



CPSU

# SafetyFirst Network

Community and Public Sector Union

## 2019 Submission

**Workers need stronger laws to ensure their  
health and safety is the priority**

Responding to recommendations  
of the 2018 Review of model WHS Laws



# SafetyFirst Network

## 2019 Stronger laws are needed

Responding to recommendations of the 2018 Review of model WHS Laws

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## Executive summary

The Community and Public Sector Union (CPSU) is a strong supporter of the nationally harmonised system of Work Health and Safety (WHS) legislation. The CPSU believes a nationally consistent WHS legislative framework which establishes effective compliance obligations and regulatory standards is essential to ensuring our members' health and safety is the priority at work.

The CPSU supports all 34 recommendations made by the review as sensible responses to identified problems in the operation of Australia's WHS regime. The CPSU welcomes this opportunity to comment on the Recommendations of the 2018 Review of the Model Work Health and Safety Laws (the Review).

This submission specifically addresses the following recommendations of which the CPSU is particularly supportive. It is these recommendations that we consider will have the greatest positive impact towards achieving the objectives of the three-tiered harmonised WHS laws; provide a consistent and effective framework that secures the health and safety of workers.

- Addressing Psychosocial hazards (No. 2 and 20)
- Risk management processes (No. 27)
- Health and Safety Representative rights (No. 8 and 10)
- Worker representation, participation and consultation (No. 6 and 11 )
- Improving compliance framework to better resolve health and safety issues (No. 9, 12 and 13)

While we also identify the need to improve the funding and resources of Comcare as the regulator in the Commonwealth jurisdiction, Comcare will never be able to replicate the benefits to workplace safety that result from active collaboration with workers and their unions. Minimising the risk of workplace injury can only be achieved when unions, employers and Comcare as the regulator work in a respectful, facilitated and tripartite manner.

The CPSU is disappointed that the review does not address the impact of the reduced funding levels and staff numbers. The capacity of Comcare to meet its objectives of monitoring and enforcing compliance, preventing harm, and promoting safe and healthy workplaces has been negatively impacted by the 6.7% reduction in staffing levels since 2013-14. The lack of capacity of Comcare as a regulator is an ongoing source of frustration to workers and their unions who are seeing increasing levels of non-reporting or under reporting of incidence.

We have been consulted on the Australian Council of Trade Unions (ACTU) submission to the review. We fully endorse the content of that submission and this submission is intended to build on that submission.

## 1. Background

The CPSU is the union that represents employees in the Commonwealth public sector. It has been our experience that WHS issues in the Commonwealth have been brought about and exacerbated by cuts to the public service.

The Commonwealth Government's policy decisions which centre on a notion of 'small government' have and continue to have a serious impact on APS employees and their capacity and capability to support good government.

Since September 2013, the Coalition Government has implemented several significant budget measures including cutting of over 15,000 APS jobs. These cuts have come on the back of various other savings measures which have impacted the operations of the APS over the preceding years. Years of continuous budget cuts, efficiency dividends and other savings measures have made it harder for the federal public sector workers to continue to provide high quality public services and increasingly agencies are relying more and more on the goodwill of overstretched staff.

In the 2015--16 Budget, the Coalition committed to freezing the size of the Australian Public Service at the same levels as those seen in 2006--07 (167,596)<sup>[1]</sup>. This has meant that regardless of population growth, increasing operational requirements or funding levels, many agencies have been required to maintain the capped maximum average staffing level. This has resulted in agencies either reducing their workforce in overall terms and/or making more expensive arrangements via the use of labour hire and contracting. Remaining permanent Australian Public Servants are under increasing pressure to take on increasing workloads when positions are left vacant or abolished, to train and retrain low paid Labour Hire staff who have high turnover rates.

Staff are doing the best they can in untenable circumstances. Workload pressures are leading to work-related stress and affecting the mental health of overworked staff. For example, a One Department Pulse check of the Department of Immigration and Border Protection in 2016 outlined that "staff describe feeling overwhelmed with work due to increased workloads and/or resource pressures."

This must be taken seriously as the public administration and safety sector is not immune from serious WHS incidents and the number of serious incidents are increasing. Safe Work Australia's recently published 2019 year to date (June) workplace fatalities revealed 7 of 64 (11%) workplace fatalities were from public administration and safety sector compared 0 in the same period last year.

