

# **SDA Submission 2018 Review of model WHS Laws**

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**Submitted by:**

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## Introduction

1. The Shop, Distributive and Allied Employees' Association (SDA) is one of Australia's largest trade unions with over 213,000 members. The majority of SDA members are women and young people. Almost 60% of members are female, equating to approximately 131,000 women. The SDA has membership in retail, fast food, warehousing, hairdressing, pharmacy and modelling.
2. The SDA welcomes the opportunity to contribute this submission to the 2018 Review of the model WHS laws. First and foremost, there is a clear need for strengthening the requirements/capacity for the Regulator to act. The focus on the Regulator performing its function should take precedence in terms of priority items arising from of this Review.
3. Additionally, the SDA contends the following areas where the framework has not been effective in meeting model WHS law objectives:
  - Existing and emerging WHS risks which are not picked up by the current framework including psychosocial hazards and occupational violence
  - the failure of many Persons Conducting a Business or Undertaking ('PCBU') to properly consult with workers and their unions
  - the failure of many PCBU's to properly conduct risk assessments
  - the challenges to support workers in facilitating worker representation through Health and Safety Representatives ('HSR'), largely on the basis the model is not well supported by many PCBU
  - the difficulty of access to training for HSRs despite the prescriptions contained within in the model WHS laws
  - poor representation of workers on Health and Safety Committees ('HSC') and
  - the failure to consult with marginalised workers who fall outside of the framework structures.

4. The SDA makes reference to recent submissions it has made that are directly relevant to the 2018 Review of the model WHS laws ('Review'):
  - a. 2014 SDA submission to the Australian Human Rights Commission ('AHRC') Supporting Working Parents: Pregnancy and Return to Work National Review.<sup>1</sup>
  - b. 2015 SDA submission to the Productivity Commission Enquiry into the Workplace Relations Framework.<sup>2</sup>
  - c. 2016 SDA (NSW and Newcastle Branches) submission to SafeWork NSW Statutory Review of the *Work Health and Safety Act 2011* (NSW).<sup>3</sup>
  - d. 2017 SDA submission to the Senate Standing Committees on Finance and Public Administration, Gender segregation in the workplace and its impact on women's economic equality.<sup>4</sup>
5. The SDA supports the submission of the ACTU and make the following additional comments.
6. This submission will address areas the SDA considers the *Model Work Health and Safety Bill 2016* ('model Act'), *Work Health and Safety Regulations 2011* ('model Regulations') and the 24 model Codes of Practice ('model Codes') do not provide adequate protection for retail, fast food and warehouse workers from the key health and safety risks arising in their workplaces. Further the SDA submits that guidance material referenced in these submissions should be upgraded to Codes of Practice, supported by new or existing Regulations to ensure there is a consistent approach to health and safety across industries.

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<sup>1</sup> [Shop Distributive and Allied Employees' Association, Submission No 46 to Australian Human Rights Commission, Supporting Working Parents: Pregnancy and Return to Work National Review, February 2014.](#)

<sup>2</sup> [Shop Distributive and Allied Employees' Association, Submission No 175 to Productivity Commission Workplace Relations Framework public inquiry, 19 March 2015.](#)

<sup>3</sup> [Shop, Distributive and Allied Employees' Association, New South Wales Branch and the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern Branch, Submission to SafeWork NSW, Statutory Review of the Work Health and Safety Act 2011, December 2016.](#)

<sup>4</sup> [Shop Distributive and Allied Employees' Association, Submission No 20 to Senate Standing Committees on Finance and Public Administration, Gender segregation in the workplace and its impact on women's economic equality, 21 February 2017.](#)

## Background

7. Since 2014, data collected by the SDA via extensive surveying of over 30,000 workers has provided the union with a direct insight into the key Workplace Health and Safety (WHS) issues workers themselves have identified as impacting on them at work.
8. The quantitative data, summarised in Table 1 and Table 2 on the following pages, has helped inform the SDA's approach to health and safety issues in retail and fast food and subsequently its responses to this Review.
9. Over 50% of retail workers reported that workload was an issue impacting their workplace between 2014 – 2016, see Table 1. Workload issues were also a significant issue for fast food workers and have featured in the top 5 reported issues since 2014, See Table 2.
10. The significant number of respondents who reported they had experienced 'customer abuse and violence' (CAV) since 2015 led the SDA to conduct an online survey 'Customer violence and abuse in Retail and Fast Food' ('SDA CAV survey') of 6,358 retail and fast food workers in 2017.<sup>5</sup> The data and experiences shared by workers in this survey provide further evidence of a serious workplace health and safety issue that the SDA submits the Model Laws Review must consider.
11. The SDA submission to the AHRC Supporting Working Parents: Pregnancy and Return to Work National Review submission included 194 case studies and examples from SDA members documenting their experiences of being pregnant at work, taking parental leave and returning to work, or trying to return to work, after their parental leave.<sup>6</sup> The case studies provide cogent evidence of the discrimination these women faced by their employers in relation to their health and safety while pregnant or after returning to work after giving birth.

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<sup>5</sup> Shop Distributive and Allied Employees' Association, *Customer violence and abuse in Retail and Fast Food*, 31 January 2017, SurveyMonkey, <https://www.surveymonkey.net/results/SM-CVNKLL9G/>.

<sup>6</sup> Above n 2.

**Table 1 - Retail & Fast Food data trends 2014 - 2016**

<b>RETAIL &amp; FAST FOOD</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Total responses</b>	6754	6752	5712
<b>Rate importance of health and safety</b>	-	Extremely important - 84.78%	Extremely important - 86.88%
<b>Awareness of issues affecting workplace. (change to awareness of issues adversely affecting workplace in 2016) *</b>			
Bullying	31.40%	34.15%	28.43%
Slips, trips and falls	36.00%	36.60%	27.49%
Cuts and Abrasions	34.60%	42.40%	33.15%
Chemicals	13.10%	15.92%	12.60%
Workload/Rostering (change to Workload 2015,2016) *	52.40%	55.51%	47.96%
Manual handling	37.60%	41.62%	33.29%
Heat and Cold	41.50%	48.13%	43.80%
Traffic management	24.70%	27.46%	20.13%
Poor treatment of ill and injured workers	23.60%	25.55%	21.75%
Burns	-	14.02%	12.55%
Poor treatment of pregnant workers	-	7.89%	6.89%
<b>Experienced customer violence or abuse in last 12 months</b>	-	45.65%	44.39%
<b>Had work related injury (change to last 12 months in 2015, 2016)</b>	32%	20%	19.17%
<b>Health &amp; safety training since induction</b>	77.40%	73.38%	77.28%
<b>Participation in evacuation/fire drill in last 12 months</b>	64.01%	61.71%	58.32%
<b>Age group, largest group between under 17 and 65+</b>	-	18-25 year olds 26.38%	18-25 year olds 27.93%
<b>Female/Male</b>	-	62% Female, 34% Male	66.64% Female, 30.95% Male

