



Best Practice Review

Submission by the Australian Council of Trade Unions to the
Best Practice Review of the model Work Health and Safety
laws

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About the Australian Council of Trade Unions

The Australian Council of Trade Unions (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 35 ACTU affiliates, which together have nearly 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sectors. As the collective voice of Australian workers, the ACTU plays a central role in shaping national policy and advocating for improved rights, conditions, and protections at work.

The ACTU is committed to advancing work health and safety for all Australian workers through a rights-based, participatory approach. The ACTU has two member positions for SafeWork Australia, representing the interests of workers and ensuring that the voices and experiences of working people are central to national WHS policy and regulatory development.

The ACTU's strategy is focused on supporting unions to actively organise workers around healthy and safe work. This includes winning and embedding new health and safety rights at work and building the capacity of unions to use both new and existing rights to organise. By empowering unions and their members to take collective action, the ACTU seeks to ensure that work health and safety is not just a matter of compliance, but a fundamental right that is actively realised in every workplace.

The ACTU acknowledges the Traditional Owners of Country throughout Australia and recognises their continuing connection to land, waters, and community. We pay our respects to Elders past and present. The ACTU's office in Melbourne is located on the lands of the Wurundjeri people of the Kulin Nation. We honour their custodianship and acknowledge that sovereignty was never ceded.

Introduction

Healthy and safe work is a fundamental human right and essential to decent work. Every worker has an equal right to a healthy and safe working environment.

Australian unions are supportive of a best practice, nationally consistent legislative scheme for work health and safety matters, which provides the highest level of protection from hazards and risks and ensures that all workers can exercise their rights and entitlements, regardless of their working arrangements, where they live and the location of their work.

Harmonisation must not come at the expense of existing protections or standards in any jurisdiction. Instead, harmonisation should serve as a vehicle to lift standards across the country, making 'best practice' the baseline for all workers.

The model WHS Act and Regulations (model laws) establish an important foundation built on participation and representation, prevention, equality, and accountability. These are the hallmarks of a rights-based approach. This approach recognises that safe and healthy work is not simply a compliance obligation but a fundamental entitlement of all workers.

While the model laws have been successful in promoting systematic risk management and embedding consultation and representation as a foundation, there remain important gaps in how these rights are realised in practice. In particular, the framework often places too much weight on managerial control and procedural compliance, rather than on empowering workers and their representatives to actively shape health and safety outcomes in the workplace. Notably, the model WHS Regulations fail to provide equal protection against psychosocial hazards as they do for physical hazards.

We believe that the current model laws place unnecessary limits on workers' and registered unions' power to act, obtain information and enforce compliance. The current framework provides the regulator with a prosecutorial monopoly, which severely restricts avenues for enforcement and accountability when regulators choose not to act or are constrained by lack of resources. This restriction is inconsistent with other areas of workplace relations where unions have the ability to undertake compliance and enforcement actions, including prosecutions, as well as receive any penalties awarded.

A truly rights-based approach to health and safety requires that those most affected by workplace hazards, workers themselves and their representatives, be active partners in identifying risks, shaping solutions, and holding duty holders to account. Health and Safety Representatives (HSRs) and registered unions are central to ensuring that workers' voices are heard and that health and safety laws are effectively implemented.

In our submission, we will make recommendations on how the rights of HSRs and unions can be strengthened in the model laws, to make the system more participatory, cooperative, transparent, and effective and better reflect and operationalise the objects of the model WHS Act.

The ACTU welcomes the Best Practice Review of the model Work Health and Safety laws and the opportunity to provide a formal submission. In preparing this submission, the ACTU has carefully considered the Discussion Paper and consulted with our affiliated unions.

The ACTU's position in the submission is informed by:

- The ACTU Affiliate Reference Group for the Best Practice Review (comprising representation from each Trade and Labour Council and unions)
- The ACTU Policy on Healthy and Safe Work, accessible [ACTU-Congress-2024-Healthy-and-Safe-Work.pdf](#)

Several of the ACTU's affiliated unions have made separate submissions to this review process.

The ACTU endorses and supports the content of those submissions, including:

- Australian Manufacturing Workers' Union (AMWU)
- Australian Nursing and Midwifery Federation (ANMF) Federal Office
- Australian Nursing and Midwifery Federation (Victorian Branch)
- Community and Public Sector Union – Public Sector Union Group (CPSU-PSU Group)
- Maritime Union of Australia (MUA)
- New South Wales Nurses and Midwives' Association (NSWNMA)
- Queensland Council of Unions (QCU)
- SA Unions
- Shop, Distributive and Allied Employees Association (SDA)
- UnionsWA

In particular, we refer to the SA Unions and the Queensland Council of Unions submission, which provides a detailed analysis of key variations in these jurisdictions WHS laws that, in the view of our affiliates, should be adopted as best practice and incorporated into the model laws.

Summary of recommendations

Recommendation 1: Safe Work Australia should undertake a comprehensive review of all relevant International Labour Organization (ILO) conventions and other international standards relating to workplace health and safety, through a consultative process involving Members. This review should systematically identify any gaps between Australia's model laws and our international obligations, and provide clear, actionable guidance on how the model laws should be amended to ensure full alignment and compliance with these standards.

Achieving the harmonisation objective

Recommendation 2: Safe Work Australia to:



- Conduct an annual stocktake of jurisdictional variations, with the assessment of ‘best practice’ guided by whether these variations strengthen the protections for workers and are consistent with the objects of the WHS Act. These findings, once endorsed by Members, should be referred to WHS Ministers to inform decisions on updating the model laws.
- Publish an annual scorecard highlighting where jurisdictions have not adopted the model laws, increasing transparency and accountability.
- Actively encourage jurisdictions to adopt best practice variations, using the stocktake and scorecard to drive continuous improvement and national consistency.

Recommendation 3: Harmonisation of health and safety laws in offshore regimes¹ with variations only where they provide stronger protections and rights for workers and their unions, and to the extent they are tailored to address the industry’s specific requirements.

Increasing the applicability of the hierarchy of control and risk management to all hazards

Recommendation 4: The duty to expressly identify hazards, manage risks, apply the hierarchy of control, maintain and review control measures should be embedded in the model WHS Act and apply to all hazards.

If this recommendation is not adopted, we recommend:

- Remove the limitation in the model Regulations² so that Part 3.1 applies to all hazards, not just Regulated hazards, and:
- Adopt the Commonwealth Regulations’ approach to the hierarchy of control, ensuring it applies comprehensively to both physical and psychosocial hazards.

Further, we recommend considering whether to amend the model hierarchy of control to specify that information, instruction, and training must not be the predominant control used to manage psychosocial hazards, as in Victoria.

Strengthen worker representation

Recommendation 5: Adopt the jurisdictional variations listed in Appendix 1 to strengthen worker representation, recognising these as best practice for inclusion in the model laws.

¹ Occupational Health and Safety (Maritime Industry) framework, Offshore Petroleum and Greenhouse Gas Storage framework, Offshore Electricity Infrastructure framework.

² Model Regulation 32.

Recommendation 6: For multi-business work groups, Inspectors should be empowered to make binding determinations on matters in dispute, mirroring the authority provided under s.54(2) of the model WHS Act for single employer work groups, rather than being limited to an advisory or facilitative role in negotiations.³

Stronger rights for Health and Safety Representatives

Recommendation 7: Amend the model laws to require PCBUs to make all reasonable efforts to conduct consultation at times, places, or in ways that are convenient for both workers and their health and safety representatives, consistent with the approach adopted in Western Australia.

Recommendation 8: HSRs receive ‘at least’ the following entitlement to training:⁴

1. in the first year, 5 days
2. in the second year, 5 days (rather than 3)
3. in the third year, 5 days (rather than 2)
4. and days are re-set at re-election.

Recommendation 9: Adopt the Queensland amendments under s 68 and s 70 to strengthen support and facilitation for HSRs in the model laws.

Recommendation 10: Amend the model WHS Act to require that HSRs are provided with express rights around timely access to all relevant work health and safety information, including inspector entry reports, notices, and incident notifications, as reflected in best practice provisions in Victoria, Queensland and New South Wales.

Recommendation 11: Health and Safety Representatives should 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, as reflected by best practice in Victoria.

Recommendation 12: Safe Work Australia review the model WHS Act’s provisions on discriminatory, coercive, and misleading conduct, and compare them to the Fair Work Act and leading state provisions, with a view to identifying and closing any gaps. The model WHS Act

³ Model Act s56(3)

⁴ Model Act s72 (1)

should be amended to expressly prohibit treating HSRs and workers less favourably than others for exercising their WHS rights, ensuring comprehensive and consistent protection against all forms of discrimination, victimisation, and retaliation.

