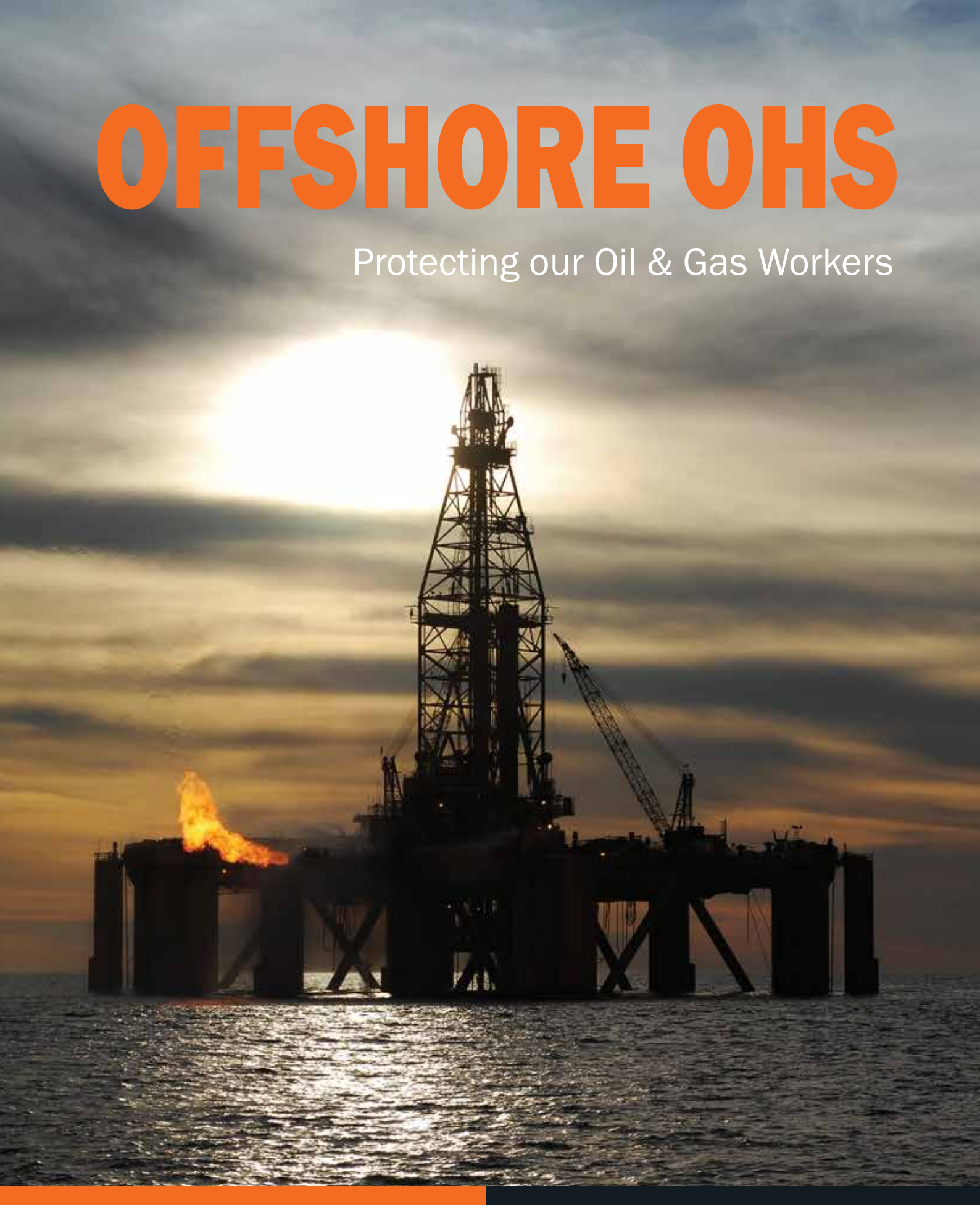
OFFSHORE OHS

Protecting our Oil & Gas Workers



ACTU
australian council of trade unions

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MARITIME UNION OF AUSTRALIA
1872

AMWU

THE AUSTRALIAN WORKERS' UNION

The ACTU

The Australian Council of Trade Unions is the peak body for Australian unions, made up of 46 affiliated unions. We represent almost 2 million working Australians and their families. Unions are active every day campaigning in workplaces and communities around Australia for better job security, pay and conditions, rights at work, healthier and safer workplaces, and a fairer and more equal society.

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The Working Australia Papers

The Working Australia Papers are an initiative of the ACTU to give working people a stronger voice about policy matters affecting them.

Acknowledgements

Many of the recommendations found in this paper were drawn from a European study tour into offshore health and safety regimes undertaken by Australian trade union officials in June 2014. The ACTU would like to acknowledge the contributions of the following people in the preparation of this report:

- Stuart Bevan, ACTU
- Andrew Dettmer, AMWU
- Cassandra Devine, ACTU
- Steven Dodd, AMWU
- Matt Goodwin, MUA
- Glenn McLaren, AMWU
- Peter Mooney, ETU
- Matthew Murphy, ETU
- Rod Pickette, MUA
- Jeff Sharp, AWU

Abbreviations

ACTU refers to the Australian Council of Trade Unions

AMSA refers to the Australian Maritime Safety Authority

COAG refers to the Council of Australian Governments

DWG refers to Designated Work Group

HSE refers to the Scottish Health and Safety Executive

HSR refers to Health and Safety Representatives

ILO refers to the International Labour Organisation

IMO refers to the International Maritime Organisation

ITF refers to the International Transport Workers' Federation

IUOOC refers to the Inter Union Offshore Oil Committee (UK)