**Table 2 - Fast food data trends 2014 - 2016**

<b>FAST FOOD</b>	<b>2015</b>	<b>2016</b>
<b>Total responses</b>	290	474
<b>Rate importance of health and safety</b>	Extremely important - 83.57	Extremely important - 81.03%
<b>Awareness of issues affecting workplace. (change to awareness of issues adversely affecting workplace in 2016) *</b>	=	
Bullying	15.17%	24.83%
Slips, trips and falls	31.14%	37.25%
Cuts and Abrasions	40.83%	46.34%
Chemicals	11.07%	26.89%
Workload/Rostering (change to Workload 2015,2016) *	22.22%	31.92%
Manual handling	25.61%	31.26%
Heat and Cold	33.56%	41.15%
Traffic management	24.82%	27.56%
Poor treatment of ill and injured workers	11.15%	21.06%
Burns	45.64%	55.56%
Poor treatment of pregnant workers	10.62%	10.62%
<b>Experienced customer violence or abuse in last 12 months</b>	35.94%	48.53%
<b>Had work related injury (change to last 12 months in 2015, 2016)</b>	19.86%	28.95%
<b>Health &amp; safety training since induction</b>	65.26%	67.11%
<b>Participation in evacuation/fire drill in last 12 months</b>	30.18%	28.00%
<b>Age group, largest group between under 17 and 65-</b>	18-25 year olds 60.93%	18-25 year olds 58.37%
<b>Female/Male</b>	58.74% Female, 38.81% Male	58% Female, 41.11% Male



*Question 1: What are your views on the effectiveness of the three-tiered approach - model WHS Act supported by model WHS Regulations and model WHS Codes - to achieve the object of the model WHS laws?*

12. The SDA support ACTU comments in relation to the model WHS Regulations however notes that improvements should be made strengthen the Regulations to provide better protections for workers and improve compliance overall.

*Question 2: Have you any comments on whether the model WHS Regulations adequately support the object of the model WHS Act?*

13. The SDA supports the three-tiered approach to achieve the object of the model WHS laws.
14. The SDA endorses the use of Codes of Practice (Codes) rather than guidance material, to ensure the model framework operates to protect workers, and not as an 'opt in' model on a discretionary basis. The development of Codes requires a rigorous and consultative process when compared with guidance materials.<sup>7</sup> The SDA supports the ACTU submission that compliance with a Code should be mandated under the Model Laws, with a caveat that a duty of care is not discharged by a PCBU solely by compliance with a Code.

## **Recommendation 1**

15. The SDA recommends the development of existing, amended or new Regulations supported by new Codes and/or upgrades to existing guidance material to Codes for the following:
- a) Reproductive health, pregnancy, breastfeeding, return to work after giving birth
  - b) Work-related psychological health and safety
  - c) Occupational violence
  - d) Working in heat (upgrade guidance material)
  - e) Protection of worker's private health information

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<sup>7</sup> Model Work Health and Safety Bill 2016 pt 14 div 2.

*Question 3: Have you any comments on whether the model WHS Codes adequately support the object of the model WHS Act?*

*Question 4: Have you any comments on whether the current framework strikes the right balance between the model WHS Act, model WHS Regulations and model Codes to ensure that they work together effectively to deliver WHS outcomes?*

16. The Discussion Paper noted the 2014 COAG review which examined the use of model Codes and recommended that national guidance material be the preferred format. The SDA's experience is that guidance material is not routinely utilised by employers.

## **Working in heat**

17. Working in heat is a key issue for retail workers. SDA member surveys over the past 3 years have identified heat and cold/thermal comfort consistently in the primary issues impacting retail workers nationally. Even with the recent publication of new the 'Managing the risks of working in heat - Guidance material' by Safe Work Australia, the SDA experience is that there is a greater focus by PCBU on customer comfort in stores, rather than assessing and controlling the risk working in heat presents to workers.
18. Overall, of those PCBU that do have a heat policy, the SDA finds they are often of a poor standard. PCBU generally have a very limited understanding of the risks to workers associated with heat/cold and thermal comfort issues. Effective training in relation to risks of working in heat rarely occurs. The consequences of poor policy, and the limited understanding that PCBU have of this issue means that it is widely under-reported by workers in retail and fast food. Unsafe exposure to heat/cold, is normalised in retail, particularly in large, warehouse style format stores.
19. PCBU must consider workers at a greater risk of heat exposure, including pregnant workers and workers managing chronic health conditions including diabetes. Cost, budget and management discretion are often cited as impediments to the necessary control measures being put into place to address heat risk in particular. The model Act states that cost should only be taken into account if it is grossly disproportionate



to the risk.<sup>8</sup> This provision is often interpreted by PCBU to mean that if the risk is lower or minimal (usually meaning not resulting in clear physical injuries), they are not obligated to implement controls. Although the cost of eliminating or minimising risk is relevant in determining what is reasonably practicable, it should be spelled out more clearly how to take into account cost in the Act itself. More prescriptive and compelling material provided in a Regulation would greatly assist all parties to address this issue and provide a greater incentive to protect workers exposed to heat to by controlling the risk.

20. One of the challenges in addressing heat/cold and thermal comfort is the failure of PCBU to properly consider and implement measures to address the potential risk in the design phase, that is before new stores are built, refurbished or retrofitted. While the new guidance material does address the legal duties in relation to ensuring 'that buildings, plant and equipment are, so far as is reasonably practicable, designed, manufactured, imported, supplied and installed so as not to expose people to risks to health and safety', underpinned by s 22 of the model Act, it is inadequate.
21. The SDA has engaged with Regulators, PCBU, design consultants and landlords about new building design/retrofitting/refurbishment and there is a clear reluctance to address heat in a proactive way at the design phase.
22. Cost and budgets are overwhelmingly cited as the most important factor in determining control measures to reduce exposure. Control measures are even harder and more complex to adopt when responsibility oscillates between landlord and tenant with neither party willing to accept ultimate responsibility of bearing the cost of implementing effective controls.
23. The SDA has also observed the increasing size of fast food delivery rider and e-bike fleets across the cities and regional centres and the exposure of these workers to extreme weather conditions, including heat. Many of these workplaces form part of a franchisee network, assuming the drivers/riders are employees not contractors. With franchisor/franchisee undertakings the franchisee determines their own WHS and Safe Work Practices (SWP) in relation to working in heat/cold/extreme weather

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<sup>8</sup> Model Work Health and Safety Bill 2016 pt 2 div 1 sub-div 2 s18 e).

conditions. While the SDA does consult with some larger fast food employers about driver/rider working conditions, the interest of the corporate entity by its own admission, to influence safe systems of work at a franchisee level is limited.