Stronger union rights

Recommendation 13: Adopt strengthened provisions, in line with best practice from various jurisdictions, to:

- require a PCBU to inform an HSR for a work group as soon as possible after a WHS Entry Permit Holder or an Inspector has entered the workplace for a purpose relevant to the HSR's work group or a part of the workplace where a worker in the work group works

Authorise EPHs to:

- take photographs, video and/or voice recordings and measurements, conduct tests, and make sketches or other recordings
 - request the production of documents or information post-inspection
5. take samples off-site for analysis⁵

Facilitating EPH to be able to perform their duties by:

- permitting them to remain at the workplace for the time necessary to achieve the purpose of the entry challenges
 - not unreasonably delaying an EPH
 - allowing reasonable disclosure of information obtained by an EPH
6. providing that an EPH Notice is not invalid only because of a formal defect or irregularity⁶

Recommendation 14: Registered 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) and Part 11.2 of the model WHS Regulation. Furthermore, workers and registered unions should be formally recognised as a party to an external review, where they have raised or been involved in that matter.

⁵ In line with proposed changes in SA to amend s118 to take and remove for analysis a reasonable sample of any substance or thing directly relevant to the suspected contravention without paying for it

⁶ QLD WHS act s119 (6)

Recommendation 15: Amend the model laws to provide registered unions standing to initiate prosecutions for breaches of WHS laws, and permit courts to award a portion of any penalty to the prosecuting union, consistent with the New South Wales model.⁷ Registered unions should have comparative powers to the regulator in terms of information gathering and access to relevant information required for the prosecution.

Recommendation 16: Amend the model WHS Act to allow unions to be a party to WHS consultation when requested by workers.

Recommendation 17: Amend the model laws to recognise only unions registered under the Fair Work Act 2009 or relevant State or Territory industrial laws as suitable entities for workplace health and safety representation, in line with the Queensland provisions.

Recommendation 18: The powers of union permit holders should have extra-territorial application, to the extent that a jurisdiction's legislative powers allow, including mutual recognition of all training undertaken.

Mandate compliance with Codes of Practice and review issues covered

Recommendation 19: Amended the model WHS Act to mandate compliance with a relevant Code of Practice at a minimum, unless a higher standard has been complied with, and authorising inspectors to issue an improvement notice for non-compliance with a Code, as in Queensland and New South Wales.

Recommendation 20: Review the current codes to assess for gaps resulting from new and emerging business models, industries and hazards.

Recommendation 21: Adopt the Commonwealth Psychosocial Code of Practice list of psychosocial hazards to include fatigue, intrusive surveillance and job insecurity as psychosocial hazards.

Close the gaps in the model Regulations

⁷ Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025, section 260-271AB.

Recommendation 22: Amend the model Regulation to ensure its application to healthcare workers who are administering cytotoxic drugs.

Recommendation 23: Safe Work Australia, in consultation with Members, develop new Regulations for emerging and neglected areas of risk. In doing so, consideration should be given to a broad range of hazards, including, but not limited to, the following:

- Workplace violence and aggression, and gendered violence
- Discrimination, bullying and harassment, racism
- Hazardous workloads
- Change management and management (such as performance management and disciplinary action)
- Fatigue
- Indoor and outdoor air quality
- Slips, trips and falls
- Working in people's homes
- Workplace facilities
- Workplace surveillance, artificial intelligence and automated decision-making
- Biological hazards
- Heat and extreme weather events and disasters
- Traffic management

Recommendation 24: Conduct a comprehensive review of the model Regulations and Codes to ensure gender considerations are fully addressed. This review should specifically examine reproductive hazards related to manual and ergonomic tasks, nightwork, exposure to chemicals and biological agents, and the ways in which symptoms of reproductive health can affect work. It should also ensure the provision of, and access to, appropriate facilities, equipment, and reasonable control measures that support the health and safety needs of all workers.

Recommendation 25: Consider all recommendations in the ACTU position paper on climate change and WHS reform.

Ensure the model laws are inclusive

Recommendation 26: Redraft the model laws using gender-neutral pronouns like 'they/them', which do not assume or specify gender.

Response to Discussion Paper Questions

The ACTU addresses many of the questions contained in the discussion paper. Not all questions have been commented on in our submission. The ACTU is happy to provide additional information on request.

Summary of relevant reviews

1. Do you have any comments on the review or inquiry recommendations outlined in this chapter, or other reviews or inquiries that may be relevant to the model WHS laws?

This discussion paper references several reports and reviews. We broadly agree with the recommendations from these references. While the Inquiry into the Digital Transformation of Workplaces recommends the development of a Code of Practice to identify and address specific WHS risks associated with artificial intelligence (AI) and automated decision-making (ADM), we believe these emerging risks would be more effectively managed through explicit provisions in the Act or Regulations, as discussed in Recommendation 23.

There are several reports not referenced in the discussion paper that we believe should be considered, including:

- The Australian Government, Department of the Prime Minister and Cabinet, *Unlocking the Prevention Potential: accelerating action to end domestic, family and sexual violence*.
- *The people behind 000: mental health of our first responders*, published by the Senate Education and Employment References Committee, Parliament of Australia. COVID-19 Royal Commission.
- Commonwealth of Australia, Department of the Prime Minister and Cabinet. *COVID-19 Response Inquiry Report*. October 2024.
- Select Committee on Job Security [Appendix 1 – Parliament of Australia](#) National Construction Industry- Blueprint for the future.
- International Labour Organization (ILO) Conventions ratified by Australia.

2. Are there any recommendations from these reviews or inquiries that you believe should be adopted in the model WHS laws? Please explain why.

- **Unlocking the Prevention Potential: accelerating action to end domestic, family and sexual violence.** Specifically, Recommendation 7(f) recommends strengthening workplace health and safety laws to complement the positive duty on employers to prevent workplace sexual

harassment, sex discrimination and harassment under the *Sex Discrimination Act 1984* (Cth).

- **The people behind 000: mental health of our first responders**

Recommendation 5: The committee recommends that compulsory first responder mental health awareness training, including safety plans, be implemented in every first responder organisation across Australia.

Recommendation 6 The committee recommends that compulsory management training focusing on mental health, such as that developed by the Black Dog Institute, be introduced in every first responder organisation across Australia.

- **COVID-19 Response Inquiry Report**

An important element of resilience and preparedness is the ability to easily modify indoor environments to manage disease transmission risk, especially in high-risk settings, including hospitals, aged care, congregate living facilities, or where people have extended indoor exposure to people from outside their home, including educational settings and workplaces. Appropriate ventilation and air management is a non-pharmaceutical intervention that needs further attention to determine its contribution to resilience against airborne disease pandemics, especially in high-risk settings such as aged care (page 225).

- **Select Committee on Job Security (Fourth Interim Report)**

Recommendation 3: The committee recommends that the Australian Government review the model laws and associated Regulations to provide a greater emphasis on supporting workers' psychological safety in the workplace and include 'job insecurity' as a workplace hazard in the appropriate laws and regulations.

- **National Construction Industry- Blueprint for the future.**

Recommendations to the government to consider what federal, state and territory WHS ministers could do to address risks of sex discrimination, harassment and assault in the workplace (at 4.9), including by ensuring mandatory access to 'appropriate and safe amenities and PPE on all construction sites, and mandate safe and respectful workplace training for workers in the construction industry.

- **International Labour Organization Conventions**

Consideration of how the relevant ILO Conventions, including those that Australia has not ratified, have been implemented, or addressed, by the model laws.

Recommendation 1: Safe Work Australia should undertake a comprehensive review of all relevant International Labour Organization (ILO) conventions and other international standards relating to workplace health and safety, through a consultative process involving Members. This review should systematically identify any gaps between Australia’s model laws and our international obligations, and provide clear, actionable guidance on how the model laws should be amended to ensure full alignment and compliance with these standards.

The harmonisation objective

3. Do you have any comments on compliance and enforcement provisions under the model WHS Act, including variations made by the jurisdictions?

Unions have previously expressed concerns about inconsistencies in how regulators approach compliance and enforcement. These concerns primarily relate to how the NCEP is adopted and applied across jurisdictions. The review of the NCEP, as conducted by SWA, reflected jurisdictions but did not address union concerns about the risk-based approach, which means that issues like representation/consultation are essentially out of scope of the NCEP, which isn’t consistent with the objects of the Act.

4. Do you have any views on how the model WHS laws interact with other work health and safety schemes?

Please refer to Recommendation 18 regarding national recognition of WHS entry permits.

5. What can be done to strengthen and sustain harmonisation of WHS laws across Australia? Is there a better way to achieve this?

Australian unions are supportive of a best practice, nationally consistent legislative scheme for work health and safety matters, which provides the highest level of protection from hazards and risks and ensures that all workers can exercise their rights and entitlements, regardless of their working arrangements, where they live and the location of their work. However, harmonisation must not come at the expense of existing protections or standards in any jurisdiction. Instead, harmonisation should serve as a vehicle to lift standards across the country, making ‘best practice’ the baseline for all workers nationwide.

It is our position that:

- The harmonisation process should be guided by the principles of continuous improvement, aiming to adopt the strongest protections available across jurisdictions.
7. Any variation from the model laws should occur only on the basis that it delivers greater protections or rights for workers.