LO refers to Landsorganisasjonen i Norge (the Norwegian Confederation of Trade Unions)

Model Act refers to the *Model Work Health and Safety Act* (23 June 2011)

NOPSEMA refers to the National Offshore Petroleum Safety and Environmental Management Authority

National Review Panel refers to the *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council* (January 2009)

OHS refers to Occupational Health and Safety

OHS(MI) Act refers to the *Occupational Health and Safety (Maritime Industry) Act 1993*

OPITO refers to the Offshore Petroleum Industry Training Organization (UK)

OPPGS Act refers to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

OPPGS Regulations refers to the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*

PSA refers to the Norwegian Petroleum Safety Authority

RTO refers to Registered Training Organisation

WHS refers to Work Health Safety

Executive Summary

In June 2014 a delegation of Australian Unions representatives embarked on a study tour of the offshore oil and gas industries of the United Kingdom and Norway. This report details their findings and recommendations.

The ACTU strongly urges the Australian Government, Council of Australian Governments (COAG) and relevant authorities to embrace world's best practice for offshore Occupational Health and Safety (OHS) legislation by adopting specific provisions of the Model Act and harmonising OHS laws governing offshore industries with those governing onshore industries.

The recommendations of this report are not contentious; we simply argue the existing OHS laws which apply to Victorian and South Australian onshore industries should be extended to cover offshore operations. Governments and regulatory bodies must answer the question – why is the safety of offshore oil and gas workers treated differently to their onshore colleagues?

The relevant legislation – the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPPGS Act) – fails to align with the principle features of all other modern Australian health and safety regimes covering high risk industries; every person and entity with the capacity to control workplace safety should be thoroughly consulted and protected under comprehensive legislation.

Recommendations

Recommendation 1: OHS laws governing offshore industries should align with those governing onshore industries, unless there is justifiable, industry specific reason not to. Specifically:

1A Amend the OPGGS Act to ensure the establishment and variation of designated work groups is conducted following negotiation and agreement between workers and a person conducting a business or undertaking.

1B Amend the OPGGS Act to provide for the right of workers to autonomously determine the manner in which they select a health and safety representative.

1C That the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) support comprehensive and consistent Health and Safety Representative (HSR) training and that the OPGGS Act be amended to provide for:

- An initial five day course (approved by the regulator) as soon as practical following election, or within 14 days after a request is made by the HSR;
- The right of the HSR to specify the approved course, after consultation with the person conducting the business or undertaking and receive paid leave to attend the training; and,
- The right of the HSR to attend a one day refresher training session per year, receiving paid leave to attend.

1D That training under paragraph 30 of Schedule 3 of the OPGGS Act can only be accredited after a tripartite panel of key stakeholders – including unions – has assessed the merits of proposed training packages and providers.

1E Amend the OPGGS Act to require that if there is a HSR at a workplace, that representative, if he or she consents, is a member of the Health and Safety Committee.

1F Amend the OPGGS Act to require that If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 or more of their number (who consent) to be members of the committee.

1G That the operator must ensure a list of each HSR and Deputy HSR (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date, and a copy of the up-to-date list is given to the regulator as soon as possible.

1H That the OPGGS Act and Regulations provide a system of high risk work licensing as outlined in Part 4 of the Model Work Health and Safety Act 2011 (Model Act) and given effect by Schedules 3 and 4 of the model Work Health Safety (WHS) Regulations, with NOPSEMA becoming the licensing body for high risk work. Further, permit to work provisions in the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (OPPGS Regulations) should be reviewed to ensure they cover all types of high risk work as defined in the WHS Regulations.

1I Given that offshore oil and gas facilities are remote workplaces, the OPGGS Act is amended to provide OHS entry permit holders with an effective right of entry.

Recommendation 2: Model Work Health and Safety regulations should be extended throughout the offshore oil and gas industry via regulation, where those standards are applicable in industry generally, or in the offshore oil and gas industry internationally.

Recommendation 3: That the current dis-application of the *Navigation Act 2012* to vessels while facilities as defined under the OPGGS Act be re-applied to vessels under the NOPSEMA jurisdiction the extent that the application of all International Maritime Organisation (IMO) and International Labour Organisation (ILO) Conventions given effect by the Navigation Act are restored and given practical effect. Further, boundary issues between the application of the Navigation Act and the OPGGS Act should be resolved through legislative action.

Recommendation 4: Amend the OPGGS Act to reflect the Objects of the Act in the functions of the NOPSEMA Board, by providing for equal numbers of worker representatives, employers and Government representatives on the Board.

Recommendation 5: Amend the OPGGS Act to provide that members of the NOPSEMA Board representing the interests of workers should be nominated by the ACTU.

Recommendation 6: That the Australian Government immediately establish a tripartite working group to reconcile consultative deficiencies between NOPSEMA, workers and employers.

Recommendation 7: Amend the OPGGS Regulations to require the operator to conduct a review and revision of the Safety Case if requested by a HSR, consistent with Regulation 559 of the Commonwealth Work Health and Safety Act 2011.

Recommendation 8: Amend the OPPGS Regulations to require that the operator provide HSRs internet access to the Safety Case at all times.

Recommendation 9: That the Australian Government immediately establish a review to investigate the implications of insecure and precarious employment on OHS standards in the offshore oil and gas industry.

UK & Norwegian Oil and Gas Study Mission 2014

In June 2014, a delegation of Australian Unions representatives embarked on a study tour of the offshore oil and gas industries of the UK and Norway. The Australian Unions delegation consisted of Michael Borowick, Mick Doleman, Glenn Thompson and Jim Ward.