24. The current guidance material in relation to bullying is inadequate. Bullying is consistently raised as a significant issue negatively impacting on the psychological and physical health of retail and fast food workers. As shown in Tables 1 and 2, around 25% of respondents to SDA surveying in 2016 confirmed bullying was an issue impacting health and safety on the workplace.

25. Bullying of retail and fast food workers is also frequently perpetrated by repeat offending customers. Over 40% (2307 respondents) to the 2017 SDA CAV survey advised that the same customer had been abusive or violent towards them, or a group of employees, on more than one occasion in the last 12 months. Extracts for the 2017 SDA CAV are below.<sup>9</sup>

5532     *Repeated behaviour – known customer*

*Continual abuse by one certain customer. He pushed a trolley into the glass front window where I was standing next to. Pushed a trolley at me when I had my back to him while supervising self serve.*

*Female*

*46-55*

*Retail*

4095     *Repeated behaviour – known customer*

*This is not the first incident of physical violence I have experienced or witnessed from customers. On another occasion, a customer, known to management, threatened a staff member at the register with a knife in the middle of the day, and even returned a few days later threatening to burn another staff member with a lighter.*

*Male*

*26-35     Retail*

2306     *Repeated behaviour – known customer*

*1) A man returned into the store after coming through Drive Thru, and asked me if we wanted to fight and threatened to hit me without any motivation. He comes in regularly and makes me feel constantly unsafe.*

*Male*

*18-25*

*Fast Food*

26. Research commissioned by Safe Work Australia has confirmed an increase in bullying in Australian workplaces, with the research indicating nearly one in 10 people report

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<sup>9</sup> Shop Distributive and Allied Employees' Association, above n 5.

that they have been bullied at work.<sup>10</sup> The devastating effects of bullying and harassment as reported, are consistent with the observations of union officials and experiences of SDA members who deal with this issue frequently.

*In relation to health outcomes, bullying was related to emotional exhaustion, psychological distress and depression. In relation to work outcomes, it was significantly negatively associated with job satisfaction and work engagement, and positively with intention to leave the workplace.<sup>11</sup>*

27. While the SDA supports the regulatory framework under Part 6-4 of the *Fair Work Act 2009* (Cth) which was designed to provide a low cost, quick and effective process and appropriate outcome for some workers affected by bullying behaviour, it is not accessible for all workers or for groups of workers affected by bullying and does not consider that bullying is first and foremost an issue that impacts worker health and safety.
28. Most employers do not treat bullying as an WHS issue or adopt a risk management model to bullying, even though bullying is included in the WHS jurisdiction. The Model Laws are grossly inadequate and unable to deal with workplace bullying in an effective way. Further the SDA notes the low-level prosecutions of bullying complaints through Fair Work Commission jurisdiction, and the SDA's direct experience of the poor handling of complaints by PCBU in many instances.
29. The model Act is clear in stating that the PCBU has an obligation to consult in relation to the identification and management of risks under Part 5, Division 2, s 49, however neither the Act nor Regulations impose a duty on the PCBU to conduct a risk assessment. The Explanatory Memorandum to the Model act does not provide any helpful commentary on risk assessments in this regard either.<sup>12</sup>

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<sup>10</sup> Rachel E. Potter, Maureen F. Dollard, Rachel R. Tuckey, 'Bullying & Harassment in Australian Workplaces: Results from the Australian Workplace Barometer Project 2014/15' (Report, Safe Work Australia, 23 November 2016).

<sup>11</sup> Ibid 7.

<sup>12</sup>

## **Recommendation 2**

30. The SDA recommends to control risks in a workplace, particularly in relation excessive workload, heat, bullying and customer abuse and violence, the obligation of a PCBU to conduct a risk assessment must be stated expressly in the model Act, with requirements on how to meet this obligation set out in a Regulation.

## **Recommendation 3**

31. The SDA recommends the bullying guidance is upgraded and included as part of a new Code addressing psychosocial risks and hazards, with clear links to a new provision in the model Act stipulating the PCBU's obligation to conduct risk assessments.

## **Recommendation 4**

32. The SDA recommends the working in heat guidance material is upgraded and included as part of a new Code with clear links to a new provision in the Model Act and stipulating the PCBU obligation to conduct risk assessments. It should be clear that cost is the least important factor when considering whether controls are reasonably practicable.

*Question 5: Have you any comments on the effectiveness of the model WHS laws in supporting the management of risks to psychological health in the workplace?*

33. The current framework fails to adequately protect workers from psychological injuries and illnesses and is failing in its objective to protect the health and safety of workers. The model WHS laws must be amended to be effective in supporting the management of risks to psychological health in the workplace. Psychosocial hazards including excessive workload, bullying and customer abuse and violence are systemic issues in parts of retail and fast food which is having a detrimental impact of the health of workers in these industries.



## Excessive workload

34. . The SDA's 2015 Workload survey ('SDA Workload survey') of 5,432, predominately female, retail, fast food and warehouse workers found the following:

- Over 70% of respondents reported experiencing an impact on their health and safety that they believed was a consequence of their workload in the last 12 months.
- Workers identified health and safety consequences they were aware of that are associated with excessive workload, with neck and/or back pain, high stress levels, anxiety and loss of motivation reported by over 50% of all respondents as impacting on them directly.
- Over 47.7% of respondents advised the issue occurred on a weekly basis, with 22% reporting it as a daily occurrence.

35. The following are extracts from the free text comments from the SDA Workload survey which illustrate the range of negative impacts an excessive workload has on the health and safety of workers:

*continual shortage of staff has all staff in my workplace feel a very low morale as we cannot see light at end of tunnel any longer especially in last 12 months.*  
8/26/2015 5:34 PM

*Staff are worried about the impact this has on their health now and the future.*  
8/26/2015 12:01 AM

*Due to working in a confined space (refrigeration) I am lifting over and above my reach. Also due to other departments not having enough staff I am moving loads that are not mine. This leads to aggression between departments and infighting.*  
8/23/2015 4:28 PM

*I've since started anti depressant and anxiety medication, but this is still only managed with a manageable workload*  
8/19/2015 10:02 PM

*I am currently on compo with severe back problems cause of this exact problem!!!!*  
8/19/2015 7:13 PM

*I take pain killers so that I can work as needed. Every shift I finish in pain (back, feet, knee and hands) We feel serarated from leadership team. Dehydrated. Some shifts it can be 5 hours before I get the time to allow for a drink or toilet break*  
8/19/2015 5:38 PM

*i have been told to curb my reactions many times. i have cried at work several times including in front of management. i have also got into several aggressive arguments with management. i believe they think i am difficult so i try to be quiet now. i react a lot less than i used to because all i get is lip service and bullsh\*t.*  
8/13/2015 12:26 AM



stress level are constantly high, often left feeling unmotivated and have had minor injuries from rushing to complete tasks within the tight time frames  
8/12/2015 8:15 PM

