provision in relation to personal liability, to hold to account individuals in decision-making positions of authority, such as company directors, for any instances of criminal negligence resulting in the death of a worker.
52. Congress reaffirms that:
- a) Unions should be defined as 'eligible persons' entitled to seek review of every type of reviewable decision listed at s 223 of the Work Health and Safety Act (except for Items 5 and 6, which relate to the forfeiture and return of seized things);
  - b) Disputes and offences under health and safety laws to be dealt with in specialist courts and tribunals by judges and arbitrators with expertise and experience in industrial and WHS matters;
  - c) The powers of union permit holders and inspectors should have extra-territorial application, to the extent that a jurisdiction's legislative powers allow, this includes mutual recognition of all training undertaken;
  - d) Union permit holders who have lawfully entered a workplace to investigate a suspected contravention under health and safety laws should be permitted to remain on the premises to investigate other safety issues which they become aware of after the initial entry. Similarly, a permit holder who has lawfully entered a workplace under another law for a different purpose (e.g. to hold discussions with potential members under s 484 of the Fair Work Act 2009) should be able to lawfully remain on the premises

to investigate a suspected contravention (or contraventions) of the health and safety laws where they become aware of safety issues after the initial entry;

- e) Union permit holders should be authorised to:
  - take photographs, video and/or voice recordings and measurements, conduct tests, and make sketches or other recordings;
  - review and make copies of documents relevant to the suspected contravention;
  - issue PINs (or similar) and direct work to cease; and
  - interview workers.

53. Congress supports improving health and safety laws to ensure that:

- a) Breaches of the provisions protecting HSRs from discriminatory, coercive and misleading conduct should be upgraded to criminal offences and these must be prosecuted by regulators;
- b) An HSR be authorised to direct that unsafe work cease and/or issue a PIN immediately upon election, even if they have not yet completed the required training;
- c) A worker be able to cease or refuse work if it would expose the worker or others to a serious risk to health or safety.

54. Congress supports a clear, unqualified duty to ensure the health and safety of workers and others. Congress believes that the burden of proving that the control of a risk was not reasonably practicable should reside with the duty holder.

55. Congress supports amendment to health and safety laws to clarify that decision makers at the top of industry structures (such as retailers and head contractors) are required to identify who is performing work right down to the bottom of these to identify, eliminate or minimise health and safety risks facing all these workers and supply chains.

56. Congress supports development of Regulations and Codes for the following new, emerging or neglected areas of risk, e.g.:

- a) Hazards caused by non-standard and precarious working arrangements;
- b) Psychological hazards;
- c) Biological hazards;
- d) Occupational violence;
- e) Safe systems of work, and adequate staffing levels in particular;
- f) Heat-related illness and exhaustion;
- g) Reproductive health;
- h) Air quality;
- i) Vibration.

57. Australian unions will pursue improvements to the current legislation to ensure that union officials have right of entry and access to remote workplaces, with employers required to facilitate transport to and from the worksite for the purpose of meeting with members to discuss health and safety matters.

58. Congress calls upon Government to investigate the impact of the 'gig' economy on workers' health and safety, and to involve unions in the creation of policies and laws which will protect all workers regardless of the form of their employment.

59. Congress calls upon all jurisdictions to modify WHS and workers' compensation and personal injury law to ensure gig workers are covered by these laws as if they were regular workers and to ensure that employers do not escape their responsibilities.
60. Congress reaffirms that changes in health and safety law must be supported by:
  - a) An adequately resourced and qualified inspectorate capable of taking action to ensure that employers control psychosocial risks; and
  - b) Decent and sufficiently financed workers' compensation entitlements for injured workers and their families.
61. Congress supports the adoption and implementation of ILO Convention 190 and all the recommendations of the 2020 Sex Discrimination Commissioners report, 'Respect@Work' and the 2019 Boland Review of the Work Health and Safety laws.
62. Congress endorses International Labour Organisation (ILO) Conventions No. 155, 161 and 187, which provide a framework for best practice on work health and safety matters, including a commitment to tripartism and genuine consultation.

## **Law Reform – Offshore and Maritime Safety**

63. Congress supports the harmonisation of health and safety laws in sector specific schemes covering seafarers and offshore oil and gas industry workers. Congress acknowledges current jurisdictional overlap and some regulatory gaps in these sectors. The introduction of a Code of Practice has improved safety in the stevedoring industry, but this should be strengthened to be a regulation.
64. In particular, Congress is committed to ensuring that International Maritime Organisation (IMO) Conventions and International Labour Organisation (ILO) Conventions to which Australia is a signatory are restored in the offshore oil and gas sector.
65. Australian unions will pursue improvements to the current legislation to ensure that union officials have right of entry and access to remote workplaces, with employers required to facilitate transport to and from the worksite for the purpose of inspecting work and meeting with members to discuss health and safety matters.
66. Congress supports the retention of NOPSEMA as the appropriate national regulator of safety for Australia's offshore oil and gas industry, but opposes NOPSEMA's handling of its regulatory functions. Congress condemns this "hands off" approach and its impact on safety performance in the offshore oil and gas industry.
67. Until such time as NOPSEMA becomes a more effective, full service regulator, Congress opposes any attempts to introduce legislative change enabling the states to confer their oil and gas safety powers in state waters to NOPSEMA.
68. Congress calls on the government and NOPSEMA to ensure that the workforce and trade unions representing the workforce are actively involved in genuine consultation on OHS in the industry, aimed at improving safety performance. In particular, Congress calls on:
  - a) The government to amend Schedule 3 of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 to provide for the appointment of at least 1 representative nominated by relevant trade unions to the NOPSEMA Advisory Board;
  - b) The government to align the OPGGS Act with the model WHS Act and the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 with the model Work Health and Safety Regulations 2011, unless there is a good reason not to do so;