The CPSU conducted mental health surveys of employees in three large Commonwealth departments in 2018/19. The result of these surveys are outlined as case studies later in this submission. They show that growing workplace pressures are creating hazards that result in increased risk of work-related stress and psychological health. A high incidence of unacceptable workplace behaviours were also reported. These factors are having a destructive effect on the psychological and physical health of CPSU members.

### **High cost of regulatory failure for workers**

Unless addressed, the consequences of failing to address psychosocial hazards and factors will ultimately fall on workers and can lead to work health and safety and workers compensation claims.

There are a significant number of individual workers who interact with WHS laws each year. In 2017-18, Comcare reported 492 notifications of serious injury or illness, 861 dangerous incidents, 14 worker fatalities and 5,800 new workers compensation claims.

WHS issues also represent a significant portion of the advice and assistance that the CPSU provides to our members. Between 1 January 2018 and 31 July 2019, the CPSU's Member Service Centre, which assists

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<sup>[1]</sup> Australian Government (2016, May). 2016-17 Budget, Budget Paper No.4 Part 2: Staffing of Agencies. Retrieved from [http://budget.gov.au/2016-17/content/bp4/html/09\\_staff.htm](http://budget.gov.au/2016-17/content/bp4/html/09_staff.htm)

members with individual issues, represented 1136 members with WHS and workers compensation matters. This is 15% of all individual representations. These figures represent a significant number of CPSU member who are directly affected by the WHS regulatory framework. It is critical that the appropriate laws are in place to protect injured workers and workers more broadly.

There is a cost, to both affected workers and the organisations that employ them, from psychosocial injuries. For example, the National Mental Health Commission has reported that employees with job-related stress and mental illness were absent from work for an average of almost 11 weeks a year in Australia.<sup>1</sup> It is in the interests of both workers and employers to minimise and mitigate risks to avoid a situation where regulatory failure leads to increasing incidents.

## 2. Make regulations to effectively manage risk to workers psychological health and well-being.

The CPSU strongly supports recommendations 2 and 20 of the Review, including amending the model WHS Regulations to deal with how to identify psychosocial risks associated with psychological injury and the implementation of control measures to manage those risks. This is needed to address the failure to establish a minimum standard for the management of psychosocial hazards and psychological health of workers. Explicit regulations should provide guidance to duty holders on minimum requirements for identifying, assessing and managing psychosocial hazards.

Risks to the psychological health and wellbeing of workers should be addressed with the same seriousness and urgency as physical health and safety risks. The prevention of mental health conditions is one of six national priorities in Australian Work Health and Safety Strategy 2012-2022. This reflects the high cost and complexity of workers compensation for mental stress, and growing body of evidence internationally linking psychosocial hazards and serious health problems – both physical and psychological. Recognising this, the World Health Organization has commenced development of evidence-based guidelines on mental well-being in the workplace having listed ‘Burn-out’ in the 11th Revision of the International Classification of Diseases (ICD-11) as an occupational phenomenon<sup>2</sup>. *Burn-out* is defined in ICD-11 as “...a syndrome conceptualized as resulting from chronic workplace stress that has not been successfully managed”.

Persons Conducting a Business or Undertaking (PCBU) have a legal obligation under the General Duties of WHS Laws to either eliminate those risks where it is reasonably practicable to do so, and where it is not then minimise those risks as far as reasonably practicable. Yet surveys and feedback from CPSU members and workplace representatives consistently report PCBU’s are not meeting their general duties when it comes to psychosocial hazards at work. In a 2019 survey, when workers in Department of Prime Minister and Cabinet were asked for their view on the Department’s systems for managing the risks to their health and safety from inappropriate behaviour and workplace culture; **55% said the Department did not have effective safety systems in place** to address them and **only 19% believed the current systems were adequate**.

While the general duties in Australia’s Model WHS Laws are broad enough to cover psychosocial hazards, the absence of explicit and tailored regulation for identifying, assessing and managing risks to psychological health has resulted in inconsistent and inadequate management of psychosocial hazards and psychological health in Australian workplaces.

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1 NMHC (National Mental Health Commission) 2014, Contributing Lives, Thriving Communities: Report of the National Review of Mental Health Programs and Services, Sydney.