- Poor management (53.30% respondents), insufficient time to complete tasks (54.08% respondents) and understaffing (76.93% respondents) were identified as the best description of the possible causes of workload impact on health and safety.
- 44% reported workload issues, generally to their manager. The issue was reported as being resolved by only 10% of respondents.<sup>13</sup>

36. The following are case examples from the SDA in relation to excessive workload:

**Worker A**

*"Sending my response to this personally so I can't be dismissed for inappropriate behaviour on social media, but here it goes. Try telling that to my CSM [Customer Service Manager] who refuses to put on enough staff because "the projection doesn't think we need it" and yet I cop abuse most nights that I work for the queues and the fact there's only two staff on front end after 9pm. Sometimes even earlier than that. Because of this we cannot change registers to face the alternate way and are therefore scanning the same way for 4 hours non-stop, possibly causing back injuries. We often have to go without our breaks or take them very soon after starting a shift all at once. And to top it off, we are a midnight trade store and most nights left alone for that last hour one person, usually a woman, without a security guard and expected to do all of the EOD tasks (clean, empty bins, count registers, fill drink fridges, loose stock, etc etc all hard to do when your also often left with just a minor who can't sell cigarettes too)...."*

**Worker B**

*Worker suffered bullying regarding workload and over-monitoring at the hands of his manager and suffered a psychological injury as a result. The worker was not greeted upon his return to work and received no communication from his employer prior to his return. The worker simply went back to work as if nothing had happened and was no longer working under his line manager who was the cause of his psychological injury. Moreover the worker felt he "had a number on his back" as the problematic line manager has now been promoted to Assistant Store Manager. This worker is still awaiting receipt of a workers compensation settlement ordered by the Commission.*

**Worker C**

*Worker suffers from depression and is on medication due to her injury and her employer's attempts to terminate her. Worker C has 25 years of service with her employer and considers her employment her 'whole life'. For her employer to terminate her for being injured leads the worker*

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<sup>13</sup> Shop Distributive and Allied Employees' Association, 2015 SDA Workload Survey, 31 August 2015, SurveyMonkey, <https://www.surveymonkey.com/results/SM-P2K2C598L/>.

to feeling worthless and unwanted. The worker has been attending redeployment appointments for almost one year but has the feeling that 'no one wants her' as she is injured.

Generally Guides for work rates Seem to have increased over the last few years. 25 years ago or so (will try to find folder with a report of this in office today) carton counts for filling shelves with night fill was 40 cartons an hour. In 2000, at least one company had carton counts about 60 cartons an hour. We have had reports over last few years carton counts now can be 70-80 cartons an hour. Though there have been changes with task requirements over the last few years this does not appear to equate with carton rates. Some changes companies point to are removal of the need to rotate products around and filling whole boxes and not having to tidy things up as much. But workers report concerns with workload more and more and not being able to maintain safety standards as much as they could before such as keeping things clean. Many small tasks don't seem accounted for.

#### **Worker D**

The worker has worked as a baker with the company for more than 10 years. The worker has a psychological disorder, mild to mid obsessive compulsive disorder and slight learning issues. The worker's psychologist describes the worker as generally high functioning but the disorder is triggered more by stress. The employee does not want to disclose this to the employer due to fear of being dismissed.

The company has systems which talk about timeframes for tasks and they now measure tasks carefully. They put pressure on the worker to perform at the same speed as a much younger worker and say this "benchmarking" is normal. The stress of this unfortunately triggers behaviour with the worker such as outbursts for which is counselled. The Union has tried to obtain information about the timeframes and benchmarking but this is not shared by the employer. The system does not take into account differences in individuals. There has been a dramatic reduction of staff in this department over the last few years and it seems though some tasks have changed, it may not warrant such a dramatic change.

#### **Worker E**

Worker has a disability and is slower than other workers at completing task. Other workers find it hard due to pressures to "cover" this worker when they are on. System which calculates hours does not account for workers who have disabilities, who are injured.

37. Workers responding to the SDA Workload survey thought that genuine consultation with employees (46.26% respondents); better understanding of the allocation of hours based upon a realistic expectation of the time it takes to complete tasks (68.27% respondents); and more staff (74.52% respondents), would assist with the resolution of issues in their workplace.<sup>14</sup>

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<sup>14</sup> Shop Distributive and Allied Employees' Association, 2015 SDA Workload Survey, 31 August 2015, SurveyMonkey, <https://www.surveymonkey.com/results/SM-P2K2C598L/>.

38. Under s 19 (3) (c) of the model Act PCBU must provide and maintain 'a safe system of work'. The failure of PCBU to conduct risk assessments to identify 'unsafe systems of work' frequently leads to operational decisions that disregard the deleterious impact excessive workload is having on their workers' health and safety.
39. Excessive workload presents risk of significant psychological and physical injuries and must be addressed by model WHS laws directly.

### **Customer abuse and violence/Occupational violence**

40. Customer abuse and violence (CAV) is having an enormous impact on both the physical and perhaps more significantly the psychological health of workers. The SDA has done extensive work on this issue over the past 3 years including the launch of the union's public 'No One Deserves A Serve' campaign.<sup>15</sup> The SDA recently hosted an industry roundtable to initiate an industry wide response, from employer associations, employers, regulators and other key stakeholders, to tackle this issue.<sup>16</sup> There is broad consensus across industry that CAV is underreported as a WHS issue. The SDA believes it is likely that there will be an upward trend in relation to reporting of incidents in retail and fast food as people become more aware of this problem.
41. The SDA CAV survey data has been provided to major organisations/PCBU in retail and fast food industry and some Regulators to provide a deeper insight into the extent of the problem. While CAV encompasses a range of abusive and violent behaviour including bullying, sexual harassment and assault, indicators of the impact on the psychological health of workers are the prevalence of the following behaviour:
- 88.14% have been subjected to verbal abuse in the last 12 months and 24.35% say it happens every week.
  - 33.54% said they had felt threatened by a customer 1-2 times in the last 12 months

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<sup>15</sup> Shop Distributive and Allied Employees' Association, 'No One Deserves a Serve' – SDA launches major national campaign to stop abuse of retail and fast food workers this Christmas' (Media Release, 1712, 14 December 2017).

<sup>16</sup> Shop Distributive and Allied Employees' Association, 'Retail and fast food workers union hosts roundtable to tackle customer abuse epidemic' (Media Release, 1803, 14 March 2018).

- 4.07% said abuse had been directed at them online
- 51.26% of respondents said no action was taken after they reported the incident.