Recommendation 2: Safe Work Australia to:

- *Conduct an annual stock take of jurisdictional variations, with the assessment of 'best practice' guided by whether these variations strengthen the protections for workers and are consistent with the objects of the WHS Act. These findings, once endorsed by Members, should be referred to WHS Ministers to inform decisions on updating the model laws.*
- *Publish an annual scorecard highlighting where jurisdictions have not adopted the model laws, increasing transparency and accountability.*
- *Actively encourage jurisdictions to adopt best practice variations, using the stock take and scorecard to drive continuous improvement and national consistency.*

Harmonisation of the offshore oil and gas and offshore electricity industries

The ACTU is concerned that there remain unjustifiable inconsistencies between the model laws and OHS laws in the offshore oil and gas and electricity industries (offshore regimes). It is unacceptable and unjustifiable that workers covered by the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, and associated regulations and the *Offshore Electricity Infrastructure Act 2021* and associated regulations are denied some of the basic WHS rights and protections enjoyed by other Australian workers. These matters affecting offshore oil and gas workers are addressed in detail in the ACTU's submission to the Offshore Oil and Gas Safety Review,⁸ and we refer to this submission for further details.

Recommendation 3: Harmonisation of health and safety laws in offshore regimes with variations only where they provide stronger protections and rights for workers and their unions, and to the extent they are tailored to address the industry's specific requirements.

Variations to the model WHS Act

The discussion paper outlines a range of jurisdictional variations to the model Work Health and Safety Act (model WHS Act). The ACTU supports the variations that advance the objects of the model WHS Act and strengthen protections for workers, considering these to be 'best practice'. However, we do not support several recent changes that undermine these protections.

⁸ Australian Council of Trade Unions (ACTU). *Submission to the Offshore Oil and Gas Safety Review: Draft Policy Framework*. August 2020. Available at: <https://www.actu.org.au/wp-content/uploads/2023/06/media1449305d54-actu-submission-to-the-offshore-oil-and-gas-safety-review-draft-policy-framework-august-2020.pdf>.

For example, in 2025, Queensland reintroduced a requirement for WHS Entry Permit Holders (EPHs) to provide 24 hours' notice prior to entering a workplace to inquire into a suspected contravention, except where there is a reasonable belief of serious, immediate or imminent risk to a worker. This requirement represents a departure from the model WHS Act, which only requires notice to be given as soon as practicable after entry.⁹ Such a change creates unnecessary barriers to effective workplace health and safety enforcement and may delay the resolution of urgent safety concerns.

Similarly, the ACTU does not support the more restrictive approach adopted by South Australia, which imposes additional conditions on EPHs beyond those set out in the model WHS Act. These measures, as outlined in the discussion paper, risk undermining the ability of unions and their representatives to promptly and effectively address workplace health and safety issues.

Rather than responding to questions 6-11 in the discussion paper individually, we will address these matters thematically, focusing on the key issues and principles that underpin our position, being:

- 1. Expanding the applicability of the hierarchy of control and risk management**
- 2. Stronger worker representation and rights for Health and Safety Representatives**
- 3. Enhancing union rights and involvement**
- 4. Closing regulatory gaps and ensuring equal protection for psychosocial hazards**
- 5. Mandate compliance with Codes of Practice**

Appendix 1 contains a non-exhaustive list of jurisdictional variations that the ACTU considers representing best practice and recommends for adoption in the model laws. While we will not discuss each variation in detail, we will refer to these examples throughout our thematic discussion.

Expanding the applicability of the hierarchy of control and risk management

A cornerstone of the WHS framework is a risk management approach, with the hierarchy of control providing a structured framework that ranks risk control measures from most to least effective. This guides duty holders to prioritise eliminating hazards at their source before considering less effective options such as administrative controls or personal protective equipment. However, the current approach within the model laws presents several significant limitations that undermine its effectiveness and consistency. Specifically:

⁹ Entry to inquire into suspected contraventions, section 117 of the Model Act.

- The hierarchy of control and risk management provisions are set out in the Regulations, not the Act itself, so carries less legal weight.
 - The hierarchy of control only applies to certain regulated physical hazards, with a specific carveout that excludes psychosocial hazards (see model WHS Regulations s55C(a)).
8. The duty to identify hazards, manage risks, maintain control measures and review control measures only applies to a duty under the Regulations,¹⁰ so does not have a broader application to hazards beyond those that are expressly regulated.
- There is no express requirement that information, instruction, and training must not be the predominant control used, which can result in duty holders relying on less effective, lower-order controls.

The following section examines each of these issues in turn and proposes recommendations to ensure the hierarchy of control is embedded in the model WHS Act and applies comprehensively to all hazards, including psychosocial risks.

Under the current model WHS Act, duty holders are required to eliminate risks to health and safety so far as is reasonably practicable, and where elimination is not possible, to minimise those risks as far as reasonably practicable. However, this formulation leaves significant discretion to PCBUs regarding how risks are managed, which can result in inconsistent and suboptimal approaches to risk reduction.

When the hierarchy of controls is not explicitly required, a Person Conducting a Business or Undertaking (PCBU) may default to lower-order controls, such as administrative measures or personal protective equipment, rather than implementing higher-order, more effective controls that address risks at their source. This tendency shifts the burden of compliance onto workers, rather than ensuring employers take primary responsibility for risk management.

The model Regulations only require the hierarchy of controls to be applied for certain regulated hazards.¹¹ Recent case law has highlighted the limitations of this approach. For example, in *Catholic Healthcare Limited v SafeWork NSW* [2025] NSWIRComm 1046,¹² the court found that the hierarchy of controls only applied where a specific duty to manage risks existed under the Regulations, leaving gaps in coverage for other hazards.

¹⁰ Part 3.1 in the WHS Regulations has limitations in its application, see regulation 32.

¹¹ Model Regulation 32 requires Part 3.1 to be applied to a PCBU who has a duty under the Regulations.

¹² *Catholic Healthcare Limited v SafeWork NSW* [2025] NSWIRComm 1046. Retrieved from <https://www.lexology.com/library/detail.aspx?g=4da85e2a-1fbb-4bc5-977f-db0a59e56817>

The current model WHS Regulations include an exception that excludes psychosocial hazards from the application of the hierarchy of control.¹³ This creates a significant gap in comprehensive risk management, resulting in inconsistent treatment of physical and psychological hazards. Such an exception undermines the principle of equal protection for all workplace risks and misses the opportunity to require proactive, systemic controls that are proven to be most effective in preventing psychological injuries. As a result, duty holders may default to lower-order controls such as administrative measures or training, rather than prioritising higher-order, more effective interventions like work redesign or organisational change. Notably, this exemption does not exist in the Commonwealth WHS regulations.

Victoria's psychosocial hazard regulations specify that information, instruction, and training must not be the predominant control used. This aims to encourage employers to prioritise higher-order controls, such as changes to work design or environment, over less effective administrative measures.

Recommendation 27 of the Boland Review¹⁴ calls for the model WHS Act to clarify the risk management process by embedding the hierarchy of controls (consistent with Regulation 36) and making corresponding amendments to the Regulations. The ACTU strongly supports this recommendation.

Recommendation 4: The duty to expressly identify hazards, manage risks, apply the hierarchy of control, maintain and review control measures should be embedded in the model WHS Act and apply to all hazards.

If this recommendation is not adopted, we recommend:

- *Remove the limitation in the model Regulations¹⁵ so that Part 3.1 applies to all hazards, not just Regulated hazards, and:*
- *Adopt the Commonwealth Regulations' approach to the hierarchy of control, ensuring it applies comprehensively to both physical and psychosocial hazards.*

¹³ WHS Regulations, 55C (a).

¹⁴ Safe Work Australia. (2018). *Review of the model Work Health and Safety laws: Final report* (Prepared by Marie Boland).
https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf

¹⁵ Model Regulation 32.

Further, we recommend considering whether to amend the model hierarchy of control to specify that information, instruction, and training must not be the predominant control used to manage psychosocial hazards, as in Victoria.

Stronger worker representation and rights for Health and Safety Representatives

In Appendix 1, we list several jurisdictional variations under the theme of representation. We consider these to be best practice. However, it is essential to recognise that some workers or workgroups may be reluctant or even fearful to establish work groups or stand for election as Health and Safety Representatives (HSRs). There are also challenges around representation in industries or settings where employment is short-term or project-based, such as production crews in film, theatre, and television, where 12-week projects are common. In these contexts, traditional workgroup election processes may be impractical or inaccessible, and additional measures are needed to ensure all workers have meaningful access to representation and the protections afforded by HSRs.

Recommendation 5: Adopt the jurisdictional variations listed in Appendix 1 to strengthen worker representation, recognising these as best practice for inclusion in the model laws.

Recommendation 6: For multi-business work groups, inspectors should be empowered to make binding determinations on matters in dispute, mirroring the authority provided under s.54(2) of the model WHS Act for single-employer work groups, rather than being limited to an advisory or facilitative role in negotiations.