Michael Borowick
Assistant Secretary, Australian Council of Trade Unions (ACTU)

As ACTU Assistant Secretary, Michael oversees Occupational Health and Safety and Workers' Compensation matters. The ACTU and its affiliates are dedicated to ensuring all workers have access to safe workplaces and that injured and ill workers are properly cared for and compensated. Michael represents the ACTU as a member of the National Workplace Relations Consultative Council, Safe Work Australia, Safety Rehabilitation and Compensation Commission, Defence Reserves Support Council and Asbestos Safety and Eradication Council.

Mick Doleman
International Executive Officer, Maritime International Federation (MIA)

At the time of the delegation, Mick was Deputy National Secretary of the Maritime Union of Australia (MUA). Mick went to sea in 1970 and has extensive experience in the offshore oil and gas industry working on support, supply and anchor-handling vessels in Bass Straight, North West Australia, Northern Territory and New Zealand. Mick represented the MUA as a Director on the Australian Diving Accreditation Scheme (ADAS) for ten years. As part of his ADAS responsibilities he was also a committee member of the Australian Standards SF-17 relating to diving occupational standards. He was a member of the Seacare Authority from 2004–2014. He is also Deputy Chair of the International Transport Workers' Federation Offshore Taskforce Group and Chair of the Regional Offshore Taskforce Group.

Glenn Thompson
Assistant National Secretary, Australian Manufacturing Workers Union (AMWU)

Glenn Thompson is the Assistant National Secretary of the Australian Manufacturing Workers Union. A fitter by trade, Glenn represents workers nationally across shipbuilding, aviation and the metal industry. Glenn brought over 25 years of experience as part of the Australian Unions study tour to the offshore oil and gas industries of the UK and Norway.

Jim Ward
OH&S Officer and Organiser, The Australian Workers' Union (AWU)

Jim Ward is the National OHS Director for The Australian Workers' Union. He worked in the oil and gas industry for 20 years and has attained post-graduate qualifications in OHS Management. He has a particular interest in Major Hazard Facilities and the safety case regime.

The organisations and individuals whom the Australian Unions delegation met included:

- The International Transport Workers' Federation Offshore Taskforce;
  - Norrie McVicar, Chair
  - Inge Marowsky
  - Jon Whitlow
- The Inter Union Offshore Oil Committee;
  - Jake Molloy, Regional Organiser, RMT
  - John Taylor, Unite the Union
  - Tommy Campbell, Regional Officer, Unite The Union
  - Ian Tasker, Secretary, STUC
- Landsorganisasjonen i Norge (LO) – Norwegian Confederation of Trade Unions;
  - Peggy Hessen Følsvik, Secretary, LO
  - Marianne Svensli, Advisor OHS, LO
  - Frode Alfheim, VP, Head of Industrial Politics, Industri Energi
  - Henrik Fjeldsbø, National Officer, Industri Energi
  - Mohammad Afzal, Secretary, LO
  - Trond Løvstakken, National Officer, Electricians and IT Workers Union
  - Ulf Madsen, Vice President, Norwegian Engineers and Managers Association
  - Arne Larsen Fløysvik, Offshoreekretaer, LO
- The Norwegian Petroleum Safety Authority;
  - Anne Vatten, Director of Legal and Regulatory Affairs
- The Scottish Health and Safety Executive;
  - James Munro, Operations Manager of the Energy Division, Hazardous Installations Directorate
- The Offshore Petroleum Industry Training Organization
  - David Doig, Group Chief Executive
- IndustriALL
  - Jim Catterson, Energy Industry Director,
- Frank Doran MP UK
- Anette Trettebergstuen MP Norway

The key lesson of the study tour was that workplace involvement, collaboration and tripartitism are integral components of any best practice OHS system. Put simply – without consultation, cooperation and trust – OHS regimes cannot function optimally.

Figure 1. Australian Unions representatives at the International Transport Federation – Workers Offshore Taskforce meeting, June 2014. The meeting included representatives from Norway, the United Kingdom, Indonesia, Trinidad, India, Russia, Singapore, Philippines, Mexico, Netherlands, New Zealand, Denmark and Croatia.

Benchmarks of International Best Practice

By way of comparison, it became increasingly clear to the members of the Australian Unions delegation that the Australian offshore oil and gas industry is lagging behind international best practice benchmarks on OHS systems and development.

For example, the Norwegian Confederation of Trade Unions (LO) reported favourable tripartite relations between the Norwegian Government, industry and workers. This was demonstrated with the establishment of a collaborative Safety Forum in 2001, which meets up to six times annually, and the Legislation Development Forum, which meets up to four times a year. LO representatives said that workers, employers and the regulator, PSA, use these tripartite mechanisms recurrently to enhance risk management strategies and best practice OHS models.

Figure 2. From left – Marianne Svensli, Ulf Madsen, Arne Larsen Fløysvik, Trond Løvstakken, Mohammad Afzal, Henrik Fjeldsbø, Peggy Hessen Følsvik, Jim Ward, Glenn Thompson, Frode Alfheim & Michael Borowick.

Figure 3. From left – Glenn Thompson, James Munro, Michael Borowick, Jim Ward and Mick Doleman at the offices of the Health & Safety Executive – Aberdeen, Scotland.

James Munro – Operations Manager of the Energy Division, Hazardous Installations Directorate, Health and Safety Executive (HSE), Aberdeen – also praised the efficacy of tripartite relations it its role of developing and improving WHS standards. Mr Munro reported that industry stakeholder engagement had matured over the years, resulting in trust and collaboration between all parties. In contrast to relations between Australian offshore unions and NOPSEMA, the HSE and UK offshore unions maintain an open dialogue through regular meetings.

