



Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024

Submission by the Australian Council of Trade Unions to the
Senate Economics Legislation Committee Inquiry

ACTU Submission, 5 February 2024
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About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. It has played the leading role in advocating for, and winning the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews and is the worker representative member of Australia's national tripartite work health and safety policy agency Safe Work Australia.

The ACTU is Australia's sole peak body of trade unions, consisting of affiliated unions and state and regional trades and labour councils. There are currently 43 ACTU affiliates who together have over 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector. All unions that represent workers in the offshore oil and gas sector are affiliates of the ACTU.

In making this submission we also take the opportunity to endorse the submission of our affiliates, including the Maritime Union of Australia.

We thank the committee for the opportunity to share our views on this important matter and welcome further engagement on this issue.

Recommendations

Recommendation 1: The provisions relating to HSRs attending initial training and refresher training each year, with costs covered by their employer should be harmonised with the s72 of the Model WHS Act with certain industry appropriate variations remaining only where they provide better rights or protections for workers.

Recommendation 2: The right to request a review of the safety related management documents, including but not limited to the safety case, should be harmonized with the provisions in the Model WHS Regulations (s559) and the incorporate the consultation aspects including in the Model WHS Act s47-48.

Recommendation 3: The provisions relating to the election procedure for HSRs and deputy HSRs, the publication of HSRs and the establishing of designated work groups should be harmonised with the Model WHS Act (s50) with appropriate modifications that take into consideration the offshore environment.

Recommendation 4: The Bill should be strengthened to include provisions for making regulations relating to psychosocial hazards.

Recommendation 5: The discriminatory conduct and prohibited reasons of the Bill should be strengthened and aligned to the Model WHS Act to include address the following (and other) concerns:

- Conduct that occurs outside of the employment relationship should be included as discriminatory conduct,
- Remove the qualifications around cease work at 88B c), and
- To protect workers who raise issues with their union in relation to health and safety matters at 88B k).

Recommendation 6: For Australia to apply the *Navigation Act 2012* (and the International Maritime Organisation (IMO) safety standards it implements domestically) to Australian vessels that are attached to the seafloor as offshore facilities, in line with other global maritime administrations. This could be achieved by amending Schedule 2 Part 1 of the Bill

to delete s.640 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act).

Recommendation 7: To amend Schedule 2 Part 1 of the Bill so that the proposed new s.342A of the Navigation Act requires the application of:

- The IMO Standards for the Training and Certification of Watchkeepers Convention, and the IMO Resolution A.1079(28) Recommendations for the Training and Certification of Personnel on Mobile Offshore Units (MOUs) to offshore units.
- The ILO Maritime Labour Convention and associated MO11: Living and working conditions to offshore units.
- Other IMO conventions as specified by AMSA, for example the Safety of Life at Sea Convention (SOLAS).

Recommendation 8: To amend Schedule 2 Part 1 of the Bill to delete the proposed s. 342 (7) of the *Navigation Act*, which says that maritime safety measures can only be implemented on vessels that are attached to the seafloor as offshore facilities with the agreement of the Chief Executive Officer of the National Offshore Petroleum Safety and Management Authority. This measure invites efforts by companies to seek to block the implementation of aspects of the maritime safety legislation they would prefer not to comply with.

Recommendation 9: Ensure that any new Rules developed under the proposed new s.342A are underpinned with the full suite of Navigation Act Regulations, compliance and enforcement mechanisms. AMSA must have access to the full suite of measures to enforce rules created under s342A, including funding and vessel access for Inspectors.

Recommendation 10: Require a consultation process involving unions representing the affected workforce for any new Rules developed under the proposed new s.342A of the Navigation Act.

Introduction

The ACTU welcomes the opportunity to make this submission on the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill (Bill)*. These changes to the *Offshore Petroleum and Greenhouse Gas Storage Legislation Act (OPGGS)* are long overdue and will improve the protections and rights of workers in the offshore oil and gas sector.

Every worker has the right to a safe and healthy working environment. The ACTU has long supported the harmonisation of best practice work health and safety arrangements across all Australian jurisdictions. This harmonisation principle ensures that all workers, irrespective of location, industry or workplace size, is afforded the same high standard of protection from hazards and rights at work. This principle also states that sector specific differences should only apply where they are objectively justified reason and are designed to provide a higher level of protection.

