Review of Model WHS Laws

Submission from
Australasian Meat Industry Employees Union

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WHS ISSUES PAPER COMMENTS:

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The AMIEU represents approximately 18,000 workers in the Meat Industry (red and white meat, poultry and related products). The AMIEU represents a broad range of occupations including Butchers, Labourers, Drovers (at abattoirs), Slaughterers, Boners, Slicers, Knife Hands, Packers, Meat Lumpers, Casings Workers, Smallgoods Workers, Rendering Workers, Meat Wrappers, Meat Cabinet Attendants, Cold Store Workers, Milk Product Workers.

Slaughtering and processing beef, lamb, pork, and poultry for our food supply are inherently dangerous jobs. Turning a 1,250 pound steer or a five pound chicken into cuts sold in the marketplace is physically demanding work undertaken in a difficult and hazardous work environment. Workers use sharp hooks and knives while standing on floors made slippery from blood, fat, faecal matter, and other bodily fluids. Unpredictable and violent reactions from animals before slaughter pose constant physical threats to workers. Heavy suspended carcasses of beef travelling along a fast moving automated line can slam a worker to the floor. Down the line, processing workers stand for long periods of time working closely together while making thousands of repetitive cuts each shift. The noise is deafening and temperatures in the plants range from hot and humid on the killing floors to near freezing in the processing rooms. Pathogens can infect workers, and chemicals from decomposing animal waste, disinfectants, or gases such as ammonia used for refrigeration can prove deadly.[1]

[1] Lessons Learned Safe food from safe workplaces: protecting meat and poultry processing workers University of Massachusetts Lowell 2010

The AMIEU wishes to make some preliminary comment on the Issues Paper, as well as addressing the specific questions asked.

Timeframes for comment

The AMIEU has grave concerns about the inadequacy of the timeframes for comment and the rushed process, which prevents stakeholders from developing considered, evidence-based submissions.

Premature review

Given the relatively brief period of time in which the laws have been in place, it is premature to be reviewing them – particularly when a statutory review is already planned. AMIEU understands that the necessary data it not yet available to empirically examine whether the laws have been effective in achieving improved safety outcomes. Given that the Commonwealth, ACT, NSW, NT and Queensland implemented the model WHS laws in January 2012; SA and Tasmania in January 2013; and WA and Victoria not at all: the AMIEU submits that the premature review the Act, without time to assess its effectiveness, is ideologically driven.

No evidence to support assertions

The questions negatively frame the model laws as 'prescriptive', 'burdensome', with compliance being 'difficult'. The AMIEU is unaware of any data or evidence published by Safe Work Australia to support these assertions.

Focus of the review - business costs – is too narrow

It is concerning that not a single question in the discussion paper is directed toward achieving better safety, better compliance. There is not one question in this feedback process about reducing death and injury.

The bulk of the review questions are concerned with the cost burdens of business. What about the cost burden of the injured worker? The review introduction itself acknowledges that 74% of the cost burden of an injury is born by the worker, and the employers only bear 5% of the burden.

Take for example the question under the heading 'Regulatory Burden', which asks Which areas of the model WHS regulations (if any) are more burdensome than beneficial? Are we not equally interested in the areas of the Act and Regulations which fall short of what is required to reduce workplace injuries, illnesses and deaths?

Reducing safety protections for workers is not in the public interest

Overall, it is clear that the feedback questions foreshadow a predetermined outcome: reductions in the model WHS Act and Regulations. AMIEU strongly submits that any moves to dismantle safety protections for workers are not in the public interest and will not be well received in the Australian community.

Scope

The scope seems to avoid any consideration of whether the current model laws improve health and safety for people at work.

Page 2 of the issues papers says:

The COAG have asked Ministers to consider whether the current system

reflects best practice, in that the model WHS laws:

- *are evidence based, cost effective and proportional to the health and safety risks they seek to address*
- *are simple and streamlined for businesses to comply with, and*
- *where possible, allow duty holders flexibility in how they comply with their obligations.*

These dot points do not reflect the principles of performance based law. Australia's health and safety laws build on the general duties of care through the setting of outcomes in comparison to prescribing how outcomes are to be achieved. The concept of so *far as reasonably practicable* provides flexibility in how a duty is to be met.

