



**Submission to Consultation
Regulation Impact Statement on
Recommendations of the 2018
Review of the model Work
Health and Safety Laws**

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1 INTRODUCTION

The Electrical Trades Union of Australia (ETU) is the Electrical, energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 electrical and electronic workers around the country and the CEPU as a whole represents approximately 100,000 workers nationally, making us one of the largest trade unions in Australia.

The ETU welcomes the opportunity to make a submission to the Consultation Regulation Impact Statement (RIS) on Recommendations of the 2018 Review of the model Work Health and Safety Laws.

The ETU is aware of the ACTU submission and supports the matters contained within that submission.

The ETU is broadly supportive of the Boland Review recommendations, however there are opportunities for further regulatory reform to ensure greater compliance by employers with workplace health and safety in the workplace.

This submission focusses on 4 key priorities for the ETU contained at chapters 7, 9, 10 and 11 of the consultation RIS.

2 RIS CHAPTER 7 – WORKPLACE ENTRY BY HSR ASSISTANTS

Recommendation 8: Clarify workplace entry of union officials providing assistance to an HSR

Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the *Fair Work Act 2009* (Cth) or another industrial law.

The ETU supports recommendation 8 of the review.

2.1 Questions

- **How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?**

The ETU has experienced situations where HSR's have not been afforded appropriate support by employers when seeking assistance from their union in resolving work health and safety matters. Often employers will attempt to hinder and obstruct a HSR's attempts to seek assistance from their Union. This has had the most significant impact when a HSR is looking for assistance in Health and Safety Committee meetings where the employer "stacks" the committee leaving HSR's outnumbered and often without the resources to advance their constituents interests.

It is often the case that the employer will seek advice and assistance from their association in these situations with the employer association specialists attending site unhindered while the HSR is obstructed from accessing their Union representative.

- **What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.**

The approach to address this recommendation outlined at option 2 would remove a range of regulatory burdens on Unions entering workplaces for the purpose of assisting and supporting HSR's to perform their role. It is important to note that Unions staff can include specialists who may not be permit holders. Unions also partner with a range of organisations who could provide specialist knowledge and support to an HSR such on important safety issues such as suicide awareness, substance abuse and bullying and harassment.

However, the ETU has concerns with the proposal that a HSR must provide the PCBU with what appears to be highly prescriptive notice of the HSR's assistants proposed entry.

- **Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.**

Whilst the ETU supports option 2 as outlined in the paper there are a few areas that may require clarification. Firstly, it appears that a suggestion of the HSR being required to notify is unnecessarily onerous. In particular the inclusion of a requirement to include a declaration about the Union official attending site. Secondly the issue of timing for entry needing to be at least 24 hrs. Whilst the 117 provision allows for immediate entry for a permit holder, there could be value in looking at a similar provision for assistant entry. Particularly because that entry could facilitate earlier resolution prior to the matter escalating.

- **What is your preferred option and why will it be best for you, your organisation and your stakeholders?**



The ETU supports the approach outlined at option 2 of the RIS paper.

3 CHAPTER 9 – CHOICE OF HSR TRAINING COURSE

Recommendation 10: HSR choice of training course

Amend the model WHS Act to make it clear that for the purposes of s 72:

- the HSR is entitled to choose the course of training, and
- if the PCBU and HSR cannot reach agreement on time off for attendance, payment of fees or the reasonable costs of the training course that has been chosen by the HSR, either party may ask the regulator to appoint an inspector to decide the matter.

The ETU supports Recommendation 10 of the review.

3.1 Questions

- **How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings? What do you consider to be the cause and extent of disagreement over HSR training?**

It is the experience of ETU members who are HSR's that employers will often go out of their way to ensure a HSR does not attend a training provider of their choice, often to the point of sending HSR's to more expensive training programs or delaying training until the employers preferred provider is available. When this occurs, the training is often done in an environment when the majority of other participants are not from the industry of the HSR and are usually in senior roles in the company meaning training context is less relevant to HSR's. When disputes occur, often the regulator is slow to respond, only meets with the employer prior to determining the dispute and mostly confirms the employer's choice.

- **What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.**

The main benefit of option 2 would be ensuring HSR's receive training in appropriate context to their roles and industry. They also develop networks at their preferred provider often with greater follow up and support back at the workplace.

- **Do you have suggestions for other options to address the problems identified in the 2018 Review? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.**

The ETU believes the recommendation contains the appropriate course of action.

- **What is your preferred option and why will it be best for you, your organisation and your stakeholders?**

The ETU's preference is option 2.

- **What do you consider as the main cause of disagreements over HSR training? How often do these disagreements occur, and to what extent do they affect you, your workplace or your stakeholders?**

The main cause of disagreements over HSR training in the ETU's experience is the employers ideological view that they should determine the training provider and also that often their preferred training provider has some form of financial connection to the employer association of which they are a member. In some cases members have raised with the ETU that the employers training provider has provided feedback to the employer about the "attitude" of the training participants.