This principle has also been supported by commonwealth, state and territory governments for more than 15 years. In 2008 the Workplace Relation Ministerial Council (WRMC) agreed to harmonise OHS laws across the country, without distinction.¹ In the years that followed Safe Work Australia commenced work to develop a Model Work Health and Safety Act (**Model WHS laws**)² and a Model Work Health and Safety Regulations (**Model WHS Regulations**)³ which are supported by Model Codes of Practice and guidance.

From 2011 all jurisdictions, with the exception of Victoria (who's laws are largely similar and were used as the basis for the model), commenced implementing their version of the Model WHS Laws and Model WHS Regulations. These laws are routinely reviewed and monitored by Safe Work Australia with the Model WHS laws, regulations, codes of practice regularly updated to ensure emerging hazards and risks are identified and appropriately controlled.

¹ [Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, 2008](#)

² [Model WHS Laws](#)

³ [Model WHS Regulations](#)

To date the offshore oil and gas sector remains one of the few occupational health and safety jurisdictions that has not been harmonised. Work in offshore oil and gas is amongst some of the highest risk work in the world. The remote nature of the work, combined with exposure to serious physical and psychosocial hazards, means that workers face the very real prospect of serious injury, illness and death at work. Despite these risks workers in this sector are afforded some of the least rights and protections of any in Australia.

The ACTU welcomes the improvements outlined in this Bill. However, whilst these changes will go some way to closing the gap in rights and protections for workers in this sector there is more to be done in these areas. We have outlined a range of concerns and made recommendations to a limited number of matters that both seek to improve the protections and rights for workers and HSRs as well as harmonise these provisions with our Model WHS Laws.

In making this submission we welcome the Minister for Resources announcement to commence “a new offshore safety review to identify further opportunities to harmonise the offshore petroleum safety regime with our national Work Health and Safety laws.”⁴ This review will provide a genuine opportunity to realise the goal of harmonisation and ensure that all workers, irrespective of location or industry ,have an equal right to a safe and healthy working environment.

⁴ [Media Release: Improving safety for the offshore resources sector workforce, 15 February 2024](#)

Strengthening the role of Health and Safety Representatives (HSRs)

The ACTU welcome the improvements to the OPGGS Act that relate to Health and Safety Representatives (HSRs) set out in the Bill. HSRs play an important role in our work health and safety framework representing workers on health and safety issues and engaging in consultation with duty holders (operators and employers) to improve health and safety policies and practices.

Despite the significant risks that workers in the offshore oil and gas sector are exposed to workers and HSRs in this industry have some of the fewest rights of any workers in Australia. We note the government's stated intention to harmonise these and other aspects in this Bill and in a future review and whilst it appears at face value these improvements go some way to closing that gap there remain significant areas of improvement.

Outlined below are areas to which this Bill fails to provide adequate support and protection to HSRs and is deficient when compared against the rights of all other workers and HSRs in Australia. In these, as with other areas, we urge the parliament to rectify these deficiencies and replicate the terms set out in the Model WHS Act with minor appropriate modification given the nature of the work.

HSRs have a requirement to attend initial training and refresher training each year, with costs covered by their employer.

Whilst the improvements around the right to attend and choose a trainer are improvements on the current regime there are a number of areas that remain concerning or are inconsistent with the harmonised provisions in the Model WHS Laws. In particular the framing of this provision is inconsistent with the approach taken in the Model WHS Laws.⁵ Unlike the Model WHS Laws provisions, which infer a right to be trained and an obligation on PCBU's (employer) to release and pay a worker for training, the provision in the OPGGS Bill

⁵ Section 30 OPGGS (Safety Measures) Bill as compared to S 72 of the Model WHS Act

set out an obligation on the HSR to be trained. This framing shifts the obligation back to the worker which is inappropriate and inconsistent with other jurisdictions.

In addition to this inconsistency the Model WHS Laws provisions, which state the PCBU (employer) must allow the HSR time off work as soon as practicable within 3 months, are compared against provisions in the OPGGs Bill which only direct the employer to release the HSR as soon as is practicable. Given the remote nature of the work and the roster cycles that operate in this sector unions are concerned that if the operator and/or employer can resist release due to practicability concerns HSRs will be denied access to training and refresher training. These matters should be addressed and the harmonised provisions with a 3 month timeframe included.