Stronger rights for Health and Safety Representatives (HSRs)

Worker-elected and supported Health and Safety Representatives (HSRs) are vital in maintaining workplace safety by serving as a crucial link between workers and management. HSRs have powers under the model laws to work with the duty holder to identify and mitigate hazards, advocate for safer practices, and ensure that workers' voices are heard and considered in decision-making processes. When there are concerns about unsafe practices that have been unaddressed by the duty holder, they can take steps to escalate and seek a remedy, such as issuing a Provisional Improvement Notice or directing a cease work.

The Work Shouldn't Hurt Survey provides evidence of the positive impact HSRs have in the workplace. The survey found that workers in environments without an HSR, or who were unaware

of having one, were statistically significantly more likely to experience mental injury.¹⁶ In contrast, workplaces with active HSRs demonstrated stronger employer compliance with key safety measures: more frequent workplace inspections for WHS hazards, prompt resolution of safety issues, a clear prioritisation of health and safety over production pressures, and equal attention to both mental and physical health risks.¹⁷

The presence of HSRs is strongly associated with higher levels of worker engagement and empowerment.¹⁸ Survey results show statistically significant differences between workplaces with HSRs and those without: employees in workplaces with active HSRs are more likely to receive health and safety training, know how to report mental health risks or injuries, participate in decision-making processes, and feel comfortable raising WHS concerns.

Despite their well-documented positive impact, HSRs continue to encounter significant barriers that limit their effectiveness. We recommend the following areas of law reform, to address these challenges.

Stronger worker consultation

A persistent concern raised by workers and Health and Safety Representatives is the failure of some PCBUs to engage in genuine consultation on health and safety matters. This can occur for several reasons: a lack of understanding of legislative obligations, a refusal to acknowledge that proposed changes may impact health or safety, or a ‘tick-the-box’ approach where outcomes are predetermined and worker input is disregarded. In some cases, consultation is conducted in ways that make it difficult or impractical for workers to participate meaningfully.

Regardless of the cause, when workers (and their representatives) are not genuinely consulted, health and safety protections are inevitably weakened. This increases the risk of injury, illness, or even death. Genuine consultation is not just a legal requirement—it is essential for effective risk management and for building a culture of safety in every workplace.

Western Australia has adopted a provision requiring the PCBU to make all reasonable efforts to carry out consultation at times, places, or in ways that are convenient for both workers and their

¹⁶ Work Shouldn't Hurt survey 2023, figure 51, page 55

¹⁷ Work Shouldn't Hurt survey 2023, figure 52, page 55

¹⁸ Work Shouldn't Hurt survey 2023, figure 53, page 56

health and safety representatives.¹⁹ This approach ensures that consultation is accessible and meaningful.

Recommendation 7: Amend the model laws to require PCBUs to make all reasonable efforts to conduct consultation at times, places, or in ways that are convenient for both workers and their health and safety representatives, consistent with the approach adopted in Western Australia.

We make further recommendations about union involvement in consultation below in Recommendation 16.

Right to more training opportunities in a timely manner

The effectiveness of Health and Safety Representatives (HSRs) relies on access to comprehensive and ongoing training. Through quality training, HSRs gain the knowledge and skills needed to assist with identifying hazards, understanding their legal powers, and actively contributing to preventing workplace injuries and illnesses.

HSRs commonly report the desire to undertake more comprehensive training. In particular, they report that they are increasingly confronting psychosocial hazards in their workplaces, and that they feel underequipped and/or insufficiently confident to take action with respect to those hazards. The complexity of the WHS legislative framework can undermine an HSR's confidence and knowledge, making it harder for them to advocate effectively for health and safety improvements.

Another issue is that having regulator-approved content limits unions' abilities to develop training packages that cater for specific industries or hazards, further restricting HSRs' access to tailored and relevant training that addresses the unique risks they face.

The ACTU is concerned that the current model Regulations unnecessarily restrict HSRs to an initial course of *up to 5 days* and *up to one day* of refresher training per year (emphasis added).²⁰ We have received feedback that in some jurisdictions, initial HSR training of 3 days is being offered. We have concerns that this may not be sufficient for the complexity and evolving nature of the role.

¹⁹ WA WHS Act s48(2)(b).

²⁰ Model Regulations, clause 21.

South Australia's HSR training provisions provide a stronger framework than the model laws, allowing HSRs up to ten days of training over three years—five days in the first year, three in the second, and two in the third—with the entitlement repeating if the HSR is re-elected.²¹ This approach better supports HSRs in fulfilling their responsibilities and adapting to new workplace risks.

Additionally, there should be a clear mechanism in the model WHS Act to ensure HSRs receive timely access to training. For example, the Queensland WHS Act requires training to occur within 28 days (or as soon as possible) after an HSR is elected. While this may be challenging in some jurisdictions, it is essential that PCBUs are required to facilitate prompt access to training for HSRs, so they can perform their critical role in safeguarding workplace health and safety without unnecessary delay.

Recommendation 8: HSRs receive 'at least' the following entitlement to training:²²

- *in the first year, 5 days*
- *in the second year, 5 days (rather than 3)*
- *in the third year, 5 days (rather than 2)*
- *and days are reset at re-election.*

Rights to support and facilitation in the role

Despite the critical role Health and Safety Representatives play in promoting workplace health and safety, they frequently encounter significant practical barriers that limit their effectiveness. Common issues include difficulty accessing essential WHS information, insufficient time to perform their duties due to existing workloads, and a lack of clarity around entitlements, particularly regarding pay and support when exercising their powers or entitlement to training.

Recognising these challenges, Queensland has amended its WHS laws in 2024 to strengthen worker protection and representation by enhancing the role of the HSR. Amendments to s 68 and s 70 of the Act allow for several things, including:

- Requiring the HSRs to be informed that an Entry Permit Holder (EPH) or inspector has entered the workplace
- Allowing the HSR to accompany the EPH or inspector at the workplace

²¹ SA WHS Act s72(9)(a)-(c).

²² Model Act s72 (1)

- Paying an HSR exercising their powers or functions under the Act the amount (including any overtime, penalties or allowances) they would get if they were performing their normal duties during the same period
9. If a dispute arises between the PCBU and HSR about refusal to grant access to information or give a copy of a notice, the HSR may ask the regulator to appoint an inspector to assist in resolving the dispute or go straight to dispute resolution²³
- Recommendation 9: Adopt the Queensland amendments under s 68 and s 70 to strengthen support and facilitation for HSRs in the model laws.

The discussion paper highlights several jurisdictional variations that we support, for example, the Queensland and New South Wales provisions that require PCBUs to promptly notify their regulator when provisional improvement notices are issued by HSRs.

Access to WHS information

Health and Safety Representatives can face significant obstacles in accessing the information they need to effectively represent and protect their work groups. Too often, essential WHS information is withheld from HSRs, sometimes under the guise of ‘confidentiality’ or simply due to a lack of awareness by the PCBP of their obligations to consult and share relevant health and safety information. The lack of clear entitlements to timely and comprehensive WHS information can undermine their ability to identify hazards, advocate for improvements, and respond to incidents.

One issue is that under the current model WHS Act, there is no express requirement for inspectors to provide entry reports directly to HSRs. In contrast, the Victorian OHS Act²⁴ specifically requires that an inspector’s entry report be given to the HSR of the relevant work group, ensuring timely access to critical safety information and supporting the HSR’s role in workplace health and safety.

Recent amendments to section 70 of the Queensland WHS Act provide important remedies to these challenges by:

- Allowing the HSR access to information that the HSR is entitled to request

²³ see note under s 70(1)(g) and definition of WHS Matter in s 102A of the QLD WHS Act.

²⁴ Victorian OHS Act s103

- The HSR is to be informed about notices issued by an inspector or WHS EPH, and provide a copy to the HSR if the PCBU has been given the notice
- Giving the HSR a copy of the incident notifications made to the regulator

Recommendation 10: Amend the model WHS Act to require that HSRs are provided with express rights around timely access to all relevant WHS information, including inspector entry reports, notices, and incident notifications, as reflected in best practice provisions in Victoria and Queensland.

Right to exercise powers without training delays

The model WHS Act requires an HSR to have completed training in order to issue a PIN²⁵ or cease work.²⁶ In practice, this means that if an HSR's training is delayed, they are unable to intervene in dangerous situations, potentially leaving workers exposed to harm. This restriction can also discourage duty-holders from facilitating timely training. As HSRs are directly elected by their peers, the system would be more democratic if representatives were legally entitled to carry out their duties immediately upon election.

The Victorian Act does not impose this limitation, allowing HSRs to exercise their powers from the outset.

Recommendation 11: Health and Safety Representatives should 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, as reflected by best practice in Victoria.

Enhanced protection against discrimination

Many Health and Safety Representatives report concerns that exercising their powers may expose them to discrimination, victimisation, or bullying, particularly those in insecure work arrangements. Such conduct not only undermines the confidence and effectiveness of HSRs but also weakens the integrity of the entire WHS regime. The current measures to protect workers from discrimination can be strengthened, and we need these broader protections to be legislated.