42. Thousands of respondents to the survey graphically illustrated how experiences of CAV impacted on their health and safety. Instances of trauma, stress, anxiety and fear in addition to the normalisation and conditioning of workers to accept CAV as the norm were clearly apparent. The following are extracts from the free text comments from the SDA CAV survey which describe some of the psychological impacts they have experienced because of their exposure of customer abuse and violence:

5532      *Photos*      *Another male customer abused me and then stalked me in the store and also took a photo of me with his phone. I immediately changed my name on social media when I was told he took my photo*  
 Female  
 46-55  
 Retail

4657      *Facebook*      *A customer abused me and called me names, then threw he's money at me. So I refused to serve him and he wrote a rant on the [COMPANY NAME] website saying how bad my customer service skills are.*  
 Female  
 36-45  
 Retail

1359      *Facebook*      *I asked to check a woman's bag one day and her boyfriend got angry and told me to mind my own business. I recieved a Facebook message from the girl later that week saying that I should stop bothering her and her family or there would be consequences and she would see me in court. The boyfriend has been know to steal from our store and has also recently pulled a knife on a fellow staff member.*  
 Female  
 18-25  
 Retail

2518      *Photo*      *Customer verbally abused me because I refused a refund. - Whilst I was door greeter, customer entered store. I alerted management of this customer as she has previously stolen. As she departed she informed me (using explicit language ) that she did not appreciate being followed around. She then left the store and took a photo of me on her phone. Because of this I felt threatened and violated*  
 Female  
 46/55  
 Retail  
 Supervisor

375      *Filming – threats to share online*      *customers filming , threatening to share online, making lude comments*  
 Female  
 18-25      *Fast Food*  
 Supervisor



*threatened – 'waiting for you when you finish' - Sick day following incident I had the next day off "sick" as I was too terrified they would come in again.*

*Female*

*18-25 Retail*

*Impact - Had to stop work as store went in to lock 2)A angry and possible drug fuelled woman returned through drive thru after an issue with her order and was abusing/shouting at my manager. My (heavily pregnant) manager did her best at ignoring the woman whilst continuing her job. The woman started screaming loudly and then grabbed her by the throat/shirt and held her. My manager screamed out of terror and tried to fight her off of her. Other workers needed to be involved as well as authorities. This woman stalked the store for hours and we had to go on lockdown.*

*Male*

*18-25 Fast food*

*Had to go and take a break It started by me asking this man if He wanted bags or not and he replied rudely, He started yelling at me and I didn't know if he was joking or what then I realised he was being abusive towards me and when I handed back the change to him I accidentally dropped it and he yelled slammed his hands down on the checkout and made me pick them up and he was also carrying on saying stuff towards me. the man behind him told him off for me and at the end I was shocked and shaken up I had to go off take a break*

*.Female*

*17 and under*

*Retail*

*Customer abuse or violence that was sexual in nature 'trapped in toilet' i left work and couldn't go back*

*my doctor stopped me from going to work*

*Female*

*46-55 Retail*

*i have been suffering anxiety and depression since and i am seeing a a psychologist at my expence*

*Female*

*36-45 Retail*

43. This Review needs to recognise that occupational violence is a significant problem across a range of industries and is directly impacting on workers' health and safety.

## **Recommendation 5**

44. , The SDA recommends that the obligation of a PCBU to conduct a risk assessment must be stated expressly in the Model Act.

## **Recommendation 6**

45. A new Regulation should be developed in relation to work-related psychological health and safety expressly stating that the requirements a PCBU must meet to provide a safe system of work in relation to psychological health and safety.



## Recommendation 7

46. The SDA supports the work SWA has done in drafting new guidance material – ‘Work-related psychological health and safety: A systematic approach to meeting your duties’. However, this guidance material should be upgraded to a Code.
47. The Code should also consider the gendered aspect to occupational violence particularly given that affected workers in retail, fast food and other industry sectors are predominately women.

*Question 6: Have you any comments on the relationship between the model WHS laws and industry specific and hazard specific safety legislation (particularly where safety provisions are included in legislation which has other purposes)?*

*Question 7: Have you any comments on the extraterritorial operation of the WHS laws?*

*Question 8: Have you any comments on the effectiveness of the model WHS laws in providing an appropriate and clear boundary between general public health and safety protections and specific health and safety protections that are connected to work?*

*Question 9: Are there any remaining, emerging or re-emerging work health and safety hazards or risks that are not effectively covered by the model WHS legislation?*

48. The key issues that are directly impacting on SDA members and are not effectively covered by the legislation include:
- Reproductive health, pregnancy, breastfeeding women and women returning to the workplace after giving birth
  - Protection of private health information
  - Occupational violence - customer abuse and violence, gendered violence
  - Excessive workload

**Reproductive health, pregnancy, breastfeeding women and women returning to the workplace after giving birth**

49. Australia's model WHS laws do not specifically address the WHS issues and hazards associated with reproductive health, pregnancy, breastfeeding women and women returning to the workplace after giving birth. The general duty of care under the Model Act requires the PCBU to actively consider the health and safety risks in their workplace, including the risks of working when pregnant.<sup>17</sup> However, there is no specific reference in the Model Act Regulations, the relevant Codes or guidance material which address the specific and unique hazards and risk factors associated with reproductive health, pregnancy, breastfeeding and women returning to work after birth.
50. The SDA continues to see members adversely affected by employers' failure to consider workplace hazards and systems of work for pregnant women and women returning to work after giving birth.<sup>18</sup>
51. The 'Australian Human Rights Commission Supporting Working Parents: Pregnancy and Return to Work National Review – Report 2014 ('AHRC Report 2014') confirmed the Model Laws framework is ineffective at protecting pregnant workers and workers returning to work after pregnancy with prevalence data reported in the Mother Survey indicating of that 27% mothers who reported experiencing discrimination in the workplace during pregnancy, nearly half (48%) reported discrimination related to their health and safety.<sup>19</sup>
52. The AHRC recommendation in relation to introducing a national Code, which supports the proposed Regulation, should be adopted as part of the Model Laws review to ensure the Model Laws provide adequate protection for workers in relation to reproductive health, pregnancy, and return to work after birth.
53. The AHRC Report 2014 made the following recommendation:
- Increase understanding of legal requirements to not discriminate on the basis of pregnancy and return to work including by:*
- *developing guidance material for employers in relation to their legal obligations and in relation to the work, health and safety needs or requirements of pregnant employees,*

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<sup>17</sup> Model Work Health and Safety Bill 2016 pp.

<sup>18</sup> Shop Distributive and Allied Employees' Association, above n 9, 50-59.

<sup>19</sup> [Australian Human Rights Commission, Supporting Working Parents: Pregnancy and Return to Work National Report, June 2014.](#)

*employees undergoing IVF and employees returning to work after miscarriage or childbirth (including employees who are breastfeeding). This guidance material should be developed with a view to introducing a 'code of practice' to have effect under Work Health and Safety laws in every jurisdiction.<sup>20</sup>*

## **Recommendation 8**

54. A new Regulation be inserted into the model Act which requires PCBU to identify, undertake risk assessments and control any risks to the reproductive health of workers, pregnant workers, workers who have recently given birth or who are breast feeding. This should be accompanied by a requirement that any risk assessment undertaken will be done in consultation with the worker affected.