- c) NOPSEMA to provide a range of support to HSRs including:
- Funding of dedicated HSR Support Officers;
  - Better training for HSRs based on HSR courses accredited by NOPSEMA after a tripartite panel of key stakeholders including unions, has assessed the merits of proposed training programs and providers consistent with the current approach to approving training under Seacare and Comcare;
  - Maintaining a publicly available up-to-date register of all HSRs and the training they have received;
  - Mandating the ability for HSRs to gain remote electronic access to the safety case for a facility; and
  - Mandating rights of inspection of facilities prior to commissioning by accredited HSRs and relevant officials of offshore unions.

## **Mine Safety**

69. Congress supports the retention and strengthening of separate, industry specific risk-based WHS legislation for mining.
70. Congress supports the “check inspector system” of worker participation at both workplace and industry level in the black coal mining industry.
71. Congress supports the establishment and maintenance of independent, properly resourced, stand-alone mines inspectorates in the mining states and territories of Australia.
72. Congress calls on the Australian Government to take immediate steps to ratify the International Labour Organisation (ILO) Safety and Health in Mines Convention, 1995 (ILO C 176).

## **Protection from hazards**

73. Congress believes all workers should have the right to the highest level of protection against all hazards and risks associated with work.
74. Congress notes that all work-related hazards and associated risks are best controlled at source and eliminated from the work environment. When that is not possible then all action must be taken to minimise the risks to health and safety as low as possible. We aim to lead government and employers in our efforts to prevent harm and promote healthy, safe and respectful work.
75. All risks, physical and psychosocial, must be controlled using the hierarchy of control – using a combination of elimination, substitution, isolation, engineering controls, administrative and work practice measures and personal protective equipment.
76. Australian unions commit to challenging the increase in specific risks such as risks to psychological health that can be linked to increased awareness, systemic changes and employment conditions in order to create healthier, safer and respectful work for all.

## **Insecure Work**

77. Congress acknowledges that insecure work, in its many forms, is linked with poor safety outcomes and has negative impacts on the physical and psychosocial health of workers. Congress notes the provision of secure, ongoing work is a key factor in improving health and safety outcomes for all workers. Congress also notes that women and young people are disproportionately affected by these realities, as women and young people are more likely to be in insecure work.

78. Research uniformly shows that insecure work is associated with increased risk of illness and injury, more severe injuries, is a contributor to psychological risk (including bullying, racism, all forms of harassment, gendered violence and stress), and results in poorer health outcomes for workers.
79. Congress supports legislative change which recognises and improves outcomes by removing exposures to unhealthy and unsafe work arrangements, irregular and unpredictable patterns of work and insecure work. Workers lacking secure employment face significant difficulties in raising health and safety issues due to the nature of their employment arrangements and conditions.
80. These risks are especially heightened in the so-called 'gig' economy, where the rights accruing to regular workers as employees are routinely denied, exposing such workers to heightened risk of injury and often removing their capacity to seek compensation or damages.
81. Congress recognises the impact that insecure work can have on the right of ill and injured workers to access leave entitlements, workers' compensation and suitable rehabilitation programs. Again, this is likely to disproportionately affect women who more often have caring responsibilities yet have no access to that leave when employed insecurely.

### **Temporary visa workers**

82. Congress notes that temporary visa workers are often provided with inferior access to safety training and workplace health and safety consultation. Congress also notes the particularly vulnerable position that temporary visa workers are often placed in due to the reliance of the worker on their employer to maintain not only their employment but also their visa or residency. This makes safety consultation and issue resolution difficult and places too much power with the employer. It also sets a lower standard for all workers, and means that temporary visa workers are often underrepresented by, or have no access to, unions.
83. Congress is committed to ensuring that temporary visa workers will be given support and income protection to ensure that illness and injury is not a pathway to poverty, or worse, expulsion from Australia.
84. Congress calls on the state, territory and Commonwealth governments to target regulatory action in workplaces where significant numbers of temporary visa workers are present, and specifically amend the immigration laws to prevent employers who threaten or terminate a worker for raising a safety issue, or who have a poor safety record, from employing more international workers.
85. Further regulations should apply to employers who wish to employ temporary visa workers, and businesses should only be allowed to engage temporary visa workers if they have demonstrated a strong health and safety record with no major breaches and provide WHS training, consultation, and education to their labour force in the appropriate language and format.

### **Psychosocial**

86. Congress acknowledges that modern working arrangements create a heightened exposure to psychosocial hazards. Work intensification across all industries, but in particular the service sector, has led to significant increases in mental ill health. Outsourcing, privatisation, corporatisation and competitive tendering of previously stable full-time jobs further exacerbates this trend and has led to a large increase in the number of workers in insecure employment arrangements.
87. Congress recognises the significant impact of secondary psychological injuries that occur as a result of deficient responses to a primary injury, including the management of rehabilitation and return to work plans. Secondary psychological injuries must be legally presumed to form part of any existing workers' compensation claim. Unions support a review of rehabilitation and return to work processes in order to minimise the risk of secondary psychological injuries.