Prior to the adoption of the Model WHS package, reverse onus and deemed to comply provisions applied to Codes of Practice in NSW and Queensland respectively. WHS Codes of Practice outline to duty holders what is considered reasonably practicable to control the risks identified. As reported in OHS Alert, Barry Sherriff noted that the model Codes "*are not imposing obligations*" and "*The Codes provide valuable information on hazards, risks and risk-control measures, and might be considered by courts "in determining whether you've done what you ought*". ***"They're actually there to help."*** [2] [emphasis added]

The Issues Paper claims that that this current review does not go to fundamental issues. The AMIEU submits that this is not correct. The questions posed in this issues paper refer to the fundamentals of the regulatory framework. For example:

Section 3 question some fundamental principles which were proposed and extensively discussed during the writing and the consultations undertaken by the National Review in 2008/9 and the Model WHA Act during 2009 which were further adopted and revised by the WRMC in late 2009.

Section 3 questions are targeted at a diminution of rights of HSRs, union officials and the workers who they represent. These are *underpinning concepts* of the WHS framework – the right to assistance, the right to prevent harm occurring to others and the right to represent the interests of workers who are members of unions.

Australia's WHS performance is improving.

As noted the estimates of costs are equivalent to 4.8% of GDP – this is half the cost of the Australian health care expenditure which is estimated at 9.4% of GDP [3] So in round figures our poor health and safety performance costs about **$2,700 per person** [note this is per person in the general population, not the working population].

Serious workers compensation claims data **do show** a fall in incidence rates but this data is not a good indicator of health and safety performance. Workers compensation data is not a consistent measure as eligibility for workers compensation changes over time, eligibility for workers compensation is not consistent across the nine jurisdictions, the administration of workers compensation systems is not consistent across jurisdictions and there are multiple factors which impact on whether a worker

[2] OHS Alert Tuesday 30 October 2012

[3] http://www.aihw.gov.au/australias-health/2012/spending-on-health/

Australia spent $121.4 billion on health in 2009–10, which accounted for 9.4% of total spending on all goods and services in the economy (known as gross domestic product or GDP). This averaged out to $5,479 per person.

accesses workers compensation benefits. Of particular importance is the growth in precarious employment. SafeWork Australia and other research show that casual workers have a higher incidence rate of injury and are less likely to apply for workers compensation[4].

The AMIEU is concerned that the governments and those lobbying for reduction in "red tape" have lost sight of the Objects of WHS Act as stated Section 3.1.(a).

What is the Problem?

The AMIEU submits that the challenge of improving the health and safety performance of small business is a world wide phenomenon.

Considerable literature exists which provide options for the removal of barriers to engaging with SMEs. For example Cowley and Else[5] listed the following barriers:

- limited development in the area of safety management
- limited access to external health and safety resources and
- infrequent inspection
- preoccupation with economic survival to consider OHS a significant issue and are more inclined to take risks due to tighter economic pressures
- information vacuum" and many small businesses act on the basis of personal experience and information obtained through personal contacts
- lack of information not only influences the likelihood that an employer will control risk, but it also influences the *level* of control that will be applied.

Small business has difficulties with the risk management approach due to a lack of a systemic approach to prevention. Small business tends to view compliance as matter of individual responsibility using a safe person framework. Regular reports note that small business respond to direct, personal and verbal advice from respected peers or independent sources of information.

Thus far Australian regulators have been timid when considering innovative approaches to "proactively" encourage prevention. International initiatives that address the lack of training and skill development of SMEs include:

- Danish requirements for training of SMEs i.e mandatory training of five days per year and then 1.5 annually, the content of which is decided by the SME themselves; the provision of very specific sector advice and a starter kit is provided to all new enterprises.
- South Korea: due to a limited capability of government to deal with increasing numbers vulnerable workers and small enterprises in 2012 the government in collaboration with universities, established free medical services at 5 centres for SMEs; using government funds to provide online education for foreman and providing financial assistance to improve the work environment.[6]

[4] Safework Australia Media Release 30 July 2012 Higher Injury Rates For Casual Workers and various publication by Underhill, E, and Quinlan, M and Final Report to the WHO Commission on Social Determinants of Health (CSDH) Employment Conditions Knowledge Network (EMCONET) Joan Benach, Carles Muntaner, Vilma Santana (Chairs), September 2009.