<sup>2</sup> 28 May 2019: World Health Organization ICD-11 notification [https://www.who.int/mental\\_health/evidence/burn-out/en/](https://www.who.int/mental_health/evidence/burn-out/en/)

In the current regulatory environment that relies on General Duties for a response to psychosocial hazards, duty holders with the best of intentions and a strong commitment to workers health and safety are nevertheless failing to implement Safe Systems of Work to manage the resulting risk to workers' health. In a recent survey of workers in Department of Defense, ***only 12.7% staff surveyed believe the Department had sufficient resources allocated to ensure workers health and safety and psychological wellbeing. 75.9% did not believe the Department had safe systems of work capable of effectively managing risk to their health and safety.***

This failure of implementation is evidenced by the recent results of 'CPSU 'Worker Health and Wellbeing' surveys in three Commonwealth departments. The results of these surveys show that psychosocial hazards identified by workers, such as increasing workload and decreasing control, are not being managed in accordance with WHS legislative risk management frameworks. This situation exists despite the existence of guidance by SWA and suggests that further guidance is needed.<sup>3</sup>

### **CPSU mental health and well-being case studies**

Over 2018-19 the CPSU conducted surveys in three major Commonwealth departments - Department of Human Services, Department of Defence, Department of Prime Minister and Cabinet. The purpose of the surveys was to better understand an increase in reporting of serious safety incidents, inappropriate workplace behaviour and poor psychological health, to the union. Together these departments employ around 50,515 APS workers<sup>4</sup>. The surveys were open to all workers in the departments.

The responses to the surveys revealed WHS management systems not coping, failing to identify or acknowledge psychosocial hazards, and failing to assess and manage risks to workers psychological health and well-being

The CPSU believes these three case studies provide practical examples of how under the current system, well-resourced, well-intentioned employers that care about their workers are nevertheless failing to manage psychosocial hazards in the absence of an explicit regulatory framework.

Almost 3,000 workers across the three departments completed the CPSU's Worker Health and Wellbeing surveys. Large numbers of respondents identified key issues adversely impacting worker health that are consistent with the *Psychosocial hazards or factors* identified by Safe Work Australia as causing psychological injury.<sup>5</sup> More than a third of respondents identified the following factors as being present in their workplace:

- **High Job Demands** - too much to do, fast paced work or significant time pressure
- **Low Job control** - workers have little say in the way they do their work, when they can take breaks or change tasks; workers not involved in decisions that affect them or their clients.
- **Poor support** - Tasks or jobs where workers have inadequate emotional support from supervisors and co-workers, information or training to support their work performance, or tools, equipment and resources to do the job
- **Poor workplace relationships** - workplace bullying, aggression, harassment including sexual harassment, discrimination, or other unreasonable behaviour by co-workers, supervisors or clients; poor relationships between workers and their managers, supervisors, co-workers and clients or others the worker is required to interact with; conflict between workers and their managers, supervisors or co-workers

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<sup>3</sup> Safe Work Australia. January 2019 National Guidance material - Work-related psychological health and safety, a systematic approach to meeting your duties.

<sup>4</sup> [https://www.apsc.gov.au/sites/default/files/aps\\_employment\\_data\\_31\\_december\\_2018\\_release-data\\_tables.xls](https://www.apsc.gov.au/sites/default/files/aps_employment_data_31_december_2018_release-data_tables.xls)

<sup>5</sup> Safe Work Australia. January 2019 National Guidance material - Work-related psychological health and safety, a systematic approach to meeting your duties.

- **Poor organisational justice** - inconsistent application of policies and procedures, unfairness or bias in decisions about allocation of resources and work, or poor management of underperformance.
- **Poor organisational change management** - insufficient consideration of the potential WHS and performance impacts during downsizing or relocations or associated with the introduction of new technology and production processes, inadequate consultation and communication with key stakeholders and workers about major changes, or not enough practical support for workers during transitions times.
- **Low recognition and reward** - lack of positive feedback, imbalance between workers' efforts and formal and informal recognition and rewards, lack of opportunity for skills development, or skills and experience are underused.
- **Low role clarity** - uncertainty about or frequent changes to tasks and work standards; important task information which is not available to the worker, or conflicting job roles, responsibilities or expectations (such as a worker is told one job is a priority, but another manager disagrees).
- **Remote work** - work at locations where access to resources and communications is difficult and travel times may be lengthy

The CPSU acknowledges the ongoing collaborative work with Department of Human Services and Department of Defence to better understand the nature of, and assess, these hazards in the workplace as part of continuous improvement programs. The Department of Prime Minister and Cabinet is yet to respond to the CPSU inquiry findings at the time this submission.