88. Congress recognises that workers who develop injuries, or illness, as a result of exposure to workplace psychosocial hazards, are likely to suffer stigmatisation and discrimination. Employers and regulators must recognise that as a consequence, disclosure and discussion of these injuries/illnesses may prove difficult for workers, and Health and Safety Representatives.
89. 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.

## **Alcohol and Other Drugs**

90. Congress notes the harmful effects that alcohol and other drugs (AOD) can cause workers, their families and fellow workers. Congress notes that there is no place for drugs of abuse or alcohol-related impairment in the workplace. Congress calls on employers and governments to work together using a preventative harm minimisation approach which focuses on the rehabilitation of those with substance abuse and provides education and assistance to those whose substance use can lead to impairment at work.
91. Congress notes there is little evidence of the link between AOD usage and workplaces accidents to justify the growth in testing regimes across Australian industries, and calls on governments and industry to consider the broader health, work and social context of AOD usage in preference to focusing on punitive action against individual workers, as a deterrent, which may compound the damage.
92. Congress urges employers to focus on identifying impairment, due to any number of factors, such as fatigue, exposure to chemicals, or inadequate workplaces systems of work which may lead to workplace incidents, rather than the use of testing for alcohol and other drugs (AOD) outside the purpose of the impairment-based approach.
93. Congress notes the limitations of testing mechanisms, including oral, urine and breath testing. Where alcohol and other drugs testing is conducted, it should only be considered as a last resort. Impairment due to AOD can be effectively managed through direct observation and supervision.

## **Asbestos**

94. Asbestos in all its forms was finally banned in Australia after a lengthy campaign by unions and victims' groups on 31 December 2003. Despite this, asbestos-containing materials are still abundant in many residential and commercial dwellings throughout Australia. Recent studies have shown that over 4,000 deaths per year can be attributed to exposure to asbestos, making Australia one of the deadliest countries in the world, per capita, for asbestos related deaths. Congress confirms its long-held position that asbestos in all its forms is a known hazard and persistent environmental carcinogen and that to prevent further exposures and hence asbestos related diseases, asbestos must be eliminated from the built environment.
95. Congress supports the ongoing role of the independent Asbestos Safety and Eradication Agency and the Asbestos Safety and Eradication Council, and the adoption and implementation of:
  - a) The asbestos register of people exposed to asbestos;
  - b) A national strategic plan for the elimination of all asbestos-containing material (ACM) from the built environment by 2030;
  - c) Carrying out a national audit of asbestos-containing materials (with government buildings and dump sites a priority);
  - d) The development and adoption of a prioritised removal program, starting with government-owned buildings;

- e) Ensuring asbestos-containing materials are only removed by licensed removalists;
  - f) The adoption of an 'Asbestos Content Certificate', identifying the location and condition of asbestos-containing materials, obtainable by the owner of a private domestic residence at the point of lease, sale or renovation;
  - g) Coordinating education and awareness activities; and
  - h) Coordinating the removal of asbestos-containing materials from the built environment.
96. 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 the Council so that we can extend and implement successful and safe asbestos awareness, control and eradication programs across the nation.
  97. Congress also welcomes regulations requiring licensing of asbestos removalists and asbestos removalists' supervisors; regulations on demolition and the requirement for removalists to participate in nationally approved training.
  98. 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, including documented, time-limited remediation/replacement plans.
  99. Congress proposes the establishment of an asbestos eradication fund that is levied on all construction materials so that these functions of asbestos removal can be adequately resourced.
  100. Congress proposes that all asbestos eradication be given full tax deductibility status to encourage asbestos removal from residential properties as is already available through current general tax deductibility mechanisms for commercial and investment premises.
  101. The WHS Regulations should be amended to prohibit asbestos removal except by a licensed asbestos removalist.
  102. Australian unions propose that a mandatory training package is developed and maintained for an asbestos awareness course with registration, regulation and oversight of those training organisations that can deliver the course. Asbestos awareness training should also be a mandatory component in all tertiary and other vocational training courses relating to the building and construction industry and allied industries with modifications made to enable identification and safe work methods for each occupation.
  103. Following the development of the Asbestos Identification Training Course, it should be made compulsory through amendment to the Work Health and Safety Regulation 2011, for all workers who stand a likelihood of being exposed to asbestos due to the nature of their work, to complete this training prior to engaging in such work. The regulator should be empowered to regulate who can provide the course.
  104. Congress recommends that the Asbestos Safety and Eradication Agency establish a standing committee, made up of representatives of the community, workers and government of all levels for the purpose of driving the management (including identification, warnings, removal, demolition, remediation, dumping) of asbestos from the built environment.
  105. The standing committee should coordinate the removal of asbestos from the built environment, to implement and make funding arrangements for asbestos removal activities (including Asbestos Content Certificates) and asbestos waste management.
  106. The standing committee should be chaired by a person with accountabilities to the appropriate Federal Minister. This may entail the establishment of a position such as Asbestos Commissioner with the statutory authority to second and advocate for appropriate resources from the public sector.