²⁵ Model Act, s90(4)(a)-(c).

²⁶ Model Act, s85(6)(a)-(c).

While the model WHS Act prohibits certain forms of discriminatory conduct, such as dismissal, contract termination, or altering a worker's position to their detriment,²⁷ it does not expressly protect HSRs from being treated less favourably than other workers.

This stands in contrast to the broader protections offered by the Fair Work Act 2009 (Cth), which explicitly recognises discriminating between employees.²⁸ In practice, this could include offering HSRs worse shifts, denying them opportunities, or otherwise disadvantaging them compared to their peers.

Queensland's WHS Act²⁹ addresses this issue by including 'treats a worker less favourably than other workers of the person' in the definition of discriminatory conduct, providing greater clarity and alignment with general protections under the Fair Work Act.

Recommendation 12: Safe Work Australia review the model WHS Act's provisions on discriminatory, coercive, and misleading conduct, and compare them to the Fair Work Act and leading state provisions, with a view to identifying and closing any gaps. The model WHS Act should be amended to expressly prohibit treating HSRs and workers less favourably than others for exercising their WHS rights, ensuring comprehensive and consistent protection against all forms of discrimination, victimisation, and retaliation.

Enhancing union rights and involvement

Unions are fundamental to achieving safe and healthy workplaces. By empowering workers to act collectively, unions ensure that hazards are identified, risks are addressed, and safe systems of work are established and maintained. Through their advocacy, representation, and expertise, unions give workers a strong voice in WHS matters and enable them to raise concerns, participate in decision-making, and hold duty holders accountable.

Unions play a particularly vital role for workers in insecure or vulnerable employment, providing support, advice, and protection where it is most needed. Their daily involvement in monitoring, negotiating, and improving safety outcomes has been instrumental in securing many of the protections workers rely on today. To fully realise the objectives of the model WHS Act, it is

²⁷ Model Act s105

²⁸ Fair Work Act 2009, S342(1)(1)(d)

²⁹ WHS Act (QLD) s105.

essential that the laws provide unions with the rights and standing necessary to play a constructive and proactive role, recognising this as best practice for safer, fairer workplaces.

Stronger Entry Permit Holder (EPH) Rights

Unions continue to face unnecessary restrictions and administrative barriers that impede their ability to enter workplaces and assist members in resolving WHS concerns. These obstacles are particularly detrimental for workers in insecure or precarious employment, who may be reluctant or fearful to raise safety issues directly with their employer. A strong, collaborative relationship between trained EPH and Health and Safety Representatives is fundamental to advancing workplace safety.

The discussion paper outlines a range of jurisdictional variations in the rights and powers of EPHs. The ACTU supports amendments that strengthen the ability of EPHs to enter workplaces and perform their functions effectively. However, we do not support recent changes in South Australia that impose more restrictive requirements on EPH entry, as these measures undermine the effectiveness of WHS enforcement and may leave workers exposed to unresolved risks.

A key gap in the current model laws is the lack of clear rights for EPHs to take photographs, videos, measurements, and conduct tests (including off-site). Unions report that these express rights are essential for effective WHS investigations and hazard identification. Often, EPHs may observe further suspected contraventions during an inspection. Without the ability to address these immediately, they must leave the site to complete new paperwork, wasting valuable time and allowing unsafe conditions to persist.

Recommendation 13: Adopt strengthened provisions, in line with best practice from various jurisdictions, to:

- *require a PCBU to inform an HSR for a work group as soon as possible after a WHS Entry Permit Holder (EPH) or an inspector has entered the workplace for a purpose relevant to the HSR's work group or a part of the workplace where a worker in the work group works*

Authorise EPHs to:

- *take photographs, video and/or voice recordings and measurements, conduct tests, and make sketches or other recordings; and*
- *request the production of documents or information post-inspection.*
- *take samples off-site for analysis³⁰*

Facilitating EPH to be able to perform their duties by:

- *permitting them to remain at the workplace for the time necessary to achieve the purpose of the entry³¹*
- *not unreasonably delaying an EPH*
- *allowing reasonable disclosure of information obtained by an EPH³²*
- *providing that an EPH Notice is not invalid only because of a formal defect or irregularity*

Union right to review decisions

The process for seeking a review of decisions³³ made under the Work Health and Safety Act is complex and often inaccessible for individual workers. Unions are often required to assist members where a review is sought. However, the current legislative framework does not consistently recognise unions as 'eligible persons' with standing to seek review of all relevant decisions. This creates unnecessary barriers to effective representation and undermines the ability of unions to ensure that workers' rights and safety are upheld.

An additional concern arises when a PCBU refers a matter—such as a dispute over a Provisional Improvement Notice (PIN)—for external review at a court or tribunal. In these cases, the applicant is typically the PCBU, and the respondent is the regulator, meaning that the Health and Safety Representative (HSR) or the assisting union do not have a formal role in the proceedings, despite

³⁰ In line with proposed changes in SA to amend s118 to take and remove for analysis a reasonable sample of any substance or thing directly relevant to the suspected contravention without paying for it

³¹ QLD WHS Act s 117-119

³³ Model Act s223

the PIN having been originally raised by the HSR. This process lacks procedural fairness, as it excludes those most directly involved in and affected by the dispute from participating in its resolution.

New South Wales has introduced a provision (not yet commenced) to strengthen union standing in the review process under the Work Health and Safety Act. Specifically, the amendment gives unions the right to request a review where that union represents workers whose interests are affected by the decision.³⁴ South Australia has also included provisions for union standing for internal and external reviews.³⁵

Empowering unions to seek a review directly supports the objects of the model WHS Act, by promoting robust scrutiny and accountability for actions taken by those exercising powers and performing functions under the Act.³⁶

Recommendation 14: Registered 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) and Part 11.2 of the model WHS Regulation. Furthermore, workers and registered unions should be formally recognised as a party to an external review, where they have raised or been involved in that matter.

Union right to bring WHS prosecutions

Under the current model laws, the power to prosecute a WHS offence is restricted to the regulator, inspectors acting with the regulator’s written authorisation, and, in some cases, the Director of Public Prosecutions. This creates a prosecutorial monopoly. When regulators choose not to prosecute or delay action, workers and their representatives are left without any meaningful recourse. This undermines deterrence and public confidence in the WHS system.

This issue is compounded by the fact that WHS regulators themselves have acknowledged that they face significant resource constraints, which limit their capacity to investigate and prosecute WHS matters. As a result, even when clear contraventions have been identified, prosecutions may not proceed, not due to a lack of merit, but due to a lack of resources. Workers, family members, and health and safety representatives are too often denied justice, even when clear contraventions of the WHS Act have been identified. There are well-documented cases where

³⁴ Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025 No 42 s223

³⁵ SA WHS Act s223(1)

³⁶ Model WHS Act, s 3(f),

prosecutions that should have proceeded only occurred after significant union and community advocacy.

Unions have a long and proven record of promoting safe work practices and advocating for injured workers. They are often the first to receive information about serious WHS breaches and have the necessary expertise to identify systemic risks. Unions already have standing under the Fair Work Act 2009 to initiate proceedings for breaches of workplace rights and represent members in these proceedings. It is inconsistent and indefensible that a union can prosecute an employer for failing to consult about a roster change, but not for allowing a worker to be killed or seriously injured due to unsafe practices.

Effective enforcement of the model laws requires that trade unions with a legitimate interest in an alleged offence be permitted to prosecute. We strongly submit that unions should have standing to bring proceedings for offences under the model laws. Allowing registered unions to initiate prosecutions may strengthen compliance, improve worker confidence in the WHS system, and give effect to the Act's core principle of worker and union participation in securing health and safety.

The right for trade unions to commence prosecutions operates as an important supplement to address circumstances in which regulators are unwilling or unable to prosecute contraventions.

The right of trade unions to prosecute WHS offences serves important functions, including:

- Maximising the efficient use of resources by permitting trade unions with extensive experience in a particular industry or workplace to deploy resources in a manner calculated to bring about organisational and cultural change to improve health and safety.
- Strengthening accountability by encouraging trade unions to be involved in WHS enforcement, which has the potential to encourage employers to take WHS obligations seriously and to involve workers and their representatives in WHS management.

Recent reforms in New South Wales provide a clear model for national best practice. Under amendments to the WHS Act, registered employee organisations will soon be able to initiate prosecutions for any WHS offence after consulting with a regulator who has declined to bring proceedings. There is also the capacity of a union to bring civil proceedings, mainly under Part 7. The regulator will also have a new requirement to notify a union if it commences proceedings in a matter that the union has raised with the regulator.

Importantly, courts can now award a portion of the fine (a 'moiety') to the prosecuting union if the case is successful. These reforms are contained in the Industrial Relations and Other Legislation

Amendment (Workplace Protections) Act 2025 (NSW), Schedule 3, clauses 12–14 (not yet commenced).