#### *Case study 1: Commonwealth Department of Prime Minister and Cabinet*

In late 2018, the CPSU initiated a Work Health and Safety Inquiry to better understand the increase in CPSU members from Department of Prime Minister and Cabinet (PM&C) contacting the union for assistance on health and safety related matters. The results of this inquiry<sup>6</sup> demonstrated a consistent pattern of members reporting inappropriate behaviour, and workplace cultures having a damaging impact on worker psychological health and well-being.

The CPSU WHS inquiry found workers suffering serious health consequences due to systemic failures of the departmental health and safety management system. The results from an all worker survey and group interview process revealed a WHS management system not identifying or acknowledging hazards, nor assessing and effectively managing risks to workers psychological health and well-being.

***Only 14% staff surveyed believe the Department had sufficient resources allocated to ensure workers health and safety, including psychological wellbeing. 55% do not believe the Department has Safe Systems of Work capable of effectively managing risk to their health and safety.***

Almost 500 staff completed the CPSU's Worker Health and Wellbeing survey. Large numbers of respondents identified key issues adversely impacting worker health. These issues are consistent with the Psychosocial hazards identified by SWA as causing psychological injury.

***75% of workers reported Excessive workloads, 67% Unrealistic work expectations, and 60% Changing or inconsistent work expectations without transparency or consultation.***

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[https://www.cpsu.org.au/system/files/2019\\_cpsu\\_whs-pmc\\_inquiry\\_report.pdf](https://www.cpsu.org.au/system/files/2019_cpsu_whs-pmc_inquiry_report.pdf)

Failing to manage the Psychosocial hazards or factors in the design or management of work has potentially devastating impacts on individual workers, groups of workers and the department.

A high proportion of PM&C workers reported inappropriate behaviour and workplace cultures.

***73% had witnessed one or more incidents of inappropriate behaviour and workplace culture in the last 12 months. The most common inappropriate behaviours experienced by workers were belittling (39.9%), favouritism (39.9%), Bullying (23.5%), Harassment (21.3%) and Racism (21%).***

When Safe Systems of Work are not implemented and maintained - worker health and well-being suffers. The impact of uncontrolled or ineffectively controlled health and safety hazards in PM&C is clear in survey results. Workers reported a wide range of physical and psychological health impacts as a result of experiencing or witnessing inappropriate behaviour and workplace cultures.

***66% were stressed, 51% had difficulties sleeping, 46% felt angry, 46% felt helpless, 45% felt depressed, 37% headaches, 27% feeling fearful, and 25% had stomach problems.***

The depth of systemic failure in PM&C Health and Safety Management Systems is alarming. When workers were asked about the health and safety incident reporting system

***44% of workers said they did not know how to submit an incident report. Only 10% of workers who experienced or witnessed incidents that could have an adverse impact on worker health and safety reported it. Of the 10% that reported only 12% said management's response was adequate.***

Only 14% staff surveyed believed that their Department had sufficient resources allocated to ensure the health and safety and psychological wellbeing of workers. 55% of respondents did not believe the Department had Safe Systems of Work capable of effectively managing risk to their health and safety.

The CPSU understands the problematic state of department's Health and Safety Management system was known to senior departmental officers as far back as June 2017.

The PM&C case study shows there is insufficient understanding and guidance for even a well resourced PCBU to follow. This case study also demonstrates the need for explicit regulation as per Report recommendation No.2 because the explicit obligations would result in equally explicit compliance requirements removing the uncertainty or ambiguity created under current system that relies on General Duties provisions of WHS Laws.

### ***Case study 2: Commonwealth Department of Human Services***

Workers in the Department of Human Services are subject to a large array of hazards that can pose serious risk to both physical and psychological health and wellbeing including customer aggression, work overload and client services related trauma (vicarious trauma). Despite these psychosocial risks being consistently identified by workers, HSRs, the CPSU, and supervisors, the Department's safety management system seems substantially geared to assessment and management of physical risks to worker health and safety, rather than psychological risks.

This is evident in the CPSU's *Mental Health and Well-being survey report*<sup>7</sup> when of the 1600 workers surveyed, ***64% felt the Department protects them well or very well from harm from physical customer aggression while***

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<sup>7</sup> [https://www.cpsu.org.au/sites/default/files/dhs\\_mental\\_health\\_and\\_wellbeing\\_survey\\_report\\_07032019.pdf](https://www.cpsu.org.au/sites/default/files/dhs_mental_health_and_wellbeing_survey_report_07032019.pdf)

1. Only 33% of workers were aware of a mental health policy existing.
2. 51% of workers said the department treated risks to mental health and wellbeing less seriously than physical risks.
3. 73% of workers say the combination of the high workload and lack of control over how they do their work causes them stress.
4. 74% of workers say the pressures on their mental wellbeing at work impact negatively on their home life.
5. 62% of workers feel poorly protected from being harmed by bullying & harassment. 60% of workers reported having been a victim of bullying or harassment at DHS.
6. 87% of workers feel poorly protected from burnout, 89% feel poorly protected from stress and 89% feel poorly protected from fatigue.