Mr. Munro added that dialogue with key stakeholders is an important part of the UK's regulatory culture, providing an opportunity to explain the HSE's regulatory approach to a wider audience, thereby improving stakeholder understanding.

"*If we as the UK's regulator only spoke to industry representatives, then our independence might be questioned. We would be missing out on valuable insight and input from offshore worker representatives. These representatives – along with input from industry – inform policy and strategy development, guidance, regulatory initiatives and implementation.*"

- James Munro, HSE (UK).

Profile: The Offshore Petroleum Industry Training Organization (UK)

Created in 1977, the Offshore Petroleum Industry Training Organization (OPITO) is a not-for-profit tripartite owned oil and gas industry skills organisation. At the core of the organisation is the belief that every worker in the oil and gas industry has the right to go to work, work safe and go home to their families. OPITO is the global leader in identification of competencies and publication of model training programs which underpin high risk work in the global offshore oil and gas industry, with strong support from the international oil and gas industry.

The owners of OPITO – employers and trade unions – prioritise OHS above all else; operators, drillers, trade unions and regulators work together to ensure OPITO creates the right training and competence standards for the workforce. OPITO then ensures the quality of training and assessment meets the needs of the workforce. Where safety, skills, competence and the ability to respond effectively to an emergency situation is of critical importance, the collaborative nature of OPITO has proven to deliver real value for the industry and the people that work in it right across the globe.

Figure 4. From left – Norrie McVicar, Jake Molloy, Mick Doleman, Jim Ward, Michael Borowick, John Taylor, Glenn Thompson, Ian Tasker and Tommy Campbell at the offices of OPITO – Aberdeen, Scotland.

OPITO standards are used in over 40 countries. Hundreds of thousands of offshore workers are trained each year through the world class training network quality assured by OPITO. Some OPITIO standards, such as *Basic Offshore Safety Induction and Emergency Training* (BOSIET), are already the accepted Australian standard. OPITO has proven over many years how collaboration between employers, trade unions and regulators in a tripartite model benefits the industry and its workers. For example, in the UK in 2014, employers and trade unions agreed there was a clear need to introduce training in new rebreather equipment for helicopter travel. Through tripartite collaboration, a new standard was developed and a new training and verification regime established. This resulted in over 60,000 workers becoming successfully trained in the new equipment within a 3 month period.

An informative meeting of Australian Unions delegates and OPITO Group Chief Executive David Doig further confirmed the need for benchmarked safety regulations for high risk work in Australian offshore OHS jurisdictions, developed through comprehensive consultation between employees and their representatives, regulators and operators.

Profile: Frode Nirisen – a long serving Norwegian Health and Safety Representative

A veteran of the Norwegian offshore oil and gas industry, Mr. Nirisen has been working in the sector since December 1985. He was first elected as a HSR in 1995, providing him with over 20 years' experience advocating for the safety of his workplace and colleagues.

Frode Nirisen
Norwegian HSR

As part of his role as HSR, Mr. Nirisen provides employees with OHS guidance, participates in the Health and Safety Executive work of the Norwegian Union of Municipal and General Employees (eg. the Operators' Committee, the Health and Safety Executive Committee, the Helicopter Committee and the Chief Safety Delegate Forum) and follows up on OHS investigations and incidents. He also joins management in meetings with the Petroleum Safety Authority Norway, takes part in Union-Management joint committee meetings, and participates in offshore working environment committee meeting with suppliers.

Mr. Nirisen unequivocally advocates the need for tripartite collaboration between workers and their unions, regulators and industry. He argues that without this, the right of all workers to a safe and healthy workplace is undermined.

Alignment of Legislation

OHS laws governing offshore industries should align with those governing onshore industries, unless there is justifiable, industry specific reason not to. Currently, the OPGGS Act fails to align with the principle features of all other modern Australian health and safety regimes covering high risk industries – every person and entity with any capacity to control workplace safety should be thoroughly consulted and protected under comprehensive legislation. Aligning OHS legislation across onshore and offshore petroleum operations will improve health and safety outcomes for offshore employees, reducing the incidence of workplace fatality, injury and disease.

The ACTU notes that the principle of harmonisation has received widespread support previously. The Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety 2008 formalised an agreement to harmonise OHS legislation nationally.[1] There are several important reasons for this. The existing interaction of the OHS (MI) Act and the OPPGS Act can create legislative confusion. For example, the OPPGS Act provides jurisdictional coverage while an oil rig is fixed, but if the same oil rig is packed and in transit, the OHS (MI) Act applies.

Further, aligning OHS legislation can enhance operational efficiencies. As outlined by the *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council 2009* (National Review Panel), this is achieved by sharing expertise, resources and information across aligned jurisdictions, improving performance and flexibility.[2] For example, inspectors trained in onshore jurisdictions could be effectively deployed cross-jurisdictionally at short notice in the case of a crisis offshore.

Therefore, the ACTU calls on the Australian Government to align OHS laws governing onshore industries with those governing offshore industries.