## Asbestos Removal Funding

107. Asbestos is not being systematically removed from our environment except when an exposure occurs or public attention is drawn to the presence. A number of government reports have recommended significant action and funding, yet no government is prioritising the removal of asbestos from the built environment due to funding shortfalls.
108. Congress proposes that jurisdiction asbestos waste levies be removed to minimise incentives for dumping.
109. Congress supports local governments and waste management organisations to build the infrastructure and employ the personnel necessary to safely receive small amounts of asbestos-containing materials locally to avoid dumping.

## Asbestos in Our Region

110. Despite the ban on asbestos in 2003, Australia is still receiving imports of asbestos. The inspectorial regime in place to police this ban is inadequate. Due to the prevalence of asbestos in Asia, Australian workers are now frequently seeing asbestos-containing manufactured materials and plant components imported into Australian workplaces, reducing the effectiveness of the Australian asbestos ban. Congress calls on Border Force and WHS Regulators to work together to increase their efforts to stop the importation of asbestos products using greater inspection and compliance mechanisms than is currently undertaken.
111. To effectively prevent the illegal importations of ACMs, Border Force must introduce “after-barrier” policing and be provided a specific head of power to enable notification and removal at the expense of the importer. The “mistake of fact” defence, which absolves importers from responsibility after importation where they accepted the imported materials were asbestos-free when they were not, must be abolished.
112. Congress notes that the use of asbestos has escalated rapidly in the Asia-Pacific region. India, Indonesia, Thailand and Vietnam are some of the major consumers of asbestos, as asbestos industries in Russia and China seek new markets, following bans in Australia and Europe.
113. Congress commends the work of Australian unions and Union Aid Abroad-APHEDA to support workers, unions and communities in the Asia-Pacific region to ban asbestos and programs to educate and protect workers and their families from exposure. Congress supports efforts by Union Aid Abroad-APHEDA to develop a regional asbestos prevention program, building on the important progress it has achieved in Vietnam, Laos, Indonesia and the Philippines. In concert with APHEDA and national unions in our region, the ACTU and affiliated unions will work to institute national bans in each country where possible, and to support control regimes as a first step towards a ban.
114. Australian unions condemn the international asbestos industry’s efforts to block the listing of chrysotile asbestos as a substance on the Prior Informed Consent list of the Rotterdam Convention. Australian unions believe that the Rotterdam Convention is deeply flawed because of its requirement for unanimity to have a substance listed. In addition, the process has now become corrupted due to the failure of the Rotterdam Secretariat to admit unions and NGOs as observers in the Contact groups, unique of all the UN Environmental Program Conventions.
115. To this end, the Australian union movement will support the creation of a stand-alone treaty, modelled on the Minamata treaty, to regulate and where possible ban asbestos. In the absence of a listing under the Rotterdam Convention asbestos is not required to be notified in consignments at all. This must end.
116. Australian unions commit to increasing the capacity of and support for our international partners, unions and civil society groups such as asbestos support groups, in their campaigns to ban the use of asbestos in their countries. Australian unions call on the Australian government to support the creation of a stand-alone treaty regulating and banning asbestos and to use all the mechanisms available to see a global ban on chrysotile asbestos.

117. In addition to the above, and as part of a coordinated international campaign, the ACTU and Australian unions will work with the international workers' capital movement to encourage divestment in manufacturers of asbestos products and to ensure that construction companies are discouraged from using asbestos in countries where its use is still legal.

## **Biological Hazards**

118. Congress recognises that there are a growing number of workers potentially exposed to animal and human vector biological hazards. The COVID-19 pandemic has highlighted the need for risk management of biological hazards. Congress calls on all governments to amend the WHS laws to include a chapter on risk management of biological hazards.

## **Climate Change**

119. Congress notes that unless governments take serious action climate change will create more hazardous working conditions for many workers. As the climate warms, more workers will be exposed to the deleterious effects of working in the heat, such as with increased injuries caused by increased physical demands or hazardous air quality such as what occurred across eastern Australia during the prolonged 2019-20 bushfire season.

120. Congress notes that there are currently no regulations requiring employers to take action to prevent exposures to unhealthy hot conditions or the hazardous air we breathe. Current air quality guidelines provide inadequate protection for both workers and the community. A Toxics Use Reduction framework would contribute to improved air quality.

121. Congress will advocate for safe and healthy air quality standards applicable to workplaces and the outside environment, and for enforcement of those standards by health and safety regulators and public health authorities.

## **Chemicals and Cancer**

122. Australia's regulatory approach to chemicals is uncoordinated and differs across governments and sectors of the workforce. The current regulatory system lags behind many international developments and reform is consistently stymied by vested industry interests. Under the neoliberal demand for 'deregulation', worker and community health is jeopardised.

123. In order to protect workers and the community from the harmful effects of chemicals, Australian unions will campaign and lobby for the reduction in the use of toxic substances at work and associated risks by:

- a) Advocating that all chemicals, both those currently in use and 'new' chemicals introduced into Australia, undergo rigorous assessments;
- b) Advocating that the relevant chemical regulators (in particular Australian Industrial Chemicals Introduction Scheme (AICIS) and the Australian Pesticides and Veterinary Medicine Authority (APVMA)) are adequately resourced, independent, and have genuine consultative structures which guarantee union participation and involvement;
- c) Advocating for the adoption of a Toxic Use Reduction approach;
- d) Progressive phase out of International Agency for Research on Cancer (IARC) Group 1, followed by Group 2A carcinogens linked to occupational cancer;
- e) Modification of the European Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) to Australian conditions; and

- f) Promoting communication in the supply chain about the safe use of chemicals through Safety Data Sheets (SDS) provision and chemical safety alerts.