When HSRs and managers conduct the three-monthly workplace inspection, departmental checklists simply do not include assessment of psychosocial hazards in accordance with SWA guidance<sup>8</sup> for monitoring and review of existing controls for these hazards.

For example, exposure to customer aggression is ubiquitous in many areas of the Department and increasing amongst customer-facing staff, yet management of the risk is inconsistent depending on whether the aggression is of a physical or verbal nature. Physical customer aggression incidents are generally treated seriously by the Department, with a zero-tolerance approach and significant responses in place to protect the workers targeted from further harm.

On the other hand, verbal customer aggression, customer distress and vicarious trauma is treated by many managers as a normal part of the job with a lack of zero tolerance approach. This is despite the significant potential of harm emerging from this type of interaction such as PTSD, burnout, unmanageable stress, depression and anxiety. The majority of DHS workers feel poorly protected from harm emerging from verbal customer aggression (57%), customer distress (58%) and vicarious trauma (71%) during customer interactions.

### **Case study 3: Department of Defence**

In late 2018, the CPSU initiated a Work Health and Safety Inquiry to better understand the increase in CPSU members from Department of Defence contacting the union for assistance on health and safety related matters. The CPSU has identified a consistent pattern of members reporting inappropriate behaviour and workplace cultures having a damaging impact on worker psychological health and well-being.

The results from an all worker survey and group interview process exposes a WHS management system not effectively identifying or acknowledging psychosocial hazards, nor assessing and effectively managing risks to workers psychological health and well-being.

***Only 12.7% staff surveyed believe the Department had sufficient resources allocated to ensure workers health and safety and psychological wellbeing. 75.9% did not believe the Department had safe systems of work capable of effectively managing risk to their health and safety and 11.4% were unsure.***

Of the 800 Workers completed the CPSU's survey, large numbers of respondents identified key issues adversely impacting worker health that are consistent with the *Psychosocial hazards* identified by Safe Work

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<sup>8</sup> Safe Work Australia. January 2019 National Guidance material - Work-related psychological health and safety, a systematic approach to meeting your duties.

Australia as causing psychological injury. High Job Demands, Low Job Control, Poor Support and inadequate resourcing, Poor workplace relationships, and poor organisational change were all evident.

***74.5% of staff found Defence an oppressive and unhappy workplace. 71.7% of workers reported Excessive workloads, 61.4% Unrealistic work expectations and target, and 60.2% Changing or inconsistent work expectations without transparency or consultation.***

A high proportion of Defence workers reported inappropriate behaviour and workplace cultures.

***83% had witnessed one or more incidents of inappropriate behaviour and workplace culture in the last 12 months. The most common inappropriate behaviours experienced by workers were belittling/shouting behaviour (46.7%), favouritism (52.2%), Bullying (34.6%), Harassment (40.5%) and Racism (33.3%).***

The impact of uncontrolled or ineffectively controlled health and safety hazards in Defence is clear in survey results. Workers reported a wide range of physical and psychological health impacts as a result of experiencing or witnessing inappropriate behaviour and workplace cultures.

***86.1% were stressed, 71.6% had difficulties sleeping, 70.2% felt angry, 66.3% felt helpless, 68.8% felt depressed, 52.4% headaches, 41.8% feeling fearful, and 36.1% had stomach problems.***

***67.1% of respondents who had experienced or witness unacceptable behaviour in the workplace had taken time off.***

The depth of systemic failure in Defence Health and Safety Management Systems is alarming, likely a combination of poor state of knowledge and instruction. When workers were asked about the health and safety incident reporting system

***Only 11.7 % of workers who experienced or witnessed incidents that could have an adverse impact on worker health and safety reported it. Of the 10% that reported only 24.1% were sure that management's response was adequate.***

The CPSU notes that the Department has, and continues to, invest in programs that target poor workplace cultures and unacceptable behaviour. However, the need for explicit regulatory guidance for managing psychosocial hazards and the subsequent risks to worker psychological health and well-being would ensure that compliance frameworks within the department require the identification and assessment of psychosocial hazards including workloads, adequate resources and job control.