The ACTU recommends that the OPGGS Act be amended to reapply the relevant provisions in the Navigation Act 2012 and Marine Orders made under that Act such that all International Maritime Organisation (IMO) and International Labour Organisation (ILO) Conventions given effect by the Navigation Act are restored to vessels defined as facilities under the OPGGS Act. This legislative amendment will ensure the workforce and workplaces of the

[1] https://www.coag.gov.au/sites/default/files/OHS_IGA.pdf, pp. 627

[2] *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council* (January 2009), op. cit., pp. 265

offshore oil and gas industry are given protections and standards of various IMO and ILO Conventions – ratified previously by Australia. The conventions which should be restored are:

1. The International Convention for the Safety of Life at Sea, 1974 (SOLAS);
2. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 2010 (STCW); and,
3. The ILO Consolidated Maritime Labour Convention (MLC) 2006.

We recommend that in restoring the relevant provisions of the Navigation Act, boundary issues between the application of the OPGGS Act and the Navigation Act be clarified to provide certainty of jurisdictional application. Existing provisions create confusion; for example, when a ship comes alongside a facility or is within the designated "petroleum safety zone" that surrounds a facility.

Under the existing framework there are unacceptable discrepancies between Federal and State/Territory OHS regulations and the NOPSEMA jurisdiction legislation which cover high risk hazards. All Federal and State/Territory OHS legislation includes specific regulations on hazards deemed to be high risk. For example:

- Working at Height
- Confined Space Entry
- Electricity
- Manual Handling
- Hazardous Substances
- Major hazardous facilities
- Construction Work
- Storage and handling of Dangerous Goods
- Plant and Equipment
- Licensing of High Risk Work

Alarmingly, in the NOPSEMA jurisdiction, there are no specific regulations covering serious high risk areas such as:

- Working at Height
- Confined Space Entry
- Electricity
- Manual Handling

OPGGS Act regulations only cover a very small group of specific hazards and where they do, the regulatory framework does not always meet the Safe Work Australia standards. For example, there is minimal coverage on machinery and equipment hazards, noise and hazardous substances. This is of particular concern as it is estimated by Safe Work Australia that hazardous substances kill over 2000 workers per year in Australia[3]– particularly asbestos, which continues to be found on vessels entering the Australian offshore industry, as reported to the Seacare Authority by AMSA.

Recommendation 1: OHS laws governing offshore industries should align with those governing onshore industries, unless there is justifiable, industry specific reason not to.

Recommendation 2: Model Work Health and Safety regulations should be extended throughout the offshore oil and gas industry via regulation, where those standards are applicable in industry generally, or in the offshore oil and gas industry internationally.

Recommendation 3: The current dis-application of the Navigation Act 2012 to vessels while facilities as defined under the OPGGS Act be re-applied to vessels under the NOPSEMA jurisdiction the extent that the application of all International Maritime Organisation (IMO) and International Labour Organisation (ILO) Conventions given effect by the Navigation Act are restored and given practical effect. Further, boundary issues between the application of the Navigation Act and the OPGGS Act should be resolved through legislative action.

[3] Australian Safety and Compensation Council (2009), The cost of work-related injury and illness for employers, workers and the community 2005-6, Australian Government, Canberra

Tripartitism

The principle of Tripartitism – that Government, workers and employers optimise workplace health and safety through collaborative regulation – is not sufficiently reflected in NOPSEMA's existing consultative arrangements. Tripartitism is recognised by the United Nations International Labour Organisation (ILO) through Occupational Safety and Health Convention, 1981 No.155 (ILO C155), a convention Australia is signatory to[4]. ILO C155 provides at Article 4 that:

'Each Member shall . . . in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.'

Effective participation of workers and the representation of their interests in OHS are fundamental to improving workplace health and safety performance. In collective, workers have unique insight, knowledge and experience. Moreover, they are intimately familiar with offshore work systems and responsibilities, making their input on OHS matters invaluable to NOPSEMA and industry. It is recognised and accepted by the Australian Government that promoting and securing compliance with the WHS regime is enhanced when workers are involved, as advanced by the National Review Panel:

'*There is considerable evidence that the effective participation of workers and the representation of their interests in OHS are crucial elements in improving health and safety performance at the workplace.'*[5]

[4] http://www.aph.gov.au/house/committee/jsct/September2003/treaties/ilotext.pdf
[5] *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council* (January 2009), op. cit., pp. xvi

NOPSEMA's current consultative provisions not only fail to meet Australia's commitment to ILO C155, but also contradict the OPGGS Act itself, which states NOPSEMA must:

'*Foster a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities*' [6] – Schedule 3, Part 1 (e)

Despite the 2008 NOPSA Operational Review and the Australian Government's response identifying consultation as an area requiring high level attention, NOPSEMA's consultation with the labour force and their representatives continues to be inadequate. Indeed, the ACTU argues NOPSEMA has never effectively engaged with offshore unions, and that NOPSEMA is too closely aligned to the WHS agenda of employers.

It is the view of the ACTU that there are two key areas in which NOPSEMA's consultation with offshore workers and their WHS representatives is deficient:

1. The representative structure of the Board
2. The absence of a Tripartite Working Group

Structure of the NOPSEMA Board

The current composition of the NOPSEMA Board clearly does not meet the provisions outlined in Schedule 3, part 1(e) of the OPGGS Act (to '*foster a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities'*).

Among other responsibilities, the NOPSEMA Board provides advice and recommendations on policy and strategic matters relating to WHS. The Board is appointed by the Minister for Industry and Science, and is composed of a Chair and between 5-7 members.

At present, the NOPSEMA Board does not have a single workers' representative, thereby excluding the voices of the people for whom it has the duty to protect. The current structure of the Board clearly lacks diversity, failing to meet the tripartite provisions of Australia's commitment to ILO C155. In addition, the Board has not made any meaningful attempts to engage the ACTU or the offshore unions in constructive dialogue or collaboration, or to utilise the high-level expertise and knowledge of its members.