4 CHAPTER 10 – REFERRAL OF DISPUTES

Recommendation 13: Introduce referral of outstanding disputes to a court or tribunal after 48 hours

Amend the model WHS Act to provide for:

- a) disputes under ss 82 and 89 of the model WHS Act to be referred to the relevant court or tribunal in a jurisdiction if the dispute remains unresolved 48 hours after an inspector is requested to assist with resolving disputes
- b) a PCBU, a worker, an HSR affected by the dispute or any party to the dispute to notify the court or tribunal of the unresolved issue they wish to be heard
- c) the ability for a court or tribunal to exercise any of its powers (including arbitration, conciliation or dismissing a matter) to settle the dispute, and
- d) appeal rights from decisions of the court or tribunal to apply in the normal way.

The ETU supports recommendation 13.

4.1 Questions

- **How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?**

Disputes about work health and safety are aggravated by a range of factors in the ETU's experience which include issues of resourcing of the regulator meaning they just don't show up, an approach from some employers to drag matters out knowing eventually workers will just give up and the issue that when inspectors do show up they appear reluctant to exercise their powers.

Workplace hazards need to be risk assessed and wherever possible eliminated or appropriately controlled according to the legislation however all too often this is not what actually occurs. The most detrimental impact on safety occurs when disputes are allowed to simply drag out indefinitely. Often items raised at work health and safety committee meetings can remain on the agenda for months and in some cases even years. Efforts by HSR's to escalate these issue to the point of resolution are hampered when employers don't take the issue seriously and regulators are either unable to attend to assist or when they do, fail to make a decision or worse, simply meet with the employer then leave the site with the issue still unresolved and the employer simply states the regulator agreed with them.

- **What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.**

Simply knowing that a matter could be escalated to an independent arbiter would be motivation in itself, that disputes need to be taken seriously and dealt with in a timely manner. This would also put regulators on notice that dealing with disputes effectively and impartially is an important function of their role.

Preventing these matters from dragging out would ensure complacency is not allowed to set into the workplace and would make for safer workplaces.

- **Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.**

Consideration should be given to referral within 24 hours for disputes relating to imminent risks.

- **What is your preferred option and why will it be best for you, your organisation and your stakeholders?**

The ETU's preference is option 2.

- **If Option 2 is adopted, would you seek to refer issues that are not resolved under ss 82 or 89 of the model WHS Act to a court or tribunal? Please explain why.**

The ETU would seek to exercise this right if it were available. Allowing safety issues to remain unresolved is disempowering for a workplace and sends the wrong kind of message around the need for safe workplaces.

5 CHAPTER 11 – WHS ENTRY PERMIT HOLDERS – PRIOR NOTICE OF ENTRY

Recommendation 15: Remove 24-hour notice period for entry permit holders
Amend the model WHS Act to retain previous wording in s 117 of the model WHS Act.

The ETU supports recommendation 15.

5.1 Questions

- **How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent? In your experience, is the extent of the problem different across industry sectors?**

Largely the ETU is not affected as most jurisdiction have already adopted this provision when establishing the model law.

- **What practical impact, including the costs and benefits, would requiring or not requiring a WHS entry permit holder to provide prior notice of entry have on you, your organisation or your stakeholders? Do you think the impacts would be different across industry sectors? Please provide evidence of the impacts wherever possible.**

In high risk occupational industries there would be a huge increase in workplace health and safety incidents, injuries and fatalities if these provisions were removed. ETU entry permit holders exercise these rights daily across Australia, often finding the most egregious of safety breaches in workplaces. The deregulation agenda pursued by State, Territory and Federal Government has meant that regulators play a very limited role in enforcement in workplaces.

- **Do you have suggestions for other options to address the problems identified in the 2018 Review? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.**

Encouraging states and territories to streamline these provisions would remove some regulatory burden and ensure consistency across borders.

- **What is your preferred option and why will it be best for you, your organisation and your stakeholders?**

The ETU's preference is option 2.

There are already two types of entry for Federal ROE and the two different safety ROE are well known and consistent.

6 CONCLUSION

There is significant evidence, such as the ACTU's Safe at Work survey results, which clearly demonstrates the need for further reforms to our Model WHS Laws. This Review presents a crucial opportunity for governments to work together to ensure that the Model Laws continue to achieve 'progressively higher standards of work health and safety'¹ and are effective in preventing death, injury and disease in Australian workplaces.

As outlined, the reforms proposed by the Review will streamline the operation of our WHS laws, promote the aims of harmonisation and deliver stronger health and safety outcomes in Australian workplaces, increasing certainty and clarity for workers, duty-holders and the community more broadly.

The ETU calls on Australia's Workplace Relations Ministers to accept all 34 of the Review recommendations, to instruct Safe Work Australia to amend the Model Laws accordingly, and to work with States and Territories to implement the reforms promptly in each harmonised jurisdiction.

¹ Section 3(g) of the Model WHS Act