

Secure Jobs. Better Future.

Occupational Health Safety Rehabilitation and Compensation

The cost of work related injury in Australia is largely borne by workers. Employers pay only 5% of the total cost of work related injury.¹

Of the approximate 12 million people that worked at some time in the 12 months to July 2010. Of these, 640,700 (or 5.3 per cent) workers experienced a workplace injury.

The most common type of injuries were sprain/strain; chronic joint/internal organ damage; cut/open wound; lifting, pushing or pulling object; hitting or being hit or cut by an object; and falls on same level (including slip or fall).²

The Health and Safety Authorities statistics show that 337 people died from a work-related traumatic injury in Australia in 2009–2010: 216 were killed at work; 79 while travelling to or from work and 42 were killed as a bystander to someone else's work activity.³

Safe Work Australia concedes however 'that there are between 2,300 and 7,000 deaths annually due to workplace exposure in Australia.' Safe Work Australia estimates that each year due to workplace exposure there are 61,000 cases of common diseases such as neoplasm (cancers and tumours), asthma and other respiratory diseases and heart disease.⁴

118,300 workers (or 18.5 per cent) that experienced a workplace injury had not received any training in OHS risks.⁵

The cost of all this workplace carnage is estimated to be \$60.6 billion each year, which is 4.8 per cent of Australia's GDP, of which workers bear 74 per cent of the costs – including loss of current and future income and non-compensated medical expenses.⁶

The cost of OHS laws is not how much employers spend, the cost is how much we lose.

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

² Australian Bureau of Statistics Cat No. 6324.0 - Work-Related Injuries, Australia, 2009-10

³ Safe Work Australia (March 2012), Work-Related Traumatic Injury Fatalities, Australia 2009-10

⁴ The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community; 2008-09, Safe Work Australia, Canberra, January 2012

⁵ Ibid Australian Bureau of Statistics

⁶ Ibid Safe work Australia 2012

We cannot rely on employers or the Government to make your workplace safe. A London School of Economics study showed that where there is a union presence, the workplace injury rate is 24 per cent lower than where there is no union presence.⁷

In 2007 another study found significantly lower injury rates in workplaces with trade union representation, by contrast the effect of management alone deciding on health and safety was not significant.⁸

Work Health Safety and National Harmonisation

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.

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.

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.⁹

ACTU Agenda 2012-2015

This policy provides that 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;
- 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.

⁷ Litwin, A., *Trade unions and industrial injury in Great Britain*, LSE discussion paper DP0468, August 2000

⁸ Nichols, Walters and Tasiran,, *Trade Unions mediation and industrial safety*, Journal of Industrial Relations 2007.

⁹ The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community: 2008-09, Safe Work Australia, Canberra, January 2012

In recognition of the important role that Health and Safety Representatives have in workplace health and safety, this Congress policy calls for appropriate support. One important mechanism for supporting Health and Safety Representatives is in the provision of 'HSR Support Officers', including those funded by Workplace Health and Safety regulators.

Workplace Health and Safety for workers' reproductive health and pregnancy, breastfeeding mothers and mothers returning to the workplace

Australia commenced harmonisation of health and safety legislation in 2008, yet to date the harmonised health and safety legislation has ignored hazards and crucial health and safety issues associated with reproductive health, pregnancy, breastfeeding mothers and mothers returning to the workplace after giving birth.

Although Persons Conducting a Business or Undertaking (PCBUs) owe a duty of care to all workers, unions continue to see members affected by employers' failure to consider workplace hazards and systems of work in relation to these matters.

The ACTU and affiliates have considered the complexity of this issue and how best to cover:

- Identification of hazards and control of risks;
- Provisions available in the Fair Work Act and industrial instruments around safe work, leave, reasonable hours and facilities;
- Issues of privacy;
- The potential to be in conflict with, and potentially in breach of, anti-discrimination laws;
- Specific hazards.

The ACTU and Unions are also concerned that any duties owed under Work Health and Safety law in relation to family and domestic violence be clearly understood.

The proposed Congress policy recommends amending the Work Health and Safety Act regulations around hazard identification, supported by the introduction of a Code of Practice which addresses specific health and safety hazards and risks in relation to reproductive health, pregnancy, breastfeeding mothers and mothers returning to the workplace after giving birth. It also recommends amendments to the existing suite of related Codes of Practice. The proposed policy is in line with ILO Convention 183¹.

¹ C183 Maternity Protection Convention, 2000

This approach, combined with union campaigning in this area, should ensure that a Person Conducting a Business or Undertaking focuses on work and workplace conditions and avoids invasion of privacy or discriminatory behaviour towards affected workers.

The Occupational, Health, Safety, Rehabilitation and Compensation policy provides that the ACTU will consult and work with TLCs and affiliates to campaign and lobby Governments to:

- a) Amend the Work Health and Safety Model Regulations to ensure that employers are required to identify, undertake risk assessments and control any risks to the reproductive health of workers, pregnant workers, workers who have recently given birth or who are breast feeding.²
- b) Insert specific clauses in hazard specific regulations: for example Hazardous Manual Tasks, Hazardous Chemicals, Plant, general working environment and facilities and Mines.
- c) Development a Code of Practice which details the specific workplace health and safety hazards and risks around reproductive health, pregnancy, breastfeeding mothers and mothers returning to the workplace.³ The Code of Practice would also highlight and raise awareness of the existing industrial and anti-discrimination legislation.⁴

A union campaign would link work health and safety, anti-discrimination, family and domestic violence and industrial rights issues and the role of unions in these matters.

² Specifically s18 Duty to identify hazards; s19 Management of risk; s20 Hierarchy of control measures;

³ A Code of Practice would include issues such as the reproductive hazards of manual tasks, night work, biological agents and hazardous substances and also cover the provision of appropriate facilities in the workplace, as well as work equipment, personal protective equipment and health surveillance. The Code of Practice would also highlight existing industrial and anti-discrimination legislation in this area.

⁴ The Fair Work Act provides for transfer to a safe job or paid no safe job leave for a pregnant worker who is entitled to unpaid parental leave and who has notified her employer of her intention to access that leave. The worker needs to give evidence that she is fit for work but not in her present position because of illness/risks arising out of the pregnancy or hazards connected with that position. (Fair Work Act Sections 81 & 82, 74).