The Department of Defence has an very capable and well-resourced approach to work Health and Safety. There is no doubt that the health and safety of Defence workers and personnel is systematically prioritised. This is why the results of the CPSU Inquiry highlight the need for explicit regulators dealing with psychological health.

The fact that this Department with its significant resources, integrated safety management systems and complete commitment to health and safety of workers and personnel is struggling to implement safe systems of work in relation to psychosocial hazards, highlights the failure of current WHS Laws to provide adequate guidance and compliance frameworks dealing worker psychological health and wellbeing;.

### 3. Clarify risk management processes

The CPSU fully supports recommendation 27 of the Review the concepts underpinning the hierarchy of control measures (reg 36 of the model WHS Regulations) be moved from the model WHS Regulations to the model WHS Act.

Currently the WHS Act contains the general requirement for duty holders to '*Manage health and safety Risks*' (s.17) but fails to tell duty holders how to do this. Including detail for the risk management process, like that contained in Part 3.1 of the model WHS Regulations (specifically the hierarchy of control), will provide complete guidance for duty holders on how to meet the *General Duties* and how to manage health and safety risks.

Not having the full risk management process detailed in the WHS Act too often results in the 'Hierarchy of Control's not being appropriately applied. The result is that rather than taking reasonably practicable steps to eliminate hazards, duty holders often wrongly apply lower order controls which do not adequately eliminate or mitigate the risk, such as administrative or using personal protective equipment.

### 4. Rights of Health and Safety Representatives (HSRs)

#### **Recommendation 8: Workplace entry of union officials when providing assistance to an HSR**

The CPSU supports Recommendation 8 of the review that assigns Safe Work Australia with the task of ensuring the right of an HSR to seek the assistance of any person under section 68(2)(g) of the WHS Act is upheld as intended by the legislation.

The WHS Act, and subsequent obligation of the PCBU to facilitate entry to the workplace of a person providing assistance to an HSR in accordance with s.70(1)(g) should not be confused or restrained by the different purposes of the *Fair Work Act 2009* or any other industrial legislation. To do so undermines the HSR's ability to obtain the assistance of persons who can resolve health and safety issues affecting workers or address potential non-compliance, and in doing so potentially saving lives and preventing serious injury or harm to workers.

The CPSU notes that it is not uncommon for permit holders to enter a workplace outside of the right of entry scheme in the *Fair Work Act 2009* for other purposes, for example as a bargaining representative at bargaining meetings or when invited on site to meet with an employer.

#### **Recommendation 10: HSR choice of training provider**

The CPSU also strongly supports the recommendation 10 of the Review that the model WHS Act be amended ensure HSRs right to choose their training course, if that course has been approved by the regulator and is one that the HSR is entitled to attend. This includes removing the requirement for the HSR to consult the PCBU about their choice of training course, and the provision for either party to ask for appointment of inspector to decide an issue about the HSR's *choice* of training is no longer needed.

The CPSU provides assistance to a network of more than 800 HSRs to exercise their powers and functions. Protecting the role of an HSR as independent of the PCBU is essential to the proper functioning of the WHS legislative framework. It is especially important this independence is assured when it comes to the training HSRs undertake because training provides the essential knowledge to monitor duty holders compliance and assist in understanding the role as an independent worker elected representative. It is unacceptable for the PCBU to have any influence over the choice of training provider, as this creates a high risk of training

providers being put in a position in which they must distort their operations and frame their training in a way more beneficial to a PCBU in order to secure enrolments.

The CPSU acknowledges issues about timing and cost are legitimate matters for consultation with the PCBU considering obligations in s 72(2) of the model WHS Act to cover course fees, pay reasonable costs and provide an HSR with time off work to attend the course. However, consultation with the PCBU must not be used to influence training providers or delay HSRs attending training with the provider of their choice. Careful consideration should be given to this and mechanisms established to prevent PCBUs illegitimately using consultation processes on HSR training.

## 5. Supporting worker representation, participation and consultation

### **Recommendation 6: Provide practical examples of how to consult with workers**

The CPSU supports recommendation 6 of the Review and believes it is important that the model Code of Practice: *Work health and safety consultation, co-operation and co-ordination* be amended to include practical examples and case studies on how genuine consultation with workers can occur.