## **Recommendation 9**

55. A Code supporting this Regulation should address the specific workplace health and safety hazards and risks around reproductive health, pregnancy, breastfeeding mothers and mothers returning to the workplace. It should provide information on the reproductive hazards associated with manual tasks, night work, biological agents, and provision of appropriate facilities in the workplace, work equipment, personal protective equipment and health surveillance. The Code should also highlight and raise awareness of existing industrial and anti-discrimination legislation.

## **Recommendation 10**

56. The following Codes should also be amended to include specific reference to the risks associated with reproductive health, pregnancy, breastfeeding and returning to work after birth;
- a) Hazardous manual tasks
  - b) Work health and safety consultation, cooperation and coordination
  - c) Managing risks of hazardous chemicals in the workplace
  - d) How to manage workplace health and safety risks
  - e) Managing work environment and facilities
  - f) Guide for preventing and responding to workplace bullying

## **Protection of private health information**

57. The SDA is increasingly concerned about the lack of prescriptions under the model WHS laws in relation to the protection of workers' private health information

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<sup>20</sup> Ibid 10.



58. The SDA notes challenges in relation to the emergence of new technology that easily facilitates the surveillance and tracking of workers by PCBU's, including the collection of personal and private information and images, and including information relating to worker health, fitness and wellbeing.
59. The SDA is opposed to the collection of personal and private health information including data or images, by PCBU and/ or third parties. Where a worker's private health information is collected, including inadvertently, by PCBU and/ or third party it must not be used by the PCBU to the detriment of the worker.
60. The law is largely settled in affirming employers broad contractual right to require an employee to provide medical and other health information.<sup>21</sup> However, the rapid emergence of new technology and increasing workplace and worker monitoring and surveillance requires the model WHS laws to consider whether there are appropriate safeguards in place for the protection of the health information of individual workers.
61. The SDA has witnessed changes to the extent to which employers in the retail industry are increasingly seeking to control or otherwise involve themselves in what might generally be described as work health issues affecting their employees.
62. Members are reporting that employers have demanded or asserted, either directly or through agents, a right to attend medical consultations or appointments with ill or injured employees or alternatively demanding that employees authorise in writing such attendances or the release of medical information arising from such consultations.<sup>22</sup>
63. Additionally, the SDA is increasingly being advised that employers are framing corporate policies which have the effect of requiring employees to acknowledge and agree to, under threat of sanction or disciplinary action, if they do not permit the

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<sup>21</sup> *Blackadder v Ramsey Butchering* (2002) 118 FCR 395 at 67.

<sup>22</sup> Georgia Wilkins, 'Bosses intruding on workers' doctor visits' *The Sydney Morning Herald* (online), 26 September 2012 <https://www.smh.com.au/politics/federal/bosses-intruding-on-workers-doctor-visits-20120925-26jh6.html>.

employer to access the information/attend appointments/provide additional medical certification.

64. The SDA's view is that a Regulation must be developed to ensure that there are sufficient protections for employees in relation to personal health information and information about their private life. At present there is little an employee can do without obtaining assistance from an advocate, like the SDA if their privacy is not respected.

## **Recommendation 11**

65. The SDA recommends the development of Regulations, supported by a Code that deals with the handling of workers' personal and private health information by a PCBU including:

- limiting the collection of workers private health information
- providing information to workers about their rights in relation to the protection of their private health information
- providing notice to workers about the potential collection, use and disclosure of private health information
- keeping private health information accurate, complete and up-to-date
- keeping private health information secure
- providing access for a worker to their private health information
- mandating that PCBUs and third parties must not be present during workers private medical appointments/medical consultations with their treating practitioners.

## **Customer abuse and violence**

66. Customer abuse and violence is impacting on both the physical and psychological health of workers. While this submission has already addressed the risks to retail and fast food worker psychological health, the headline data from the 2017 SDA CAV survey shows that this issue is not limited in this regard. CAV is widespread and systemic, effecting workers' physical and psychological health.

67. Key facts about CAV experienced by retail and fast food workers from the SDA CAV survey:



- 88.14% of respondents have been subjected to verbal abuse from a customer in the last 12 months. (4,912)
- 24.35% of respondents subjected to verbal abuse say it happens every week. (1,279)
- 33.54% of respondents said they had felt threatened by a customer 1-2 times in the last 12 months. (1,863)
- 14.49% of respondents have experienced physical violence from a customer. (806)
- 11.62% of respondents said the incidents of customer abuse or violence involved behaviour by a customer that was sexual in nature. (637)
- 62.31% of respondents said customer abuse was generally perpetrated by both male and female customers.
- 4.07% of respondents said customer abuse had been directed to them online. (224)
- 78.98% of respondents work in stores with between 30 and 300 employees. (4,940).
- 64.93% of respondents work on cashier/front end/service/registers.
- 74.24% of respondents are female. (4,620)
- 64.30% of respondents said they had not received any training in the last 12 months on how to deal with threatening situations that includes abusive or violent customers. (2,985)
- 51.26% of respondents said no action was taken after they reported an incident. (2,054)
- 12.08% of respondents said the customer was banned as a result of reporting an incident. (484)

68. Examples from of the customer behaviour experienced by respondents to the SDA CAV survey:

*"Other team members have been slapped in the face, one grocery manager was grabbed by the throat and choked against a wall. We get yelled at and abused all the time."*

*"Sometimes just rude people. Screaming/yelling, swearing, hands being thrown around, invading personal space, provocative behaviour when in an even more vulnerable position such as door greeter. Have been a victim of serious abuse and threatening behaviour where things were thrown at me and security/management were involved."*

*"I have had customers throw products at me when being simple things such as a product is out of stock. I've had my face spat on, slapped across the face and had one person throw a swing to punch me and miss (I dodged it). It becomes second nature to have to know how to defend yourself, even when you're just selling groceries and providing an everyday service.*

*"Once a team member was held up with a syringe."*

*"The customers swear at you when they don't get their way."*

*"I have been spat at. I have had a hot roast chicken and a bag of salad thrown at me."*

*"I've had a man run at me carrying a sword while I was changing promotional boards, mistaking me for another person. I've had a young male rush to punch me in the face after I refused to sell alcohol to he and his friends. I've had a group of young boys harass customers, staff and myself by throwing rotten fruit at us. I've been spat on during a theft incident. I've had people threaten to harm myself and my staff after we've refused service due to intoxication.*

*I was punched in the arm by a woman who wanted a dress to be cheaper and pushed into a tiled wall where I hit my head and received a concussion by a customer who I caught shoplifting.*

*Have had mentholated spirits tipped onto counter and he tried to light it*

*repeatedly punched while protecting a 6month old baby from two customers fighting over the top of the trolley she was sitting in one of them was her mother baby did not get hit or hurt in any way myself and a male team member wore most of the hits i covered the baby and he tried to cover me had objects thrown at me leaving large bruises verbal insults about me and my family*

## **Recommendation 12**

69. The SDA recommends a new Regulation be developed which stipulates that a PCBU is required to identify, undertake risk assessments and control any risks related to occupational violence, including customer abuse and violence.