[5] The application of a social marketing model to increase the uptake of OHS risk control measures by small business , Stephen Cowley & Dennis Else, University of Ballarat

[6] Presentations form respective government representatives at ASEM Conference Singapore 2012

The questions below have been extracted from the Issues Paper prepared by Safe Work Australia. The numbering used in that Issue Paper has been retained

3.1 What areas in the model WHS Act, other than those identified by COAG and addressed below, have positively or negatively impacted on your organisation and how could they be improved?

The AMIEU notes that the Queensland Parliamentary Committee made recommendations regarding induction training. These have not been discussed or incorporated into Queensland WHS Act/Regulation changes. .

We submit that the value of OHS training is indisputable and notes that the model WHS laws provide for:

- The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by - . . . promoting the provision of advice, information, education and training in relation to work health and safety. (Section 3(1)(d)); and,
- . . . a person conducting a business or undertaking must ensure, so far as is reasonably practicable - . . . the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking. (Section 19(3)(f)).

Even though similar provisions were in all OHS law all around the country the ABS found that in 2009 1 in 3 workers had not received any training in OHS risks[7]. The AMIEU supports initiatives such as the recently introduced mandatory awareness training for workers supervisors in Ontario, Canada [8]

Therefore we support

- mandatory training for all new employees in basic first aid and basic health and safety
- provision of information, instruction and supervision that is necessary to protect all persons from risks to their health and safety should be unconditional and not tempered by the *'so far as is reasonably practicable'* qualifier.
- Basic training for workers should at a minimum cover:
- WHS Legislation: Overview of the Act, including duties of all parties; consultative arrangements (HSR's and WHS Committees), key regulations and Codes of Practice;
- Workplace policies and procedures (including bullying/harassment policy, procedures to report hazards, incidents, injuries, and near misses; equal opportunity; hazardous substances);
- Work Groups and who the HSR's are;
- Major potential hazards in the workplace, potential effects, how to identify

[7] ABS, *Work-related Injuries Australia*, Cat. No. 6324.0 0

[8] http://www.labour.gov.on.ca/english/hs/training/ accessed 22 July 2014

A new regulation will require health and safety awareness training for every worker and supervisor under Ontario's Occupational Health and Safety Act (OHSA). The regulation comes into force July 1, 2014

them, and how they are controlled in the workplace (i.e. power supply isolation);
- First aid arrangements, including who the first aiders are;
- Emergency evacuation procedures; and,
- Brief rehabilitation, return to work and workers' compensation rights.
- Compulsory Industry OHS training for high risk industries.
- Building on the basic WHS training undertaken by all employees, specific training for high risk industries should be compulsory for all employees and supervisors.
- High risk industry training should focus on the actual hazards of the high risk work and the application of specific regulations to mitigating those hazards.
- This training should be in addition to requisite training for occupational licenses.

3.2 What impact (positive or negative) has the duty on officers had on your organisation?

It is worth placing in context the evidence which supported the introduction of due diligence. This is well explained in Submission 258 to the Model Regulations and Codes in April 2011. Johnston and Tooma noted:

> *One of the most important reforms introduced by the Model Work Health and Safety Act has been the introduction of a proactive due diligence obligation on officers. Under section 27 of the Model Act, an officer is required to exercise due diligence to ensure compliance by their company with its health and safety obligations under the Act.*
>
> *This proactive obligation is an important reform because health and safety leadership is critical to health and safety outcomes. An international study into best practices in corporate health and safety amongst major corporations by the Conference Board concluded that achieving excellence is about empowering everyone – management, supervisors, employees and contractors alike – to make health and safety truly work.*
>
> *The report into the BP US Refineries' 2005 disaster at the Texas Refinery by the US Chemical Safety Board identified lack of leadership by the BP Board of Directors as a root cause of the disaster. The same observation could be made of most major disasters. Kletz's review and analysis of 20 major industrial accidents including Three Mile Island, Piper Apha, Chernobyl, Longford, Gresford Collier explosion identifies poor management at the root of all these incidents. This ultimately comes down to the commitment and leadership of the top echelon of the organisation.*