Accordingly, the ACTU calls on the Australian Government to introduce an amendment to the OPGGS Act to reflect the Objects of the Act in the functions of the Board, by providing for

[6] Offshore Petroleum and Greenhouse Gas Storage Act 2006, pp. 57

equal numbers of worker representatives (nominated by the ACTU), employers and Government representatives on the NOPSEMA Board.

Tripartite Working Group

The operator of a facility has a duty to satisfactorily consult with the workforce to develop an OHS policy. Specifically, with regard to duties relating to OHS under Schedule 3, Part 2, Division 1 of the OPGGS Act, the operator of a facility is required:

"to take all reasonable practical steps to develop, in consultation with: (i) members of the workforce; and (i) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be involved those consultations – that workforce representative; a policy relating to occupational health and safety, that… must provide appropriate mechanisms for continuing consultation between… the operator; and… the members of the workforce."[7]

As outlined by the Review Panel Report, such consultation is vital because:

'A person conducting a business or undertaking is responsible for making decisions regarding health and safety, but may not have a full understanding of the finer detail or subtleties of the work or working conditions. It is, therefore, important that the person conducting a business or undertaking obtain information from those workers who are most directly involved in the work of the business or undertaking, before making changes or implementing measures which may adversely affect health and safety.'[8]

To date, the reticence of NOPSEMA in working with trade unions and workforce representatives, HSR and safety committees has been unacceptable. To this end, the ACTU recommends the Australian Government announce the establishment of a tripartite working group to develop legislative solutions to rectify these gaps.

Recommendation 4: Amend the OPGGS Act to reflect the Objects of the Act in the functions of the NOPSEMA Board, by providing for equal numbers of worker representatives, employers and Government representatives on the Board.

Recommendation 5: Amend the OPGGS Act to provide that members of the NOPSEMA Board representing the interests of workers should be nominated by the ACTU.

Recommendation 6: The Australian Government should immediately establish a tripartite working group to reconcile consultative deficiencies between NOPSEMA, workers and employers.

[7] Offshore Petroleum and Greenhouse Gas Storage Act 2006, pp. 42
[8] Review Panel Second Report, op. cit., pp. 86

Safety Case

During the 2014 Australian Unions study tour of the offshore oil and gas industries of the UK and Norway, the Australian delegation spoke about the regulation of major hazards facilities in Australia and the use of the safety case regime. It was explained that the safety case regime in Australia differed across the various Australian OHS jurisdictions. HSRs in the Australian offshore oil and gas industry feel remote from the safety case system because in most cases it was developed without workforce involvement.

Unlike the safety case regimes applying to major hazards facilities in the State of Victoria and those regulated by the federal *Work Health and Safety Act 2011*, a HSR is not able to trigger the revision of a Safety Case even in circumstances were there had been no workforce involvement in its preparation or in circumstances were the operator has identified a major incident hazard, conducted a safety assessment or adopted a new risk control measure. In addition, HSRs in the offshore oil and gas industry regularly argue that the Safety Case is inaccessible and opaque.

Recommendation 7: Amend the OPGGS Regulations to require the operator to conduct a review and revision of the Safety Case if requested by a HSR, consistent with Regulation 559 of the Commonwealth Work Health and Safety Act 2011.

Recommendation 8: Amend the OPPGS Regulations to require that the operator provide HSRs internet access to the Safety Case at all times.

Workplace Involvement & Representation

Designated Working Groups

OPGGS Act provisions for the establishment and variation of Designated Working Groups (DWGs) fail to align with the majority of all other Australian work health and safety regimes, undermining the principles of tripartitism and stakeholder consultation. The OPGGS Act is prescriptive, stating:

"Establishment of designated work groups at initiative of operator"; and, *"Variaion of designated work groups at initiative of operator."*[9]

In stark contrast, the Work Health and Safety Act 2011 (Commonwealth) and State and Territory OHS laws (excluding Western Australia) provide for consultation and negotiation with the workforce regarding the establishment and variation of DWGs.

The ACTU believes the existing terms of the establishment and variation of DWGs are both out-dated and no longer supporting best practice. This view is endorsed by the Model Act; Part 5, Subdivision 2, 52(1), which recommends:

"(1) A work group is to be determined by negotiation and agreement between: (a) the person conducting the business or undertaking; and (b) the workers who will form the work group or their representatives"; and,

"(4) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement."[10]

Therefore, the ACTU calls on the Australian Government to align offshore regulation for the establishment and variation of DWGs with onshore legislation.

Representation

Provisions of the OPGGS Act which currently regulate health and safety representation are unnecessarily restrictive, impeding the right of workers to decide who should represent their interests on WHS issues. This concerns the ACTU because HSRs have been found to play an important role in improving WHS outcomes, as outlined by the National Review Panel:

[9] Offshore Petroleum and Greenhouse Gas Storage Act 2006, pp. 64, 66
[10] *Model Work Health and Safety Act* (23 June 2011), pp. 48

'There is considerable evidence that the effective participation of workers and the representation of their interests in OHS are crucial elements in improving health and safety performance at the workplace. This representation occurs through the use of the health and safety representatives…'[11]

In relation to representation, the ACTU notes three key problem areas under current legislative provisions:

1. The restrictive provisions for HSR elections
2. The constitution of Health and safety committees
3. Inadequate regulation for HSR training

Selection of Health and Safety Representatives

Consistent with the majority of other modern Australian health and safety regimes, the ACTU strongly supports the right of HSRs and workers to determine the conduct of an election. Regrettably, existing OPGGS Act regulations for election processes are prescriptive and circular, conferring control of selection procedures to the operator.