HSRs to have the right to choose their own trainer

HSR training is designed to ensure that HSRs have a strong understanding of their rights and the obligations of operators and employers. Ensuring they have choice in training provider is fundamental to ensuring quality in delivery and consistency with all onshore workers. Whilst these improvements are supported by unions it is again unclear why the provisions that apply to all other workers in Australia and have been set out in the Model WHS Laws are not replicated here.

In addition to these concerns the right to pay as if the HSR would otherwise be entitled to receive for performing duties during that period is also inconsistent and likely to leave HSRs disadvantaged for attending training.

That HSRs will be able to request that the operator of a facility review safety management-related documents, and that HSRs will be able to request that NOPSEMA consider information that demonstrates reasonable cause for the revision of the safety case for a facility.

The ACTU welcomes the improvements to strengthen the role of HSRs in requesting a review of the safety management related documents. The safety case and related safety management documents are a critical element of the safety system and unlike other major hazard facilities that operate onshore workers HSRs have had limited rights to request a review when they believe critical controls are inadequate.

Similar to the concerns raised in other parts of this Bill it is unclear why, if it was intended to harmonise these provisions with the Model WHS Laws, that the provisions were not just simply replicated from the harmonised legislation. Instead there are elements of these and other provisions that are weaker, or at best uncertain in their operation. We believe these provisions relating to safety management related document should be consistent with those set out in the Model WHS Regulations and specifically s559. Equally, given the importance of worker and HSR consultation the Model WHS Laws provisions relating to genuine consultation should also be implemented to complement this provision

The election of HSRs

Every worker and work group should have the right to elect a colleague to represent them as an HSR and workers should be able to determine how the election is to be conducted.

Enabling access to HSRs is also important in ensuring the health and safety of the workforce.

Workers and others who enter the workplace should be able to identify the HSR and communicate with them. There are a range of provisions relating to this that should also be strengthened and harmonised with the Model WHS Act provisions. These include:

- The provisions relating to recording and reporting HSRs this should also extend to the publication in the workplace as it does in the Model WHS Act.
- Permitting a HSR paid time to undertake their role and exercise any powers or functions including consulting with and representing others, investigating health and safety issues could also be clarified by implementing the Model WHS Laws provisions.
- There are also concerns that the powers of a HSR in the offshore regime may cease at the conclusion of their term. This is inconsistent with the Model WHS Act that allows a HSR to continue exercising powers after their term expires. This doesn't prevent an

election from occurring to replace or re-elect the HSR but merely ensures continuity of powers. This should be addressed by way of harmonising these provisions.

Recommendation 1: The provisions relating to HSRs attending initial training and refresher training each year, with costs covered by their employer should be harmonised with the s72 of the Model WHS Act with certain industry appropriate variations remaining only where they provide better rights or protections for workers.

Recommendation 2: The right to request a review of the safety related management documents, including but not limited to the safety case, should be harmonized with the provisions in the Model WHS Regulations (s559) and the incorporate the consultation aspects including in the Model WHS Act s47-48.

Recommendation 3: The provisions relating to the election procedure for HSRs and deputy HSRs, the publication of HSRs and the establishing of designated work groups should be harmonised with the Model WHS Act (s50) with appropriate modifications that take into consideration the offshore environment.

Clarifying the definition of 'health'

Every worker should have the right to a safe and healthy working environment. Health should be broadly defined to including physical and psychological health. Every worker in Australia, with the exception of those employed in offshore oil and gas have had this right clarified and the Model WHS Laws state that health includes both physical and psychological health.⁶

In addition to the clear definition of health to including psychological health the Model WHS Regulations also includes additional duties on PCBUs and employers to identify, assess and control psychosocial risks.

⁶ Model WHS Act s4 Definitions

Offshore workers are exposed to a range of well-known and serious psychosocial risks due to the remote nature of the work, long roster periods, hazardous physical environment and separation from the home environment. Unions report that mental health is a serious issue for offshore workers, and like many remote and isolated workers, have seen a rise in work-related mental health conditions. Despite these significant psychosocial hazards the occupational health and safety provisions of the OPGGS Act do not define health and do not include any additional obligations on operators to identify, assess and control psychosocial risks. This means that workers are afforded less protection when it comes to mental health and that systems of work, such as those contained in the Safety Case and other safety related documents, do not consider psychological safety.

The changes proposed in this Bill will clarify the obligations in relation to psychological health and should then trigger reviews of all Safety Cases and other safety-related documents. These provisions should be strengthened in line with the Model WHS Regulations and include a psychosocial hazard regulation which specifically prescribes the method of identifying, assessing and controlling psychosocial risks.