124. Australian unions will lobby and campaign for the establishment of a single regulatory chemicals body to develop and implement a cohesive policy on the assessment, registration and management of chemicals.

125. Australian unions will also campaign for the development of an effective recognition of occupational cancer by workers' compensation systems and the adoption of ILO Convention 121.

## **Nanomaterials**

126. 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, which has resulted in these being classified as 'hazardous'. Concerns regarding the health risks of nanomaterials are greatest for workers, who are more likely to be exposed more routinely, and at higher doses than the general public.

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

128. Congress calls for the introduction of specific regulation of nano-forms of existing substances by Health and Safety and other regulators.

129. Congress calls on government to develop effective legislation incorporating the precautionary principle for nanomaterials. Specifically, Congress calls for:

- a) The classification of nanoscale chemicals as new chemicals under AICIS and other regulators;
- b) The development of new standards for the handling of nanotechnology;
- c) Mandating the labelling of all commercial products containing nanomaterials;
- d) The establishment of a tripartite body to oversee implementation of this regulatory framework;
- e) Development and improvement of hazard identification, assessment and control mechanisms for nanomaterials;
- f) Enforcement of the requirement to disclose all chemicals and the labelling of all commercial products, new exposure standards, including via a well-resourced inspectorate; and
- g) Monitoring of the health impacts on Australian workers involved in nanotechnology and investment in related medical research.

130. The ACTU, TLCs and unions will lobby governments for effective protections for people exposed to nanomaterials.

## **Noise and Hearing Loss**

131. Occupational noise-induced hearing loss (ONIHL) is a significant health and safety and economic problem in Australia. The economic burden of ONIHL is mainly borne by workers and their families and the wider community with workers' compensation being fairly limited with a high threshold for eligibility.

132. Exposure to occupational noise is associated with many adverse effects besides loss of hearing. It has also been linked to fatigue, stress and hypertension. Proper workplace and equipment design and adequate management practices can control occupational noise levels and workers' exposure, thereby reducing the risk of hearing loss and other adverse effects. Despite this, employers' usual preferred method of control is personal hearing protection which should be the last resort.
133. Excessive noise should always be reduced at its source where practical. 'Buy Quiet' policies should be introduced in all noisy workplaces.
134. Australian unions will campaign to have a first action level for noise to be at an LAeq or the sound level in decibels of 80dB(A) at which detailed assessment must take place as well as the provision of information, training and health monitoring to workers.
135. The whole person binaural impairment compensation threshold for hearing loss should be set at 1% in all jurisdictions in accordance with best practice research and guidelines.

## **Occupational Lung Disease**

136. The increase in workers being diagnosed with well-known and well recognised lung diseases such as Coal Miners Pneumoconiosis, silicosis and other chronic lung diseases highlight the failures of corporate responsibility, current regulation and the enforcement of general health and safety duties.
137. Currently there are few specific regulatory measures that PCBUs are required to implement to prevent exposures to harmful dusts, fumes and vapours. Consequently, Australia has the tragedy of young workers facing unemployment due to disability and shortened life spans. This is against the backdrop of large, very profitable international companies knowingly supplying hazardous products such as high silica content engineered stone to many small businesses.
138. The guiding principle for the prevention of work-related illness and in particular occupational lung disease is the application of the hierarchy of control. This should be combined with a comprehensive systematic approach that focusses on prevention but also includes work on improving treatment options and the provision of safer alternative work for those affected by dust disease.
139. Congress supports the banning of importation of high silica content engineered stone, coupled with the development of safer alternative products.
140. Congress supports health-based exposure standards for all hazardous dust and substances. Congress supports the Workplace Exposure Standard reduction to 0.02mgm/m<sup>3</sup> for respirable crystalline silica immediately.
141. Congress supports the establishment of a national notifiable dust disease system for all occupational lung disease.
142. Congress supports regulations under all health and safety laws to control for all exposures to respirable hazardous dusts and respiratory allergens.

## **Bullying**

143. Congress acknowledges that workplace bullying is a work health and safety issue which must be identified, assessed and controlled to the same degree as other hazards.
144. Congress supports the anti-bullying laws in the Fair Work Act 2009 to stop bullying as early as possible and supplement other WHS/Workplace Bullying codes and regulation.
145. Congress acknowledges the initiatives of the Fair Work Commission's (FWC) to maintain and resource this separate and discrete function of the tribunal.

146. Congress advocates that all workers, not just those employed by constitutional corporations, should have access to the jurisdiction, and that once a complaint has been made, it should continue to be heard under the FWC jurisdiction even if the worker's employment is terminated.
147. In addition, Congress supports varying the legislation to ensure applicants include unions seeking to stop systemic bullying rather than the current focus on individual complainants having to make public applications for anti-bullying orders. This would allow unions to make complaints on behalf of their members who have been bullied at work but are too afraid to speak up.
148. Congress also supports legislative amendments to empower the industrial tribunal to award a more comprehensive suite of remedies than is presently available. This includes a regime of pecuniary penalties and compensation or damages orders.
149. Congress rejects the use of the "reasonable management action taken in a reasonable manner" defence as a means for employers to cover workplace bullying.