70. The SDA recommends that the proposed new Regulation be supported by a standalone Code dealing with Occupational Violence.

*Question 10: Have you any comments on the sufficiency of the definition of PCBU to ensure that the primary duty of care continues to be responsive to changes in the nature of work and work relationships?*

*Question 11: Have you any comments relating to a PCBU's primary duty of care under the model WHS Act?*

71. The lack of prescription in the model Act in relation to PCBU duties to undertake risk assessments and provide a 'safe system of work' are key issues already outlined.
72. PCBU are increasingly attempting to shift their primary duty of care back to the worker. Responsibility for worker health, safety and wellbeing tends to be heavily weighted towards the individual worker to be healthy and safe and to not put themselves at risk at work; rather than on the PCBU to put in the appropriate control measures.
73. The SDA CAV survey responses clearly illustrate how many PCBU avoid their primary duty of care in retail and fast food. Hundreds of members have provided examples of situations where:
- a customer is abusive towards a worker for any number of reasons, including waiting too long in a queue, product not available, return not accepted
  - the worker challenges the behaviour by not acceding to a customer request, often in accordance with company policy, and escalates the matter to a manager
  - the customer behaviour is generally not challenged by the manager and the customer requests for returns/discounts etc are acceded to
  - the worker is disciplined because of their apparent failure to manage the customer
  - that a worker has been exposed to a risk in their workplace and it has not been controlled is not addressed
74. Disturbingly, many workers who have been injured or ill before returning to work are often deemed by a PCBU to be a risk to the workplace and directed not to attend work. The SDA has been involved with many cases involving members who have been stood down without pay on the basis the PCBU cannot fulfil its duty of care to provide a safe workplace due to the risk of worker may be injured or become ill. These cases can become quite complex as they may span workers compensation, disability discrimination, WHS and industrial jurisdictions.

75. There have been numerous instances of injured or ill workers being stood down by PCBU, including major retail employers. These cases have become highly litigious in some instances and have resulted in workers feeling bullied, harassed and discriminated against and some have acquired a psychological injury. These issues are often framed by PCBU as requiring workers to furnish proof that they are 100% fit for work to fulfil the inherent requirements of the job. However, compliance in relation to PCBUs WHS obligations should not and does not mean employers have a right to withhold wages because an employee may reasonably refuse to attend a medical appointment to prove they are fit for work.<sup>23</sup>
76. The following was 1 of 4 cases the SDA was involved with in 2016, involving the same PCBU, where members were stood down on the basis the PCBU argued it could not meet its primary duty of care as the workers presented a risk (as they had been injured):

*PCBU concerned that a member will re-injure her back if she works in the deli with its current design. The deli design was deemed unsafe as it was too deep to reach into to set up displays and serve customers. The PCBU refused to provide the member shifts in the deli until a definitive position could be reached with regard to their ability to make reasonable accommodations in order for the deli shifts to continue safely. It was made clear by the PCBU that it is an inherent requirement of the deli customer service role to be able to reach into the deli case to serve customers, and that the reason the worker could not perform this inherent requirement safely is because she has a permanent physical limitation in that she is short in stature.*

**Question 12: Have you any comments on the approach to the meaning of 'reasonably practicable'?**

77. The SDA is concerned with how the standard of 'reasonably practicable' is interpreted by PCBU.
78. The model Act is clear that cost should only be taken into account if it is grossly disproportionate to the risk.<sup>24</sup> Although the cost of eliminating or minimising risk is relevant in determining what is reasonably practicable, it should be spelled out more clearly in the Act how to consider cost

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<sup>23</sup> *Blackadder v Ramsey Butchering* (2002) 118 FCR 395 at [75].

<sup>24</sup> *Blackadder v Ramsey Butchering* (2002) 118 FCR 395 at [67].

79. As stated above at paragraph 74-75 in relation to PCBU primary duty of care, there is often dispute between the SDA and the PCBU of what is 'reasonably practicable' particularly in relation to providing a healthy and safe workplace for ill and injured workers. It has been considered and concluded that an employer has a strict obligation under WHS legislation to ensure the health and safety of employees.<sup>25</sup>

*Question 15: Have you any comments relating to a worker's duty of care under the model WHS Act?*

80. Refer to response to question 11.

*Question 16: Have you any comments relating to the 'other person at a workplace' duty of care under the model WHS Act?*

*Question 17: Have you any comments relating to the principles that apply to health and safety duties?*

*Question 18: Have you any comments on the practical application of the WHS consultation duties where there are multiple duty holders operating as part of a supply chain or network?*

*Question 19: Have you any comments on the role of the consultation, representation and participation provisions in supporting the objective of the model WHS laws to ensure fair and effective consultation with workers in relation to work health and safety?*

81. PCBU obligations to consult are frequently not met, or conducted in a manner that does not satisfy their obligations under the model laws. Many PCBU approach consultation by advising workers, and on an ad-hoc basis their union, *after* any major decisions have been made and ask for 'feedback' which they will consider. PCBU understanding of their obligations to consult are poor and consultation is often merely part of a human resources or communication engagement strategy with workers, with little or no regard to legal obligations. PCBU are often simply delivering information not consulting.



82. HSC are still the primary method of consultation for many PCBU in retail and fast food. The SDA's experience is that HSC are often not properly constituted i.e. stacked with management or management appointed worker representatives. Often the HSC regular meeting agenda is set centrally by the PCBU at a national or state level without worker input. Minutes of HSC meetings are often difficult to access and not very detailed. HSC meetings are often conducted by a salaried manager rather than a worker. There is no have a requirement for training of representatives on HSC.
83. The model laws should also clearly state that less than half of the members of the HSC should be from management. This will ensure there is more effective consultation with workers from these committees.
84. The SDA also submits that the legislation should require the chair of the HSC be a non-management employee. The SDA has had extensive feedback from a wide range of workplaces affirming that the HSC is ineffective where a majority of its members are management employees and the chair is a salaried manager.
85. In relation to HSR, this representative model is generally poorly supported or in too many cases actively resisted by the PCBU. Some PCBU policies state that HSRs are not needed if a HSC committee is established. Recent examples include a PCBU (large employer) deliberately acting to reduce the number of HSR nominations by each nominee having to meet with a State WHS Manager and Store Manager to talk about the HSR role. In this instance the number of nominations for HSR positions reduced from 40 to 11. Other strategies are to delay HSR elections or access to training and protracting negotiations for 'Designated Work Groups'. One current DWG negotiation with workers, the PCBU and the SDA has been ongoing for 6 months.
86. The SDA strongly supports ACTU recommendations in relation to the HSR role including clarifying the process for HSR nomination and election and negotiating workgroups, unrestricted access to experts and training.