Johnston and Tooma argued for Regulations and Code of Practice to clearly outline the minimum requirements for "officers"

- *These elements are inter-related and cumulative in nature. They are elements of a unified system for ensuring organisational compliance – the essence of due diligence.*
- *While the definition represents a codification of the current judicial interpretation of due diligence, no additional guidance is provided in relation to that duty in the regulations or in a code of practice.*
- *If the purpose of regulations is to identify critical components of the general duties imposed by the Act to ensure that those matters are addressed by duty holders as a minimum requirement of compliance with their legal obligations, shouldn't officers receive similar guidance?*

- *Importantly, the class of persons who fall within the denomination of 'officer' is necessarily broad. While all are required to exercise due diligence, it is beneficial to define what the legislature expects as a minimum from each category of persons. For example, resource allocation is an important component of due diligence. At director level this would require scrutiny and oversight to ensure that sufficient resources are allocated to projects to ensure that they are undertaken safely and without risks to health and that sufficient support resources are provided to assist in complying with the company's health and safety obligations.*

- In that context, one might expect that the regulations would specify that in exercising due diligence, an officer with financial responsibilities must have regard to:
    - *the allocation of resources to projects having regard to the size, complexity and risks associated with projects;*
    - *the allocation of resources to preventative maintenance of plant and equipment;*
    - *the allocation of resources to training of workers; and*
    - *the allocation of resources to verify the effectiveness of the system*.

AMIEU has no evidence of any negative impact of Section 27 WHS Acts. Anecdotal evidence is that this has focussed employers' prevention efforts, which is a positive change.

3.3 Which aspects of the duty (if any) should be changed?

The AMIEU supports the adoption of Regulations, Codes of Practice and Guidance material to assist officers when exercising due diligence, as per Johnston and Tooma above.

3.4 What impact (positive or negative) have the powers provided to WHS entry permit holders to enter a workplace had on your organisation? Please provide relevant examples and evidence.

The AMIEU submits that unions have historically played a substantial role in providing information, training and assistance to workers. We have also been pivotal in obtaining regulations that provide statutory WHS protections for workers. This has been complemented by our leading role in modernising WHS laws and especially so during the last 30 years. Without unions, Australia's WHS laws would be much weaker.

The right of entry for union officials to workplaces is an integral aspect of our industrial role, whether in relation to working conditions generally or workplace health and safety issues in particular.

There is no evidence, however, of any widespread abuse of this right. On the contrary, there has been an exceptionally high level of compliance with the conditions attached to this right.

The right of union officials to enter workplaces for reasons of health and safety has existed in NSW since 1996, Victoria since 2004 and also in Queensland, NT and ACT. In Western Australia the OSH Act of 1984 is recognised in the 1979 IR Act.

According to the AMIEU available records **there hasn't been an application t**o revoke a permit which has been used for health and safety purposes. It has been our

officials' experience that health and safety risks are identified and controlled as a result of their visits and discussions with employers. In fact, after initially "feeling a bit put out" employers are often happy to get free H&S advice. Many employers prefer the union official to a government inspector.

The WHS Act and the Fair Work Act do serve different functions. At its most basic level the WHS Act is about saving lives and improving the health outcomes of workers.

It is also of considerable importance to note that Federal Court Judge Justice Murphy found in AMWU v Visy Pty Ltd (3) [2013] FCA 526 that an employees rights or duties under the OHS act, as an employee or health and safety representative, are workplace rights under the Fair Work Act [section 340]. Justice Murphy [para 168] said:

> *"The OHS Act plainly contemplates that a health and safety representative may have a different view from the employer as to the appropriate resolution of a particular health and safety issue.* ***The right to advocate such a different view is an important workplace right and the dialogue it promotes serves an important occupational health and safety function****. In my opinion, actions taken by a health and safety representative in asserting a particular position on a health and safety issue should not lightly be treated as constituting uncooperative or obstructive conduct."*

Inserting a notice period simply ensures that "the ship will have sailed" before serious health and safety issues are addressed. The AMIEU also notes that the Issue Paper in this section [page 13] refers to time to respond to identified health and safety issues, but later on asserts that Issue Resolutions impose a regulatory burden. The two statements appear rather contradictory.