## **Harassment**

150. Harassment at work, in all its forms, has consequences for workers' health and safety – both physical and psychological.
151. The experience of racial and sexual harassment by Aboriginal and Torres Strait Islander workers has been highlighted by the ACTU and other research and must, like all forms of harassment, be treated as a workplace health and safety risk.
152. Congress notes that implementation of all 55 recommendations of the Respect@Work report and the 34 recommendations of the Review of Work Health and Safety laws would deliver real change and must be adopted in their entirety.

## **Workplace Violence**

153. Violence in the workplace is a WHS risk management issue as well as potentially a conventional criminal activity. Congress calls on amendments to appropriate legislation to include a WHS psychological risk management chapter that includes provisions to assess and control violence.
154. Congress notes the increase in violence and harassment of front-line workers during COVID and the introduction of laws in some jurisdictions which created a specific offence for spitting or coughing on public officials, and workers in health, retail, transport, airports and the ADF. Congress supports the introduction of laws to protect workers from third party violence and harassment including a new criminal offence when a third party (customer/client) assaults, abuses or threatens a worker, including sexual assault or threats.
155. A specialist inspectorate should be established and tasked with reducing violence through higher order controls such as Crime Prevention Through Environmental Design (CPTED) research.
156. Congress opposes the increasing acceptance by employers of violence in the workplace, particularly where workers work alone and/or where exposure to antisocial and violent behaviour was once the responsibility of police or trained security.
157. Australian unions support a Regulation and Codes of Practice to cover all workers, with particular reference to those workers at increased risk of workplace violence including those vulnerable to random attacks at work.
158. Congress calls for improved laws to protect workers from third party violence and harassment such as improved banning provisions and the introduction of a criminal offence for assaulting a front-line worker.

## Gendered Violence

159. Gendered violence is any behaviour, action, system or structure that causes physical, sexual, psychological or economic harm to a worker because of their sex, gender, sexual orientation or because they do not adhere to dominant gender stereotypes or socially prescribed gender roles. Gendered violence includes:
- a) Violence experienced by women because they are women;
  - b) Violence experienced by a person because they identify as LGBTIQ;
  - c) Violence experienced by a person because they don't conform to socially prescribed gender roles or dominant definitions of masculinity or femininity;
  - d) Witnessing gendered violence directed at someone else, such as a co-worker.
160. Examples of gendered violence include (but are not limited to) behaviours and actions such as:
- a) Stalking;
  - b) Intimidation;
  - c) Threats;
  - d) Verbal abuse;
  - e) Ostracism;
  - f) Rude gestures;
  - g) Offensive language and imagery;
  - h) Put downs;
  - i) Sexual innuendo/insinuations;
  - j) Sexual suggestions or unwanted sexual advances;
  - k) Sexual assault and rape;
  - l) Systems of work that exclude some people from participating in work;
  - m) Work practices that cause some workers to not be able to participate fully in a workplace;
  - n) Not providing private toilets, showers and change areas.
161. Gender inequalities, sexism, homophobia, biphobia and transphobia at work drive gendered violence at work. Gendered violence can be perpetrated by those who are strangers/external to the workplace, and those that are internal to the workplace (including clients, inmates, patients, students and customers), work peers and managers.
162. Congress calls on unions and employers to take positive steps to:
- a) Eliminate gender inequalities and inequity that exist in the workplace;
  - b) Overcome gender segregation where it exists;
  - c) Eradicate cultures of sexism;
  - d) Eradicate homophobia, biphobia and transphobia;

- e) Promote the benefits of gender equality and workplaces that are inclusive of workers from a range of backgrounds, experiences and identities; and
- f) Develop and encourage attendance at union run courses for organisers, delegates and HSRs.

## **Racism**

163. Congress recognises that racism, like bullying and gendered violence, negatively affects the health and safety of workers. Research confirms that adults who frequently experience racism are almost five times more likely than those who do not experience racism to have poor mental health and 2.5 times more likely to have poor physical health. Racism damages health both directly and indirectly. In fact, the strength of the association between physical ill-health of experiences of racism is similar to the strength of association between smoking and physical ill-health. The greater the frequency of racist experiences, the worse the health outcomes.
164. Congress calls on employers and unions to take steps to:
- a) Eliminate racism and the cultures of racism that exists in the workplace;
  - b) Develop education and training programs to address racism including mechanisms to encourage reporting of incidents of racism;
  - c) Encourage the active participation in workplace health and safety structures of Aboriginal and Torres Strait islanders and workers from Culturally and Linguistically Diverse backgrounds; and
  - d) Develop and encourage attendance at union run courses for organisers, delegates and HSRs.

## **Women's Health and Safety**

165. Congress acknowledges that the exposure to work health and safety risks, hazards and issues and the impacts hazards may have on the health outcomes for women may be different to that of male workers.
166. Congress acknowledges that women are disproportionately impacted by some work health and safety risks such as workplace violence and harassment, gendered violence including sexual harassment.
167. Congress acknowledges that research relating to work health and safety issues has traditionally been based on male populations and therefore does not provide sufficient data on the gendered impact of risks and hazards.
168. Congress laments that in 2021 some women workers and trans and gender diverse workers are still denied fundamental facilities such as access to safe, secure and dedicated facilities such as toilets and changing rooms.
169. Additionally, many women workers in male dominated industries are not provided with fitting, appropriate and suitable personal protective equipment, tools and clothing.
170. Congress will undertake gender analysis of work health and safety issues to determine any differences between workers, and the particular needs of women workers to ensure an appropriate policy and campaign response.