*Question 20: Are there classes of workers for whom current consultation requirements are not effective and if so how could consultation requirements for these workers be made more effective?*

87. Casuals/precarious workers, young workers and Culturally and Linguistically Diverse ('CALD') workers are not specifically considered in the current WHS framework.

*Question 21: Have you any comments on the continuing effectiveness of the functions and powers of HSRs in the context of the changing nature of work?*

88. The SDA's experience over decades is that HSR are an effective in improving safety in workplaces. The union has received positive feedback from workers about the role HSRs play and the difference made to workplace safety. Long term issues have generally been solved and workplaces become safer. Workers also feel empowered and are more confident to raise health and safety concerns. The SDA's 2018 national survey of HSRs has supported the effective functioning of HSRs in retail and distribution centres in particular.

89. While the SDA notes the effectiveness of HSRs in the context of medium to large workplaces, smaller workplaces including franchisee networks, insecure workers (Labour Hire), casuals and CALD workers are not generally considered in the current model WHS framework.

*Question 22: Have you any comments on the effectiveness of the issue resolution procedures in the model WHS laws?*

90. There is often confusion by PCBU between whether to apply an enterprise agreement dispute resolution procedure or the WHS prescribed Issue Resolution. The resolution of WHS issue can become unnecessarily protracted.

*Question 23: Have you any comments on the effectiveness of the provisions relating to discriminatory, coercive and misleading conduct in protecting those workers who take on a representative role under the model WHS Act, for example as an HSR or member of a HSC, or who raise WHS issues in their workplace?*

91. Further protections for HSRs from discriminatory, coercive and misleading conduct are required.
92. Examples of the kind of conduct HSRs have been subjected to, and cases which the Regulator was made aware of are as follows:

*An employer counselled and warned a HSR for conducting a petition to demonstrate that workers agreed there was a health and safety issue. The employer also took disciplinary action against the employee, a HSR, for disclosing to "third parties" private medical information of co-employees that had authorized the disclosure. The third party was in fact the Union, which had already engaged the employer about the matter. The HSR disclosed the information to the Union, in the presence of the Company, during a meeting with all three parties in which the health and safety issue were being discussed.*

*The warning was finally removed after a lengthy intervention by SafeWork NSW. However, the time to resolve the matter prolonged the distress to the employee who subsequently left the company and is firmly of the view that the reasonable conduct of an HSRs is not protected by the legislation.*

93. The SDA supports ACTU comments that while the wording of the model laws is sufficient in theory there is a clear failure to ensure they are complied with and enforced. Amending union powers to commence legal proceedings for breaches will assist.

*Question 24: Have you any comments on the effectiveness of the provisions for WHS entry by WHS entry permit holders to support the object of the model WHS laws?*

*Question 25: Have you any comments on the effectiveness, sufficiency and appropriateness of the functions and powers of the regulator (ss 152 and 153) to ensure compliance with the model WHS laws?*

94. Regulators have sufficient powers; however, consideration should be given to the training and development of Inspectors to ensure they properly understand the function of the regulator and are confident to use powers where there are breaches of WHS laws.

*Question 26: Have you any comments on the effectiveness, sufficiency and appropriateness of the functions and powers provided to inspectors in the model WHS Act to ensure compliance with the model WHS legislation?*

*Question 27: Have you experience of an internal or external review process under the model WHS laws? Do you consider that the provisions for review are appropriate and working effectively?*

*Question 28: Have you experience of an exemption application under the model WHS Regulations? Do you consider that the provisions for exemptions are appropriate and working effectively?*

*Question 29: Have you any comments on the provisions that support co-operation and use of regulator and inspector powers and functions across jurisdictions and their effectiveness in assisting with the compliance and enforcement objective of the model WHS legislation?*

95. In addition to the ACTU comments, the SDA notes that use of regulator and inspector powers and functions across jurisdictions is an issue that must be addressed across all industries. The perception of retail and fast food as a 'low risk' industry, by comparison to other 'high risk' industries, should not mean less attention and less resources should be allocated by the regulator and the inspectorate.

*Question 30: Have you any comments on the incident notification provisions?*

96. A range of serious workplace incidents are not reported. A problem for SDA members in retail and fast food is that the legislation does not specify that workers should have direct access to reporting systems. In the SDA's experience, many companies have online reporting processes which can only be accessed by management and are not easily, if at all, accessible by workers. This can lead to errors in reporting and failures to properly investigate incidents by managers, especially if an incident does not result in a serious injury. The SDA has found extensive under-reporting of CAV as referred to above.

97. An example of the limited access workers' have to reporting systems and the resultant consequences is outlined below:

*A night worker sustained an injury. It was reported to a health and safety committee member on duty as the store manager and assistant store manager were not working at the time. In addition the employee reported the injury to her team leader the following day. None of the persons she reported the injury to were able to enter the injury in the system or reported it further. It was not until 4 days post-injury when the worker was unable to attend work (due to what we now know to be excruciating pain from a snapped disc in her lower spine), that it became apparent that store management wasn't aware of the injury and that nothing had been reported. The injury report was not made until 4 days after the injury was incurred and had the injury not persisted nothing would have ever been recorded. Delaying the report has had a detrimental impact on the workers' recovery.*



## Recommendation 13

98. The SDA recommends the following incidents should be included under the notifiable incident provisions as a 'serious' or 'dangerous' incident in Part 3 of the model Act:

- Assault including serious threats, such as threats to life or grievous bodily harm, which create a risk of serious injury or illness
- Direct exposure to body fluids/exposure to e.g. saliva, blood
- Suicide or attempts at suicide by a worker

99. Note, the limitations with the current notifiable incidents provision mean that a range of serious psychological injuries are not picked up because they do not require immediate treatment as an inpatient.

## Recommendation 14

100. The SDA recommends Regulations stipulate the right for workers to have direct access to incident reporting systems, regardless of whether the incident is defined as 'notifiable' or 'dangerous' under the model Act, and be provided with a copy of any incident report directly affecting them.

*Question 31: Have you any comments on the effectiveness of the National Compliance and Enforcement Policy in supporting the object of the model WHS Act?*

*Question 32: Have you any comments in relation to your experience of the exercise of inspector's powers since the introduction of the model WHS laws within the context of applying the graduated compliance and enforcement principle?*

*Question 33: Have you any comments on the effectiveness of the penalties in the model WHS Act as a deterrent to poor health and safety practices?*

*Question 34: Have you any comments on the processes and procedures relating to legal proceedings for offences under the model WHS laws?*

*Question 35: Have you any comments on the value of implementing sentencing guidelines for work health and safety offenders?*

*Question 36: Have you any comments on the effectiveness of the provisions relating to enforceable undertakings in supporting the objectives of the model WHS laws?*

*Question 37: Have you any comments on the availability of insurance products which cover the cost of work health and safety penalties?*