Recommendation 15: Amend the model laws to provide registered unions standing to initiate prosecutions for breaches of WHS laws, and permit courts to award a portion of any penalty to the prosecuting union, consistent with the New South Wales model.³⁷ Registered unions should have comparative powers to the regulator in terms of information gathering and access to relevant information required for the prosecution.

Strengthen the union's role in consultation

Workers are sometimes reluctant to provide views or feedback on WHS matters, particularly those who are in insecure work arrangements or where there is fear of retribution. Unions report ongoing challenges in ensuring genuine consultation on health and safety matters. Allowing unions to represent workers, when requested, helps ensure workers' voices are heard and that PCBUs meet their consultation obligations.

We support the Queensland amendments³⁸ which allows relevant unions to assist or represent workers in relation to WHS consultation, when requested by workers.³⁹

Recommendation 16: Amend the model WHS Act to allow unions to be a party to WHS consultation when requested by workers.

Recognising registered employee associations

Recent amendments to the Queensland Work Health and Safety Act⁴⁰ ensure that only unions registered under the Fair Work Act and the Queensland Industrial Relations Act are recognised as 'suitable entities' for workplace representation. This approach strengthens the integrity and accountability of workplace health and safety processes by ensuring that only unions with formal legal standing, robust governance and democratic accountability to members can represent workers in key WHS matters.

³⁷ Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025, section 260-271AB.

³⁸ QLD Act s48

³⁹ QLD WHS Act s48

⁴⁰ QLD WHS Act s45A and 45B

Recommendation 17: Amend the model laws to recognise only unions registered under the Fair Work Act or relevant State or Territory industrial laws as suitable entities for workplace health and safety representation, in line with the Queensland provisions.

Managers to support and understand HSR's powers and functions

A recurring challenge identified by Health and Safety Representatives (HSRs) is that, after completing their initial five-day training, they often return to workplaces where their own understanding of WHS surpasses that of the managers or supervisors responsible for day-to-day WHS matters. This knowledge gap can hinder effective collaboration and limit the impact of HSRs in driving safety improvements.

To address this, it is essential that PCBUs ensure any manager or supervisor delegated WHS duties possesses the necessary skills, knowledge, and experience to competently fulfil these responsibilities. By investing in targeted training and ongoing professional development for managers, organisations can ensure that HSRs and management work together productively towards safer workplaces.

National recognition of WHS entry permits

WHS Entry Permit Holders (EPHs) should not be required to hold multiple permits to perform their functions across state and territory borders. Requiring separate permits is inefficient, creates unnecessary administrative burden, and undermines the goal of nationally harmonised WHS laws. This is particularly problematic when workplace risks and union representation frequently cross jurisdictional boundaries.

The Commonwealth WHS Act already recognises entry permits issued under corresponding state and territory WHS laws,⁴¹ allowing EPHs to exercise their rights in the Commonwealth jurisdiction without needing a separate permit. This approach strengthens the WHS regime's ability to monitor and enforce compliance in workplaces that operate across borders and should be adopted nationally.

⁴¹ See definition of corresponding WHS law in the Cth WHS Act, s6A

Recommendation 18: The powers of union permit holders should have extra-territorial application, to the extent that a jurisdiction's legislative powers allow, including mutual recognition of all training undertaken.

12. Do you have any comments on Codes of Practice, including variations made by jurisdictions? Are the variations best practice?

Codes of practice play an important role in the WHS regime in explaining the requirements of the general duties in the model WHS Act and setting out practical and detailed ways to meet required standards. Codes should contain clear, comprehensive and authoritative advice for duty-holders. Codes, however, should not be a substitute for regulations. For example, while we appreciate a biological code of practice being developed, we believe that this should also be a regulated hazard.

Under s 275 of the model WHS Act, it is not a requirement to comply with a Code. However, codes are admissible as evidence of what a duty-holder should have known about specific hazards, risks and risk controls, and therefore what would have been reasonably practicable in a given situation.

It is our view that compliance with a relevant Code should be mandatory at a minimum. However, duty-holders should not be able to rely on compliance with a Code to meet all their obligations if the Code does not cover all potential risks and hazards. Duty-holders should still be required to consider and address all risks, not just those set out in the Regulations and Codes.

The Commonwealth Psychosocial Code of Practice sets a strong example by explicitly listing psychosocial hazards such as fatigue, intrusive surveillance, and job insecurity, and by requiring PCBUs to apply the hierarchy of control to manage these risks. These provisions represent best practice and should be adopted more broadly.

While we recommend that compliance with relevant Codes be made mandatory as a minimum standard, we acknowledge that this approach is not without risks. If codes become mandatory, they will need to be redrafted with a level of specificity and prescriptiveness similar to regulations to ensure enforceability and legal certainty. This could diminish the flexibility and practical guidance that codes currently provide, potentially making them overly complex or rigid and less adaptable to diverse or rapidly changing workplaces.

There is also a risk that making codes mandatory could reduce the impetus to develop or update specific WHS regulations, with important matters being addressed through codes that have not undergone the same rigorous development and scrutiny as regulations.

To address these concerns, it is essential that codes are regularly reviewed and updated through robust consultation with stakeholders, and that duty-holders are not permitted to rely solely on compliance with a code where additional or higher standards are reasonably practicable.

Ultimately, making codes mandatory should be seen as a floor, not a ceiling, for WHS compliance, and should be accompanied by ongoing regulatory development and oversight to ensure all workplace risks are effectively managed.

Recommendation 19: Amended the model WHS Act to mandate compliance with a relevant Code of Practice at a minimum, unless a higher standard has been complied with, and authorising inspectors to issue an improvement notice for non-compliance with a Code, as in Queensland and New South Wales.

Recommendation 20: Review the current codes to assess for gaps resulting from new and emerging business models, industries and hazards.

Recommendation 21: Adopt the Commonwealth Psychosocial Code of Practice list of psychosocial hazards to include fatigue, intrusive surveillance and job insecurity as psychosocial hazards.

Variations to the model WHS Regulations

13. Do you have any comments on the model WHS Regulations, including variations made by jurisdictions? Are the variations best practice?

We support the majority of the jurisdictional variations raised in the discussion paper, which provide greater regulatory protection to workers, including:

- New South Wales's requirements in relation to delivery riders and online platforms
- Queensland's variations for amusement devices and inspection of passenger ropeways
- 10. Queensland's and Tasmania's variations for the use of quad bikes at the workplace
- 11. Queensland's amendments regarding sexual harassment and sex or gender-based harassment

- Queensland’s amendments for construction work amenities, including ensuring access to female toilets.⁴²

In addition to the examples provided in the discussion paper, we submit that the Victorian OHS Regulation 140’s reference to therapeutic goods is preferable to model Regulation 328(6)(c). The model Regulation currently excludes coverage of risks associated with cytotoxic drugs for healthcare workers, due to its reference to the ‘point of intentional intake by or administration to humans.’ In contrast, the Victorian regulation does not include this limiting phrase, ensuring that work-related exposures are covered. We consider this exclusion in the model regulations to be a drafting error, and do not believe it was the intended outcome.

Recommendation 22: Amend the model Regulation to ensure its application to healthcare workers who are administering cytotoxic drugs.

14. Do you have any comments on the role of the model WHS Regulations? Should there be criteria guiding their content and structure? If so, what should this be?

The model WHS Regulations play a critical role in clarifying and operationalising the general duties set out in the model WHS Act, ensuring that duty-holders address key health and safety matters as a minimum standard of compliance.

To determine which workplace hazards warrant specific regulations, the following criteria should be considered:

- Severity and likelihood of harm
- Prevalence and exposure
- Emerging or evolving risks
- Historical evidence of harm
- International standards and best practice
- Vulnerability of worker groups, for example, young workers, pregnant workers or those in insecure employment
- Potential for catastrophic events

Hazard-specific regulations should focus on risk management and provide clear prompts for PCBUs regarding appropriate control measures. Importantly, the regulations should offer equal

⁴² Queensland Work Health and Safety (Amenities for Construction Work) Amendment Regulation 2024

protection against psychosocial hazards as they do for physical hazards, ensuring comprehensive coverage of all workplace risks.

Use of prevention plans

The ACTU supports the inclusion of prevention plans within the model Regulations, recognising their value in proactively addressing workplace risks. We believe they should be required where there is a risk to health or when undertaking high-risk work. In particular, we endorse the approach taken in the Queensland sexual harassment and sex or gender-based harassment Regulations,⁴³ which requires the development of prevention plans to manage these hazards. Early-stage feedback from unions has been positive, with Health and Safety Representatives and unions reporting examples of effective input into the development of these plans. PCBU's are developing much more comprehensive prevention plans than the basic templates provided by the regulator, and in cases where unions previously found it difficult to engage with PCBU's, these provisions have created new opportunities for meaningful dialogue and collaboration on workplace safety.⁴⁴

15. Do you have any comments on the industries or work areas covered by the model WHS Regulations? Are these sufficient or are there gaps and if so, what are they?