Recommendation 4: The Bill should be strengthened to include provisions for making regulations relating to psychosocial hazards.

Discriminatory conduct

Due to the high levels of insecure work throughout the offshore oil and gas sector unions report workers and HSRs are regularly fearful of making complaints or taking action in relation to health and safety matters for fear of reprisal. The discriminatory conduct provision in the current OPGGS Act are significantly weaker than the protections afforded to workers and HSRs in other Australian workplaces.

Whilst the **discriminatory conduct** provisions outlined in the Bill are a welcome improvement they still fall short of providing adequate protection and are deficient when compared with other jurisdictions. Specifically, the provisions in this Bill relate to ‘employers’

and 'employees' and conduct in that relationship whereas in all other jurisdictions this is broadened to include 'workers' who might not be employees of the employer/PCBU/operator who is engaging in the discriminatory conduct. Given the high use of contractors in this sector this matter must be addressed as it is often the case that workers suffer discrimination, not by their direct employer, but by the client of their employer such as the operator of a facility. It is recommended that this provision should be broadened to ensure that it captures all conduct that is potentially discriminatory that may occur outside of the employment relationship.

In addition to this the abovementioned concerns the **prohibited reasons** are needlessly narrow or complex when compared to other jurisdictions. For example, the qualifications surrounding cease work provisions at 88B c) may potentially deter workers from ceasing unsafe work and should be removed. Further to this the provisions at 88B k) extend the prohibited reasons for discrimination to the raising of an issue with a series of persons including: inspectors, HSRs, other workers.... This list of persons is incomplete when compared with the Model WHS Act which also extends this to WHS Entry Permit Holders (EPHs). EPHs under the Model WHS Act are employees of registered employee organisations who support workers in the exercising of their powers. A similar prohibited reason should extend to the raising of issues with employees of unions (which have been defined in this Bill).

Recommendation 5: The discriminatory conduct and prohibited reasons of the Bill should be strengthened and aligned to the Model WHS Act to include address the following (and other) concerns:

- Conduct that occurs outside of the employment relationship should be included as discriminatory conduct,
- Remove the qualifications around cease work at 88B c), and
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Interaction with Commonwealth Maritime Legislation

Finally, we acknowledge the efforts of the government in seeking to address the significant maritime safety issues for vessels that are attached to seafloor facilities as outlined in Schedule 2 of the Bill. For more than 20 years workers in this industry have been afforded some of the least protections of any in the world with the disapplication of the *Navigation Act 2012* and the International Maritime Organisation (IMO) standards that it applies. Equally concerning has been that vessels in these circumstances have been left to degrade costing the government millions and exposing workers to a lower standard of safety.

Whilst we welcome the effort to address this issue we note that the proposal continues to create confusion and is inconsistent with global practice. As outlined in the MUA's submission the decision to disapply the *Navigation Act 2012* by the Howard Government was found later to have no rational basis and contributed to significant health and safety issues, including but not limited to deaths of workers.⁷ Additionally, these changes undoubtedly contributed to issues that plagued the *Northern Endeavour* which is set to cost the Federal Government \$325m and poses a serious safety and environmental threat. The current arrangement creates a high degree of confusion and uncertainty for vessels in these circumstances as to which jurisdiction applies and when.

Whilst the Bill does allow the Australian Maritime Safety Authority (AMSA) the ability to re-apply some standards the MUA and other affiliates are concerned there is a lack of clarity on how these will be applied which will continue the confusion and uncertainty. This uncertainty is further highlighted by the inconsistency given that foreign flagged FPSOs are required to observe the IMO standards that would apply to Australian vessels if the *Navigation Act* were to apply.

The ACTU supports the submissions of the MUA and their recommendations which are set out below.

⁷ MUA member Trevor Moore was killed during the emergency disconnection of the FPSO *Karratha Spirit* during a cyclone in 2008

Recommendation 6: For Australia to apply the *Navigation Act 2012* (and the International Maritime Organisation (IMO) safety standards it implements domestically) to Australian vessels that are attached to the seafloor as offshore facilities, in line with other global maritime administrations. This could be achieved by amending Schedule 2 Part 1 of the Bill to delete s.640 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act).

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Recommendation 10: Require a consultation process involving unions representing the affected workforce for any new Rules developed under the proposed new s.342A of the Navigation Act.

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