## **Sexual and Reproductive Health**

171. Congress notes that different life stages are associated with specific sexual and reproductive health issues, including menstruation, chronic health problems (such as endometriosis and polycystic ovary syndrome), fertility, pregnancy, breastfeeding, return to work after childbirth and menopause.

172. Congress supports the development of a Code of Practice which details the specific health and safety hazards and risks which can arise in relation to reproductive health, pregnancy, breastfeeding mothers and mothers returning to work after giving birth. The Code of Practice should provide information on the reproductive hazards associated with manual and ergonomic tasks, nightwork, chemicals, biological agents, and the provision of appropriate facilities and equipment.
173. Congress supports the development of educational material and a union campaign in relation to the specific work health and safety hazards and risks which may arise in relation to reproductive health, menopause, pregnancy, breastfeeding mothers and mothers returning to work after giving birth.

## Injured workers

### Health Rights At Work

174. Congress opposes the misuse of 'duty of care' by employers 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.
175. Congress expresses grave concern for the widespread and systemic incidence of ill and injured workers being subjected to a range of coercive, intrusive, inappropriate and discriminatory practices by employers, such as:
- a) Employers, insurers and employer representatives attending medical consultations/appointments with ill and injured workers;
  - b) Employers forcing ill and injured workers to attend company doctors rather than allowing workers to choose their own doctor;
  - c) Workers who have previously sustained an injury being subjected to constant medical assessments and functional capacity assessments even though their treating doctor has cleared them to return to work;
  - d) Medical information being used by third parties and without the consent of workers;
  - e) The growth and use of corporate doctors; paid for by the employer and providing care more aligned to the employer's rather than the injured person's benefit;
  - f) Failure by employers to properly implement and comply with workers' return to work plans and to provide suitable duties;
  - g) The use of the 'lawful and reasonable' direction to force workers to reveal medical information and attend unnecessary 'independent' medical assessments;
  - h) Medical certificates and suitable duties/return to work plans not being adhered to and workers being forced to return to work prematurely;
  - i) Injured workers being informed by their employer that as a result of a past or present injury, they pose a 'risk' to the business or organisation and consequently face the termination of their employment;
  - j) Employers' inappropriate use of the 'inherent requirements of the job' exemption to justify terminating workers' employment;
  - k) Employers and third parties engaging in private discussions with workers' treating doctors without the worker's knowledge or consent;
  - l) Employers and third parties requesting workers' full medical history which goes well beyond the information needed to effectively deal with a workplace injury or disability;

- m) Workers being required to attend 6-monthly medical assessments with company doctors when they are not ill or injured;
  - n) Reasonable accommodations and adjustments not being made to allow injured workers to return to work;
  - o) Employers insisting on 'fit for work' or 'full clearance' certificates from workers after a period of personal leave or annual leave; and
  - p) Large employers and Government Departments insisting that 'pre-injury duties' must be at the previous worksite when equivalent positions exist across multiple sites.
176. Australian unions will continue to pursue legislative protections which ensure there are decent, fair and appropriate work health rights for all workers.
177. Australian unions will seek to have research commissioned which explores the nature, scope and scale of work health rights issues occurring in Australian workplaces and identifies the gaps in the current legal framework.

## **Workers' Compensation**

178. 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. 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.
179. Congress notes that the last time the predecessor of Safe Work Australia, NOHSC, undertook research into the full death toll arising from work was 2003. The 2003 estimate of total deaths from traumatic injury and disease was between 3000-8000 deaths per year. Congress calls for Safe Work Australia to undertake such research at regular intervals as part of the National WHS Strategy.
180. Congress calls for all jurisdictions to explicitly include maintenance of all rights, benefits and medical payments for temporary visa workers, regardless of whether they reside in Australia or overseas.
181. 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.
182. 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 their health and employment as close as possible to that enjoyed prior to their injury, including full access to superannuation and leave entitlements.
183. 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. This includes removing barriers to claiming for secondary psychological claims, following a physical injury.
184. Congress reaffirms its opposition to the current neoliberal use of competition between schemes to reduce benefits available to injured/ill workers. Workers' compensation should be available on a no-fault basis where an injury 'arises out of or in the course of employment', even where it is the aggravation of an existing injury or disease.
185. Australian unions call on all workers' compensation jurisdictions to update their Deemed Diseases lists in accordance with Safe Work Australia (SWA) Deemed Diseases in Australia Report 2015 and any revisions that expand the list. Lists of Deemed Diseases based on the International Labour Organization's List of Occupational Diseases under Convention 42 created in 1934 are out of date and woefully inadequate.