Historically, work health and safety regulations have concentrated on physical risks in traditionally male-dominated industries, with specific regulations for individual hazards such as noise, asbestos, hazardous manual handling and confined spaces. While this approach has delivered important protections in traditional high-risk sectors, it has also resulted in significant gaps in coverage for other industries. As noted in the discussion paper, sectors such as agriculture, road transport, accommodation and food services, public administration and safety, and healthcare and social assistance remain under-represented in the model WHS Regulations, despite their size, growth, and high rates of injury and illness.

A key limitation of the current model Regulations is their narrow focus on a prescribed list of physical hazards, rather than addressing the full spectrum of risks present in today's diverse workplaces. While the model Regulations now include an overarching psychosocial hazard regulation, this single provision cannot adequately address the complexity and variety of psychosocial risks, just as one physical hazard regulation cannot cover all risks related to asbestos, confined spaces and manual handling.

⁴³ Queensland WHS Regulations, 55E-55G

Hazards such as workplace violence and aggression, gendered violence, harassment, fatigue, and hazardous workloads each require tailored, practical guidance for effective management. For example, for a regulated hazard such as hazardous manual handling, PCBUs are directed to consider relevant matters in determining control measures, such as design of the work area, layout of the workplace, systems of work and nature, size, weight or number of persons, animals or things involved in carrying out the task. However, for hazards such as violence and aggression, similarly important underlying factors are not explicitly identified or required to be considered, resulting in less comprehensive risk management for these complex issues.

It would be expected that specific psychosocial hazard regulations would focus on the systems of work and relevant factors to consider when determining appropriate control measures, as in the Queensland Work Health and Safety (Sexual Harassment) Amendment Regulation 2024.

The Boland Review (2018) highlighted the importance of closing gaps in workplace health and safety coverage, recommending that Safe Work Australia establish criteria for the ongoing assessment of new industries, hazards, and working arrangements. Recommendation 3 specifically calls for a continuous review process to identify when legislative changes, new model WHS Regulations, or model Codes are needed to address emerging risks in modern workplaces.⁴⁵

⁴⁵ Safe Work Australia. (2018). *Review of the model Work Health and Safety laws: Final report* (Prepared by Marie Boland), Recommendation 3. https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf

Recommendation 23: Safe Work Australia, in consultation with stakeholders, develop new Regulations for emerging and neglected areas of risk. In doing so, consideration should be given to a broad range of hazards, including, but not limited to, the following:

- *Workplace violence and aggression, and gendered violence*
- *Discrimination, bullying and harassment, racism*
- *Hazardous workloads*
- *Change management and management (such as performance management and disciplinary action)*
- *Fatigue*
- *Indoor and outdoor air quality*
- *Slips, trips and falls*
- *Working in people's homes*
- *Working environment and facilities*
- *Workplace surveillance, artificial intelligence and automated decision-making*
- *Biological hazards*
- *Heat and extreme weather events and disasters*
- *Traffic management*

Recommendation 24: Conduct a comprehensive review of the model Regulations and Codes to ensure gender considerations are fully addressed. This review should specifically examine reproductive hazards related to manual and ergonomic tasks, nightwork, exposure to chemicals and biological agents, and the ways in which symptoms of reproductive health can affect work. It should also ensure the provision of, and access to, appropriate facilities, equipment, and reasonable control measures that support the health and safety needs of all workers.

16. Do you have any comments on the model WHS Regulations? Do they continue to reflect best practice?

No comment, but there are gaps in the hazards covered that need to be updated (as above).

17. Do you have any comments on the use of Australian Standards in the model WHS Regulations?

Australian Standards should be referenced where appropriate and those standards free and available.

18. Which aspects of the model WHS Regulations are working well, and which are not? What changes could improve them?

No comment

Environmental scan

19. Do you have any comments on the issues raised in this section as they relate to best practice WHS laws and harmonisation going forward?

The environmental scan highlights a number of important themes that are highly relevant to the ongoing development and harmonisation of best practice WHS laws. We broadly support the issues and priorities identified in this section and will only individually address several themes.

Impacts of climate change on WHS

The discussion paper rightly acknowledges that climate change is likely to exacerbate existing hazards in new and emerging industries. This challenge is front of mind for the union movement, which has consistently advocated for a rights-based approach to WHS reform that anticipates and responds to climate-driven risks. However, we believe the scope must be broader. Strong evidence shows that climate change and environmental degradation are already contributing to deteriorating working conditions and increasing the risk of occupational injury, illness, and death across most industries—not just emerging ones.

The model WHS Act does not explicitly address climate-related hazards like extreme heat, indirectly addressed under the general duty to provide a safe work environment. Targeted WHS provisions are needed to require PCBUs to eliminate—or where not practicable, minimize—climate-related risks to worker health and safety.

The ACTU Position Paper on Climate Change and WHS Reform – *Work Health and Safety in the Era of Climate Crisis* - puts forward a number of recommendations based on the union movement's goal of strengthening the rights-based system within the WHS framework. These recommendations include:

Heat stress

- Develop a WHS Regulation that covers the risks associated with heat using risk assessment criteria, like the hazardous manual handling regulation, rather than a one-size-fits-all threshold.

- Review and strengthen existing codes of practice, including the Code of Practice on Managing the work environment and facilities, by expanding the section on heat, cold and outdoor work, including protection against the risks of UV.

Air quality

- Develop a WHS Regulation on indoor air quality or via amendment of the provisions in regulation 40 of the model Regulations around the general working environment.
- Review and strengthen existing Codes of Practice, including the Code of Practice on Managing the work environment and facilities, which includes a section on ventilation.

Incident weather and emergencies

- Review and strengthen model WHS Regulation 43 (duty to prepare, maintain and implement emergency plan).
- Strengthen the model Code of Practice on Managing the work environment and facilities, which includes a section on emergency plans covering natural disasters. This Code of Practice should cover PCBU obligations to develop and conduct emergency planning in consultation with the workforce.

Vector-borne illnesses

- Develop a biological hazards Regulation, which would cover vector-borne illnesses

Recommendation 25: Consider all recommendations in the ACTU position paper on climate change and WHS reform.

Gender diversity

The environmental scan references people from diverse backgrounds, such as LGBTIQ+ communities. We observe that the model laws contain gender specific pronouns such as ‘him’ and ‘her.’ This binary drafting of the laws excludes people who identify outside the male-female binary, such as non-binary or gender diverse individuals.

Recommendation 26: redraft the model laws using gender-neutral pronouns like ‘they/them’ which do not assume or specify gender.

References

VTHC Employee submission to the Independent Review of Employee Representation (in draft)
Review of model WHS laws 2018 ACTU Submission

SA Unions. (n.d.). Submission to the Inquiry into Empowering Health and Safety Representatives.
Workplace health and safety in the era of climate crisis- ACTU position paper on climate change
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ACTU Congress policies 2024- Healthy and Safe Work

Appendix 1: Jurisdictional variations to the WHS Act

Topic/theme	WHS Act provision
<p>HSR rights, powers and support</p>	<p>HSR training entitlements</p> <p>SA WSH Act s72(9) – i.e. more days after initial training (during the second year- 3 days, during the third year- 2 days).</p> <p>Qld WHS Act place a 28-day time frame (or as soon as possible) on training after an HSR is elected. We note that this may be difficult to achieve in practice in some jurisdictions, but there should be pressure on the PCBU to facilitate an HSRs attendance at training.</p> <p>Clarity around pay whilst accessing HSR training</p> <p>QLD WHS Act s 72: removal of ‘time off work’ so just requires PCBU to allow the HSR to attend the training, and amends provisions about pay so even if attending in ordinary time off work, they still get paid as if they worked. Specifically linked to dispute resolution provisions so QIRC can resolve underpayment issues. (Note: Payment provisions listed – normal work time, might work but not rostered on or if on time that you would not have worked - ordinary pay has detail – these called out in the disputes resolution and could file a dispute)</p> <p>Powers/functions of HSRs in relation to Entry Permit Holders</p> <p>Qld WHS Act s 68: HSR accompany a WHS entry permit holder on inspection, both ‘request and receive’ information (not just ‘receive’), and assistance restricted to ‘suitable entity’. This provision is specially referred to in the Dispute Resolution</p> <p>HSR receive all information re notices under Part 10 and if EPH gives PCBU an entry notice (i.e. then HSR knows can accompany EPH)</p> <p>PCBU obligations to HSRs</p> <p>Qld WHS Act, s70</p> <p>Allowing access to information the HSR is entitled to request</p>