The AMIEU submits that these powers are of benefit for all and that there is no evidence to justify the May 2014 Queensland amendments or an extension of these amendments to other jurisdictions.

3.5 What limitations (if any) do you think should be placed on the powers? Please provide reasons for your suggestions.

The AMIEU does not support greater limitations. Instead we would support amendment of the WHS Act and regulations which would allow Union officials to direct work which poses an immediate or imminent risk to workers. The Entry Permit Holder would then need to raise the issue directly with the PCBU and have the right to call on inspector to assist in resolving any outstanding health and safety risks

3.6 What impact (positive or negative) have health and safety representatives' powers and functions had on your organisation? Please provide relevant examples and evidence.

The framing of this question leads the reader to assume that only "businesses" need answer. The AMIEU submits that the question challenges the basic framework of WHS laws.

COAG and subsequent decisions made by jurisdictions on the time for response have significantly hampered the depth of the workers response to this question. Below are a few responses from HSRs to the question "*how do you think you have*

helped your employer improve health and safety at your work site?"
The names of HSRs and employers have been removed.

Worker One:
I would like to add a couple of examples of these rights that I have used and the WorkSafe Authority has agreed with.

- In September 2011 A supervisor approached me and had an idea that could improve the system and production on our workplace, the idea was intentioned to spread out the work load across the room and give workers more room to work in. With this consultation with another member of our work group and myself it was agreed that we would trial this system, there was no doubt the system had potential. We worked through a few minor details and that was fine, not without a major flaw. After a couple of weeks workers were complaining of sore backs and shoulders due to lifting, bending and twisting. Further consultations did arise from these issues, and the complaints were ignored and the reply we received from the supervisor was "That's the way it's staying! ". This reply left me no choice but to put a PIN on where the workers had the concerns. WorkSafe entered the workplace the next week and agreed that there was definitely concern for the workers getting musculoskeletal injuries. Immediate measures were put in place and in time structural change was made in the area where the new system was put in place, and to this day are still using this system with minimal bending, lifting and injuries.

- In March 2013. About half way during the day, after a tea break, workers in our room alarmed me of an ammonia leak coming from another section of the work place where there was no HSR. With best intention for my DWG I went out to see where the problem was coming from. An OH&S Officer was there and a shift manager. The ammonia leak was strong enough to make my eyes water and irritate my nostrils. Other workers approached me and said they did not want to work in this area due to the stench of the ammonia, Reading up to 44 ppm it was quite obvious that no one should be working in this environment without the correct breathing apparatus. A cease work was called and the shift manager ignored this call to cease work. Work Safe was notified, by me not the company, it was unfortunate that the inspector did not come out for another 4 days after this incident when the residual ammonia level was down to 9 ppm. After meeting with management and work safe, a few good things did arise, including introduction of masks with ammonia filters and that in immediate risk circumstances and a cease work is called that management must cease work and notify WorkSafe.

Worker Two
- On the small stock kill floor in an abattoir the HSR saw a situation of immediate danger when 4 lamb carcasses dropped off the rail in one morning. As he needed advice the HSR sought assistance from the HSR from the beef line (a different DWG) to investigate the cause and negotiate a solution with the supervisor. When it was found that there was not sufficient maintenance it was agreed that there would be a stoppage of the line while urgent maintenance was performed.

Worker Three
- The HSR in a retail meat room was concerned that there was a breach of the PCBU duties of the Act and the Manual Handling regulations because the work at the wrapping machine was highly repetitive, involved handling weights, working above shoulder height and more than 30 cm away from the body for many hours

every day. The meat wrappers were developing musculoskeletal injuries in the shoulders, elbows and wrists. The HSR approached the meat manager who agreed that there was a problem but had no budget to eliminate or minimise the risk. The meat manager and the HSR took the issue to the store manager who advised them to raise the issue at the health and safety committee meeting. They did so. Nothing was done. The HSR continued to raise the issue at OHS committee meetings. Nothing continued to happen.