In addition to the matters identified for practical guidance, the CPSU believes it important to address three most common problems experienced by our members when it comes to additional health and safety consultation arrangements established in workplaces under s 47 of the *WHS Act*):

1. consultation arrangements failing to be agreed with workers,
2. workers right to be represented by a union not being respected, and
3. restrictions being applied on the ability of HSRs and worker representatives to be assisted by the union on health and safety committees.

All three issues need to be addressed with practical guidance to ensure the proper application of the letter and intent of the objectives set out in Division 2 of the WHS Model Laws.

Duty holders are using the fact that they *Consultative Arrangements* to demonstrate they are meeting their duties under WHS Laws to consult workers and their representatives per sections 47 through 49 of the WHS Act, including when responding to PINs and non-compliance actions brought by workers for failure to consult. However, these arrangements are not being agreed with workers, rather management provides perfunctory advice to workers on their implementation, and our experience is that Inspectors are not willing to determine the legitimacy of such arrangements in regard to them being 'agreed' with workers.

A recent example of the problems experienced by CPSU members is in the Department of Home Affairs. Management proposed changes to consultative arrangements, and in doing so did not take any steps to implement a process that demonstrates that agreement with workers will be achieved before implementation. Management's changes excluded CPSU representatives from the national health and safety committees despite thousands of union members and HSRs directly requesting union representation on committees. Considering the high-risk nature of the work undertaken in this department (including the use of firearms) excluding union health and safety experts from these committees undermines the continuous monitoring and improvement processes essential to ensuring safe systems of work.

### **Recommendation 11: Provide examples of HSC constitutions, agendas and minutes**

The role of HSCs are to promote consultation and co-operation between PCBUs and workers. The CPSU supports the recommendation for model codes and guidance to be improved with more practical guidance to address problems identified. However, the CPSU believes that more needs to be done to ensure the

proper application of the letter and intent of objectives set out in Division 2 of Model WHS Laws on worker participation and representation, and encouraging unions and employer organisations take constructive roles in promoting improvements.

The CPSU believes that the model WHS laws should be changed to require:

- that the HSC constitution is negotiated and agreed with workers, or their representatives where requested, and covers functions of the committee, timing of meetings, nomination of the chair and processes for minutes,
- that non-HSR members of the HSC are elected by workers and that all HSC members undertake WHS training, and
- that PCBU's facilitate HSC members' attendance at meetings and discourage cancellation of planned meetings.<sup>9</sup>

We also support the submissions of the ACTU and Unions NSW that the model WHS laws should require that a worker is appointed to the chair of the HSC to address the imbalance of power inherent in the worker/PCBU relationship.<sup>10</sup>

Comcare's submission to the review acknowledges the regulatory gap in this regard when it suggested:

*"there is ambiguity in s 75 of the model WHS Act regarding requests for additional committees. For example, the laws do not make clear whether an HSC is required for a part of the business even if there is an overarching HSC in place or if the laws, and their subsequent provisions for membership and meeting frequency, only apply when there is no HSC that covers a part of the business or undertaking."*<sup>11</sup>

## 6. Improving compliance framework to better resolve health and safety issues

### Recommendation 9: Inspectors to deal with safety issue when cancelling a PIN

The CPSU supports the recommendation 9 of the Review that, following the cancellation of a PIN for technical reasons, the inspector will be required to assist in the resolution of the safety issue which led to the PIN being issued. It is an important requirement of the regulator and it addresses a shared frustration in circumstances where an Inspector cancels a PIN while failing to address the substantive issues.

However, the CPSU believes that the recommendations should go further and requirement of an HSR to undertake training before being entitled to issue a PIN. This is a matter of inconsistency across jurisdictions.

The CPSU believes that a worker elected to the position of HSR is capable of identifying hazards and risks to workers, regardless of whether training has been undertaken. It is essential then that the HSR can act on this matter directly to ensure worker safety. To remove an HSR's ability to act and protect workers until training is completed is unsafe.

WorkSafe Victoria's submission to the review noted that it does not require training before HSRs can exercise their powers on the basis that:

*'Victoria recognises that the provision of training to HSRs is key to supporting and enabling them in the performance of their functions. However it has been WorkSafe's experience that HSR's [sic]*

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<sup>9</sup> ACTU Submission, p 44.

<sup>10</sup> Unions NSW Submission 2, p 12.

<sup>11</sup> Comcare Submission, p 8.