186. Australian unions will:
- a) In consultation with Trades and Labour Councils (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;
  - b) Work with TLCs and affiliates to coordinate lobbying and activity at the state and other jurisdictional levels to maintain and raise standards in each jurisdiction; and
  - c) Coordinate a campaign at the national level in partnership with TLCs and affiliates in each jurisdiction to promote and secure fairer workers' compensation laws and policy.
187. Australian unions commit to supporting injured workers and to ensuring that education about rehabilitation, return to work arrangements and compensation issues are included in training for delegates, HSRs and union members.
188. Congress calls for improvements to workers' compensation schemes to be made in the form of:
- a) Comprehensive coverage of the employment relationship, including on journeys to and from work, and during recess breaks;
  - 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.
189. 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 and insurers onto injured workers and government services, including the public health system and social security.
190. Premiums must recover the costs of the system as well as encourage safe work practices.
191. All workers' compensation regulators must be appropriately resourced to carry out their functions properly, including through an increased emphasis on prevention and compliance.
192. The system of scheme agents and self-insurers should be abolished and all workers' compensation functions should be internalised within the regulatory authorities.
193. Congress notes the prevalence of employment in the so-called 'gig' economy. The basis of this economy is the transfer of risk from employers to workers; the risk includes threats to workers' health and safety and capacity to enjoy a safe and healthy work environment. To ensure that employers do not escape their responsibilities to all workers in their employ, regardless of the form of such employment, Congress calls upon all jurisdictions to modify WHS/OHS and workers' compensation and personal injury laws to ensure such workers are covered by these laws as if they were regular workers.
194. Congress notes that most workers' compensation jurisdictions terminate payments for international workers once they return or are returned to their home country. This creates an incentive to not rehabilitate the

worker and also creates a cheaper category of workforce if they are injured. This reduced cost of injury has the potential to reduce the incentive to maintain a safe workplace with this vulnerable group of workers.

195. Congress calls on all jurisdictions to provide adequate workers' compensation to temporary visa workers to at least the same level and duration as the local resident workers when injured, and to likewise provide adequate support to the worker's dependents in cases of a workplace fatality.
196. Trade unions must have the power to enforce compliance with workers' compensation law together with rights of entry, inspection and other investigative powers.
197. The relevant tribunals or commissions should provide a quick, easy, effective and legally binding mechanism to resolve disputes about all aspects of the workers' compensation system.
198. Return to work should be elevated as a central tenet of workers' compensation by:
  - a) Placing an absolute obligation on employers to provide suitable duties;
  - b) Preventing termination of employment unless the worker agrees that their injury management plan states that the return to work goal is a different job and a different employer; and
  - c) Providing incentives for the employment of injured workers.
199. Weekly payments should be set at a level equivalent to an injured worker's pre-injury average weekly earnings irrespective of their fitness for work and should not be subject to any caps or step-downs.
200. Costs associated with medical and all related treatment, as well as supplements to loss of income for childcare or other expenses should be covered for workers' compensation purposes with no arbitrary caps or limits.
201. Work capacity reviews and decisions should be removed from the workers' compensation legislation. Consideration of a worker's functionality should be properly addressed as part of their rehabilitation plan.
202. 'Reasonable management action', and like provisions, must be removed from all jurisdictions' workers' compensation provisions.

## **Self-Insurance**

203. Congress opposes self-insurance for employers as it creates a conflict between profit generation and administration of workers' compensation claims, and 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 acknowledges that existing self-insurance arrangements must only be continued if the employer has 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 and/or repeated non-compliance.
204. 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 workers' privacy.
205. 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 workers genuinely favour this option. Self-insurers must be able to demonstrate good consultative practices with workers and their elected representatives.

## Rehabilitation

206. 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.
207. 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.
208. Congress recognises that in many cases the current rehabilitation practices applied to injured workers does not always facilitate their return to suitable and meaningful employment. As such, effective rehabilitation services and programs must also deliver genuine opportunities to meet this objective.
209. 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.
210. 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, including the accrual of leave and employer superannuation contributions;
  - 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 environment and retraining of 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 workers, supervisors and management in the rehabilitation policies and procedures adopted.

211. The employer must ensure that participation in a rehabilitation program itself will not prejudice an injured person. Participation in a rehabilitation program must not deprive injured workers from accruing and accessing annual leave, long service leave, parental leave and any other forms of leave that an injured worker is entitled to use. Furthermore, an injured worker must not be dismissed or have their employment damaged because of a work-related injury or any resulting temporary impairment.
212. In the event of dismissal of the injured worker or damage to their employment, the applicable tribunal will be empowered to review and remedy the situation.
213. Regulatory authorities must enforce workers' rights to rehabilitation and to return to work.
214. All workers must be provided with a comprehensive statement detailing their entitlements regarding rehabilitation and return to work.

### **Seacare and Maritime health and safety**

215. Congress supports the retention of Seacare as a national scheme of workers' compensation and health and safety for Australian seafarers as an independent statutory authority operating under Commonwealth legislation. It should be retained as an independent statutory authority with tri-partite governance. Congress calls on the Australian Government to reduce the exposure of the scheme to private insurers and to repeal the Seafarers Safety Rehabilitation and Compensation Directions 2006 that allows employers to opt out of the scheme if they can find cheaper insurance elsewhere.
216. Congress notes that, for workers at sea who have been injured and are returning to work, it is often appropriate and desirable to place that worker with another employer to undertake rehabilitation. Australian unions support the development of group training approaches to ensure workers can be placed in meaningful jobs while rehabilitating.
217. Congress urges the Federal Government to allocate budget funding to AMSA to enable it to properly perform its OHS Inspectorate functions under the Occupational Health and Safety (Maritime Industry) Act 1993 (OHS (MI) Act).
218. Congress calls on the Federal Government to harmonise the OHS (MI) Act and Regulations made under that Act with the model WHS Act 2011 and WHS Regulations as appropriate.