	<p>Informing HSRs about notices issued by an inspector or WHS EPH, and providing a copy to the HSR if the PCBU has been given the notice</p> <p>Giving the HSR a copy of incident notifications made to the regulator</p> <p>When HSRs must be informed that an EPH or inspector has entered the workplace</p> <p>Allowing the HSR to accompany the EPH or inspector at the workplace</p> <p>Paying an HSR exercising their powers or functions under the Act the amount (including any overtime, penalties or allowances) they would get if they were performing their normal duties during the same period</p> <p>If a dispute arises between the PCBU and HSR about refusal to grant access to information or give a copy of a notice, the HSR may ask the regulator to appoint an inspector to assist in resolving the dispute or go straight to dispute resolution.</p> <p>Issuing a PIN</p> <p>QLD Act s92: The timeframe for complying with a PIN is reduced from eight days to four days, except in circumstances where all parties agree to extend the timeframe.</p> <p>QLD Act s100: The period for when a person can ask the regulator to appoint an inspector to review a PIN is reduced to three days.</p> <p>NSW WHS Section 97A PIN must be given to regulator. QLD also requires PCBP to notify the regulator of a PIN.</p> <p>Vic Act does not contain the requirement for an HSR to have attended training prior to issuing a PIN or cease work.</p>
Representation	<p>Election of HSRs</p> <p>QLD Act: s50A PCBU must not intentionally hinder, prevent, or discourage a worker from requesting an election for HSRs</p> <p>QLD Act s50B: requirement for PCBU to invite workers to elect HSRs every 12 months (and in other circumstances).</p> <p>S52 of Act parties can seek a variation AND unions can negotiate on behalf of workers</p> <p>QLD Act s52: union standing in own right to be part of negotiations of work group and negotiations to be completed within 14 days (not commence within 14 days), as well as prescribing that negotiations are carried out only at the agreed time and place.</p> <p>QLD Act s54: inspector appointment to decide work group matter within 7 days.</p>

	<p>QLD Act s62A: a PCBU must not intentionally hinder, prevent or discourage the election of an HSR or deputy HSR or a person conducting the election from following election procedures a PCBU must inform workers in writing about:</p> <ul style="list-style-type: none"> their right to request the election of HSRs and establish work groups the role, powers and functions of HSRs and the process for electing them, and who can represent workers during negotiations about work groups <p>Health and Safety Committee</p> <p>WA provides that PCBUs must, without unreasonable delay, consider HSC recommendations, provide a response to the HSC, and take action where recommendations are agreed. PCBUs cannot unreasonably withhold their agreement to a HSC's recommendation.</p> <p>QLD WHS Act s 76. (6A), (6B) inspector determination of constitution of committee a PCBU must establish an HSC as soon as practicable but not later than 28 days after receiving a request to do so.</p> <p>if the parties are unlikely to reach agreement within 28 days, they may ask the regulator to appoint an inspector to assist the parties reach agreement about the constitution of an HSC.</p> <p>if the inspector reasonably believes the parties are unlikely to reach an agreement with seven days of being appointed to assist, the inspector must make a decision about the HSC.</p> <p>an inspector's decision will not be subject to internal review, and any dispute about the decision can proceed to the QIRC</p> <p>Provide a list of HSRs to the regulator</p> <p>Although the model Act was amended to remove the requirement of PCBUs to provide a list of HSRs to their regulator, most jurisdictions, including QLD and SA do not follow the model Act and contain this requirement (s74).</p>
Union role in WHS	<p>Role in issue resolution</p> <p>QLD Act s 80: provide union standing in own right to issue resolution procedure by written notification to PCBU.</p> <p>QLD Act s81: allows a union to enter and remain at the workplace for the purpose of attending discussions with a view to resolving the issue.</p> <p>NSW WHS Section 223 - Add union to reviewable decisions</p>

	<p>WHS Entry Permit holders</p> <p>MIC OHS Act s58 and s89: take photographs or measurements or make sketches or recordings at the place</p> <p>NSW 118(1)(d1 and d2)-take measurements or conduct tests directly relevant to the contravention. Taking photos and videos and 118(5) if on site can deal with other issue they become aware of whilst on site</p> <p>QLD Act s119 a notice is not invalid only because of (a) a formal defect or irregularity in the notice; or (b) a failure to use the correct name of a person or relevant union mentioned in the notice if the notice sufficiently identifies the person or union.</p> <p>The Cth WHS Act recognises entry permits issued under corresponding state and territory WHS laws (s6A), allowing EPHs to exercise their rights in the Commonwealth jurisdiction without needing a separate permit.</p>
Access to information	<p>Access to inspector notices</p> <p>NSW Confidentiality of information – allows information obtained under the Act to be provided:</p> <p>After 271(3)(c)</p> <p>(c1) to any of the following persons relating to an inspection or investigation of a matter raised by the person with the regulator—</p> <ul style="list-style-type: none"> (i) a person who holds office in, or is an employee of, a registered organisation, (ii) a person who holds office in, or is an employee of, an employer organisation, (iii) a health and safety representative, or <p>(c2) if the document is a notice required to be displayed under section 210,</p> <p>S271A allows unions to receive information in relation to incidents (new provision 1 sept 2024)</p> <p>Vic OHS Act section 103.1.b inspector must provide report to HSR after entry by inspectors</p>
Union right to prosecute	<p>NSW WSH Section 230 – Registered organisations can prosecute after consultation with regulator</p> <p>230(1)(c) right to for union to bring prosecution –</p> <p>230(3) union need to speak to regulator prior before taking a prosecution, and the regulator needs to have declined to bring the proceedings.</p> <p>230(2A and 2B)Regulator must advise union asap if they bring proceedings in relation to a matter raised by the union,</p>

	<p>230(6) Court can direct monies can be paid to union who brings action.</p> <p>232(2 & 3) Court can grant leave to extend time frames if granting it is in the interests of justice</p> <p>260 NSW civil proceedings can be state or union if represents the member</p> <p>262 the court may order the monetary penalty under a civil penalty order is paid to the union</p>
Codes of practice compulsory	Codes compulsory – NSW WHS section 26A and QLD WHS Act s26A.
Protection against discrimination	QLD WHS Act s 105: include ‘treats a worker less favourably than other workers of the person’ in the definition of discriminatory conduct –
Dispute resolution	<p>Qld Act Division 7A:</p> <p>No timeframe anymore, so not even the 48 hours recommended in Boland review</p> <p>Relevant union standing specifically prescribed</p> <p>Appointment of inspector required only for work group and consultation matters</p> <p>Effect of notice of dispute on involvement of inspector prescribed (i.e., their involvement ceases)</p> <p>If union not a party, they can request to be</p> <p>s 102D for QIRC to review decision of inspector to exercise, or not to exercise, compliance powers under part 10 to resolve a dispute</p> <p>NSW WHS 102A-102I provides for unions standing</p> <p>Appointment of inspector only required for workgroup determination/variation or H&S committee matter</p> <p>Unions can request to be a party</p>
Enforcement and prosecution	Enforceable undertakings

	<p>QLD WHS Act s216: enforceable undertaking cannot be accepted for IM (as per other jurisdictions) or cat 2 if failure to comply with duty results in the death of an individual</p> <p>Prosecutions</p> <p>Qld WHS Act s230-233A</p> <p>Extending the 12-month timeframe to 18 months after an act or omission for a person to request the WHS Prosecutor to bring a prosecution for a Category 1 or 2 offence</p> <p>Providing a request can be made within six months of a coronial report, or a coronial inquiry or inquest ending</p> <p>Requiring the regulator to provide written updates on investigations every three months to a person who has made a request until a decision is made on whether a prosecution will be brought</p> <p>The WHS Prosecutor can authorise an appropriately qualified member of staff from their office to bring proceedings under the WHS Act</p> <p>QLD WHS Act s260 amendments: union standing to pursue WHS civil penalties in relation to contraventions of EPH provisions (a) section 126; (b) section 144(1); (c) section 145; (d) section 146; (e) section 147(1).</p> <p>QLD WHS Act s31 'negligence' not 'gross negligence'</p>
Regulator reporting	<p>NSW 271DA</p> <p>271DA Reporting about psychosocial matters</p> <p>(1) SafeWork NSW must, as soon as practicable after the end of each 6-month period, give the Minister a report about the following for the 6-month period—</p> <p>(a) the number and types of complaints received by SafeWork NSW about psychosocial matters that relate to—</p> <p>(i) the government sector, or</p> <p>(ii) the private sector,</p> <p>(b) the number and types of notices issued under Part 10 by the regulator or an inspector about psychosocial matters that relate to—</p> <p>(i) the government sector, or</p>

	<p>(ii) the private sector,</p> <p>(c) SafeWork NSW's insights about the issuing of notices under Part 10 about psychosocial matters that relate to the government sector and the private sector, including any recommendations for—</p> <p>(i) improving psychosocial work health and safety in the sectors,</p> <p>and</p> <p>(ii) reducing psychological injuries in the sectors.</p> <p>Also 271E SafeWork NSW to publish information on website</p>
Consultation	QLD Act s48: if requested by workers consultation must involve their representative carrying out consultation only at the time and place agreed to by the parties.
Duty for providers of WHS advice and services	<p>WA WHS Act s26A additional duties for service providers</p> <p>New duty for providers of WHS advice and services (e.g. consultants to ensure their services do not put workers at risk. They can be held liable if unsafe advice or services contribute to harm.</p>
Industrial manslaughter	NSW's industrial manslaughter offence carries the highest maximum penalty with a \$20 million fine for body corporates and 25 years imprisonment for individual offenders (NSW WHS Act s34C)

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