*who have not undergone training, may still be able to identify serious health and safety risks that may warrant the issue of PINs or directions. Disqualifying HSRs from issuing PINs or directions in these circumstances may mean that identified risks to health and safety are not addressed or that actions to address these risks may be delayed.’<sup>12</sup>*

The CPSU believes that regulatory changes are needed to consistently apply the Victorian jurisdiction compliance framework for HSR use of PINs.

#### **Recommendation 12: Update guidance on issue resolution process and participants**

CPSU members and HSRs are frustrated by the issue resolution processes in WHS Laws. This is because PCBU's are using the ambiguity in s.80 WHS Act to frustrate the ability of the union to be a representative and exclude the union from being able to initiate an issue resolution procedure despite being a known representative of workers. It is also a problem that the issue resolution process is open ended without the appointment of jurisdictional power that is required to make a decision on the matter.

Our members and HSRs experience is that when escalating to seek the assistance of an Inspector under s.82, the Inspector does not exercise powers to resolve the substantive issues and issues are not being resolved. This is because there is no requirement for the inspector to do anything other than assist parties to reach a resolution.

The CPSU fully supports the recommendation to include further information, including ways of selecting a representative and informing the other parties of the representative's involvement, in the *Worker representation and participation guide*. However, we believe this will not address the root causes of the frustrations our members and HSRs have with the current legislative framework for issue resolution.

The CPSU supports the ACTU and other union submissions on this matter,<sup>13</sup> that the model WHS laws be amended to make clear to PCBU's that the relevant unions are parties to a dispute, and are able to initiate issue resolution procedures, so they can represent workers to facilitate issue resolution.

#### **Recommendation 13: Resolving outstanding disputes after 48 hours**

The CPSU strongly supports amending the model WHS laws to provide that, where there are provisions in the model WHS Act that enable Comcare Inspector to assist in resolving an issue, the issue may be progressed to the relevant jurisdictional court or tribunal if the matter is still unresolved within a short period after an inspector has been requested to assist.

It is critical that the jurisdictional authority must be available to parties to resolve health and safety issues where agreement cannot be reached. Too often CPSU members and HSRs are frustrated that the current application of issue resolution does not result in a conclusion, leaving issues unresolved to the detriment of worker safety.

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<sup>12</sup> WorkSafe Victoria Submission, p 2.

<sup>13</sup> CFMEU (Construction and General Division) Submission, pp 14–15; ACTU Submission, p 45; Unions NSW Submission 1, p 9.

## 7. Resourcing the Regulator

In order to support the implementation of review recommendations and ensure that the WHS regulatory system is sufficiently supported it is crucial that regulators are adequately resourced to perform their role.

The Commonwealth Government's funding cuts to Comcare as the regulator in the Commonwealth jurisdiction, directly affect its capacity in the tripartite regime to monitor and enforce compliance with WHS Laws. This draws sharp attention to the independent role of unions as Comcare alone can never replicate or replace the role unions play in the protection of workers health and safety. Inadequate resourcing of Comcare highlights the need to better facilitate the work of unions to secure the health and safety of workers, in monitoring and ensuring PCBU compliance, and supporting workers and worker representatives. The scope of Comcare's activity continues to narrow as a result and the cost of workplace injury is increasing being borne by the injured workers themselves with costs transferred from employers and the Comcare Scheme to the Health systems of State Governments.

While the number of Australian workers in the Commonwealth jurisdiction continues to grow, the Average Staffing Level of Comcare fell from 675 in 2013-14 to 630 in 2018-19 (a decline of 45 or 6.7%)<sup>14</sup>.

In addition, it is unacceptable that workers in Tasmania and the Northern Territory do not have Comcare inspectors based in their state. Workers and industry in these regions need properly responsive inspectorial functions like workplace inspections, issue resolution and compliance activities. The Commonwealth Government should recognise the valuable investment that a properly resourced regulator represents, rather than imposing short-sighted cuts.

## Conclusion

For the reasons set out above, in addition to those set out in the submission of the ACTU, the CPSU submits that the recommendations of the Boland review be adopted and implemented in full.

The CPSU further submits, for the reasons set out above, that Comcare be provided with the increased resources and funding which it requires to ensure that the regulatory framework leads to improved outcomes and safe workplaces.

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<sup>14</sup> 31 December 2018 headcount figures (both ongoing and non ongoing) from the APSC Data release , Table 2 at [https://www.apsc.gov.au/sites/default/files/aps\\_employment\\_data\\_31\\_december\\_2018\\_release-data\\_tables.xls](https://www.apsc.gov.au/sites/default/files/aps_employment_data_31_december_2018_release-data_tables.xls)