In contrast, the principle expressed in the Model Act is that workers should be in control of the election process, as outlined in Part 5 Consultation, representation and participation, Subdivision 4(61):

'Procedure for election of health and safety representatives; (1) the workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted. (2) However, an election must comply with the procedures (if any) prescribed by the regulations. (3) If a majority of the workers in a work group so determine, the election may be conducted with the assistance of a union or other person or organisation…'[12]

[11] *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council* (January 2009), op. cit., pp. 89

This principle was also endorsed by the National Review Panel, which found:

'*Allowing workers themselves to determine the manner in which they may select a representative is the best way to ensure that a work group is truly represented.*'[13]

Thus, the ACTU calls on the Australian Government to align onshore and offshore legislation, amending the OPGGS Act to provide for the right of workers to autonomously determine the manner in which they select a health and safety representative.

Obligation to train health and safety representatives

HSR training is an integral part of the health and safety framework of offshore facilities. As noted by the National Review Panel, "the recent OHS reviews consistently recommended or agreed that an employer should pay the costs of HSR attendance at training, and allow the HSR the necessary time off work with pay to attend and take part in the courses."[14] The Maxwell Review reports that "the training of HSRs is critical to their ability to perform their functions as representatives of the health and safety interests of their fellow workers", and that "the benefits for all workplace parties are enormous".[15] Given the demonstrated and widely recognised importance of HSR training, the ACTU is concerned by the inadequacy of current legislative requirements. Indeed, there are four key issues with the OPGGS Act provisions for HSR training:

1. No specified length of training course.
2. No specified entitlement to days for initial training or refresher training.
3. No time frame for when training is undertaken.
4. Training courses are limited to specific RTO providers, with no formal assessment of participants.

The current training provisions are at odds with the findings and recommendations of both the Model Act and the National Panel Review, 25.149, which endorsed:

- *"An obligation of the HSR to attend initial five day competency based training (that has been approved by the regulator) as soon as practical following election;*
- *The right of the HSR to specify the approved course, after consultation with the person conducting the business or undertaking;*
- *The right of the HSR to attend one day's refresher training per year"*[16]

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[12] *Ibid*, pp. 54
[13] *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council* (January 2009), op. cit., pp. 127
[14] *Ibid*, op. cit., pp. 142
[15] Maxwell Review, pp. 211
[16] Draft Model Work Health and Safety Act – Last revised 23 June 2011, pp. 145

Accordingly, the ACTU recommends the provisions for HSR training be revised and upgraded so that HSRs are adequately trained.

Moreover, consistent with the approach to approving training under Comcare, the ACTU strongly recommends training under paragraph 30 of Schedule 3 of the OPGGSA Act 2006 should only be accredited after a tripartite panel of key stakeholders – including unions – has assessed the merits of proposed training packages and providers.

Constitution of Health and Safety Committees

Existing provisions of the OPGGS Act for the appointment of HSRs to the Health and Safety Committee are unsatisfactory. At present, a HSR is not required under the legislation to be a workface representative on the Committee. Instead, NOPSEMA advises that HSRs are included on the Committee depending on the outcome of a negotiation, developed in consultation with workforce members. The ACTU argues this process is deficient; Health and Safety Committees are an important mechanism through which workers can participate in OHS policy and consultation, a contention supported by the National Review Panel:

"There is good evidence that constructive involvement by workers in OHS contributes to better OHS. This is supported by academic studies..."[17]

Accordingly, the ACTU believes HSRs should have the right to automatically become a member of the Health and Safety Committee. To this end, the ACTU recommends the immediate adoption of clause 76(2), Division 4 of the Model Work Health and Safety Act 2011, which states:

'*If there is a health and safety representative at a workplace, that representative, if he or she consents, is a member of the committee.*'[18]

[17] *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council* (January 2009), op. cit., pp. 156

Moreover, given the evidence supporting the benefits of representation to workplace health and safety, workers should have the right to appoint more than one HSR to the Committee. This view is supported by the National Panel Review, 25.31, which recommended:

"... There should not be a limit on the number of HSRs that can be agreed by a person conducting a business or undertaking and the workers engaged or directed by them... While one HSR may be able to adequately represent all of the workers at one workplace, there may be a need for several HSRs at another, due to the size of the workplace or the diversity of activities carried out with it."[19]

Once more, the ACTU calls on the Australian Government to amend the Act to adopt the Model Work Health and Safety Act 2011 Division 4, Clause 76(3), which recommends:

'If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 or more of their number (who consent) to be members of the committee'.[20]

OPGGS Act provisions on the constitution of Health and Safety Committees are excessively constrictive. According to Schedule 3, Division 4, clause 41(1), the following three conditions are required to establish a Health and safety committee:

'*(a) the number of those members normally present at the facility is not less than 50 (whether or not those members are all at work at the facility at the same time); and (b) the members of the workforce are included in one or more designated work groups; and (c) the operator is requested to establish the committee by the health and safety representative for the designated work group or for one of the designated work groups.'*[21]

These conditions are unnecessarily onerous, not even requiring the operator of a facility to establish a Health and Safety Committee. Therefore, the ACTU recommends the adoption of the provisions outlined in the Model Act - Division 4, Clause 75(1):

'The person conducting a business or undertaking at a workplace must establish a health and safety committee for the business or undertaking or part of the business or undertaking: (a) within 2 months after being requested to do so by: (i) a health and safety

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[18] *Model Work Health and Safety Act* (23 June 2011), pp. 68
[19] *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council* (January 2009), op. cit., pp. 94
[20] *Model Work Health and Safety Act* (23 June 2011), pp. 68
[21] Offshore Petroleum and Greenhouse Gas Storage Act 2006, pp. 84

representative for a work group of workers carrying out work at that workplace; or (ii) 5 or more workers at that workplace.'[22]

Health and Safety Representative Lists

As HSRs are an important feature of modern OHS systems, it is vital that each workplace has an active and well trained HSR. Accordingly, the ACTU is of the view that the OPPGS Act should provide for up-to-date and readily available lists of HSRs, with a copy of this list given to the regulator as soon as possible. This requirement currently applies in most Australian OHS jurisdictions.

1A Amend the OPGGS Act to ensure the establishment and variation of designated work groups is conducted following negotiation and agreement between workers and a person conducting a business or undertaking.

1B Amend the OPGGS Act to provide for the right of workers to autonomously determine the manner in which they select a health and safety representative.

1C That the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) support comprehensive and consistent Health and Safety Representative (HSR) training and that the OPGGS Act be amended to provide for:

- An initial five day course (approved by the regulator) as soon as practical following election, or within 14 days after a request is made by the HSR;
- The right of the HSR to specify the approved course, after consultation with the person conducting the business or undertaking and receive paid leave to attend the training; and,
- The right of the HSR to attend a one day refresher training session per year, receiving paid leave to attend.

1D That training under paragraph 30 of Schedule 3 of the OPGGS Act can only be accredited after a tripartite panel of key stakeholders – including unions – has assessed the merits of proposed training packages and providers.

1E Amend the OPGGS Act to require that if there is a HSR at a workplace, that representative, if he or she consents, is a member of the Health and safety committee.

[22] *Model Work Health and Safety Act* (23 June 2011), pp. 67

1F Amend the OPGGS Act to require that If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 or more of their number (who consent) to be members of the committee.

1G That the operator must ensure a list of each HSR and Deputy HSR (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date, and a copy of the up-to-date list is given to the regulator as soon as possible.

Licensing of High-Risk Work

The OPGGS Act fails to address the issue of authorisation for high-risk work. For the majority of Australian OHS jurisdictions, "the operation of specific high risk work is governed by a system of certification or licensing designed to minimise the risk of adverse consequences associated with a lack of competency".[23]

Categorically, the OHS laws governing offshore operations are outdated and no longer support best practice. The ACTU submits that this is unacceptable; offshore workers deserve the same levels of protection afforded to their onshore colleagues. The ACTU demands that a new part of the OPGGS Act provide for a 'permit to work' system for high-risk activities. An individual should not carry out high-risk work or be directed to carry out high risk unless they are authorised to do so, as advanced by the Model Act (Part 4, Authorisations):

> *43 Requirements for authorisation of work*
>
> *(1) A person must not carry out work at a workplace if:*
>
> *a. the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and*
>
> *b. the person, or the person on whose behalf the work is carried out, is not authorised in accordance with the regulations.*[24]

These provisions – matched with specific standards and demonstrated competencies – will improve health and safety outcomes for offshore employees carrying out high-risk activities, thereby reducing the incidence of workplace fatality, injury and disease.

As an interim and complementary measure, the ACTU suggests recognising the competency standards of the Offshore Petroleum Industry Training Organisation (OPITO)

[23] *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council* (January 2009), op. cit., pp. 190
[24] *Model Work Health and Safety Act* (23 June 2011), pp. 41

and the Australian Dive Accreditation Scheme (ADAS) for high risk work given effect by schedule 3 of the OPGGS Act.

There would be considerable benefit to employers, operators and employees if the industry and the regulator adopted appropriate benchmarks for the high risk work training in the offshore oil and gas sector. The current position is a variety of different standards applying to high risk work – such as crane operations, rigging, dogging, scaffolding and confined space work. A consensus is emerging supporting the potential advantages for the developers and managers of safety cases if the industry could refer to accepted industry competency benchmarks when identifying how to reduce risk to as low as reasonably practicable.

1H That the OPGGS Act and Regulations provide a system of high risk work licensing as outlined in Part 4 of the Model Act and given effect by Schedules 3 and 4 of the model WHS Regulations, with NOPSEMA becoming the licensing body for high risk work. Further, permit to work provisions in the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 should be reviewed to ensure they cover all types of high risk work as defined in the WHS Regulations.

Right of Entry

Unions provide critical logistical support (training, information and protection from victimisation) to formal representative structures in the workplace, particularly HSRs. Indeed, The ILO highlights the crucial role of unions in securing safer and healthier workplace, strongly advocating for "a strengthening of collective voice as the primary means of improving working conditions, and protecting workers' health."[25] This was supported by the Review Panel Report, which found that providing a legislated right of entry for WHS purposes to union officials "would contribute in a positive manner to OHS compliance at a workplace level".[26]

Therefore, the ACTU recommends that – consistent with the harmonised national system – unions should have a legislated right to enter OPGGSA Act facilities for WHS purposes. This right should be enacted consistently with the Commonwealth Work Health and Safety Act 2011.

1I Given that offshore oil and gas facilities are remote workplaces, the OPGGS Act is amended to provide OHS entry permit holders with an effective right of entry

[25] International Labour Organisation (2004), 'Economic Security for a better world, ILO Socio-Economic Security Programme', International Labour Office, ISBN 92-2-115611-7
[26] *National Review into Model Occupational Health and Safety Laws – Second Report to the Workplace Relations Ministers' Council* (January 2009), op. cit., pp. 312

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