Being totally frustrated and seeing the meat wrappers' injuries getting worse the HSR wrote a PIN and served it on the store manager who called in the head office OHS Officer who called in the inspectorate. The inspector supported the PIN with modification. The modification was to require the store to engage a consultant to evaluate the manual handling risks and recommend solutions and to give more time for the store than had been on the PIN. This was done and eventually the supermarket purchased a new wrapping machine.

- Some months later the HSR identified another breach of the Act and the Manual Handling regulations. This involved loading and unloading boxed meat where the boxes, which weighed from 22kg to 38kg, had to be unloaded off pallets at ground level in the storage room, and stacked onto racks in the cool room. The racks ranged from 30 cm above ground level to 2 metres high. The musculoskeletal injuries that were identified as resulting from this were to shoulders and lower backs of butchers and meat packers. The HSR raised the issue at OHS committee meetings with support from the meat manager. Again the issue was not addressed by the supermarket despite being raised on numerous occasions. The HSR issued another PIN. This time management did not call in the WorkSafe inspectorate but purchased a trolley with a battery powered scissor lift. This helped to solve the problem (remedy the contravention).

It is the experience of the AMIEU that it is not unusual for a management to ignore the issues raised by the HSR until a PIN is issued. The dated list (or a diary) is a good way to keep track of how long things are taking. If there are problems getting things done you can write out a PIN.

There are some workplaces where problems are resolved using the consultative process and this is the ideal method. It would appear however, that in too many workplaces the most serious issues are only resolved after the HSR issues a PIN. The resolution is beneficial to the employer, as it helps to reduce injuries. HSRs should not be put in the position where they are repeatedly arguing with the employer. If they can't resolve an issue through discussion, they must be able to write a PIN.

Worker Four

- One suggestion from HSR 4 is "If they don't listen to me I would show a PIN to the relevant manager and tell him that if they haven't started to fix the problem in two days, I will sign the PIN and issue it to him. This way of doing things seemed to work for me, I only ever had to sign and deliver one PIN. PINs are a useful way to get your employer to take you seriously. You are required to consult with your employer to resolve issues before you write a PIN. If the consultation turns into a "Talkfest" writing a PIN is a good way to move forward."

Worker Five

- In an abattoir there was a problem on a beef line with a hide puller. The HSR was informed by the regular operators of the hide puller they had become aware that

the three stage hydraulic ram which the hide puller travels up and down on seemed to be “jolting” a lot as each stage of the ram moved into the next part of the ram. Adding to the problem was the fact that the ram was slipping a bit on the downward travel. The HSR addressed the issue with Management who responded with “we will look at it”. At the next Occupational Health and Safety committee meeting the issue was re-addressed and the HSR was seeking a single stage ram which had been proven to be a lot safer in other meatworks. The company again insisted that there was nothing wrong with the ram and the workers were either bored or just wanted to make the company waste money as some sort of vendetta.

The HSR who was now insistent on a single stage ram was told “the issue was not that bad - get on it and see for yourself”. The HSR was also told it was too expensive to buy and the installation would cost too much in lost production. The HSR worked a day on the hide puller for personal experience and noticed above normal tightness in the back and sore knees before the end of one shift. As one worker was now on WorkCover with a back related injury due to this issue more discussions took place with Management, the HSR and another senior HSR from a different department.

Eventually the company decided that there was still no reason for a single stage ram but they would put some rubber mats on each of the operator’s platforms. This clearly was not sufficient so the HSR issued a cessation of work on the hide puller because of the immediate high risk of back, leg and neck related injuries due to how severe the “jolting” had become. Along with issuing the cease work the HSR issued a PIN and suggested a possible remedy of the issue being a single stage ram which would eliminate the hazard of “jolting”. The HSR also added to the PIN that consultation should occur between the HSR and the company when seeking a remedy to allow the people who will be using the machinery the option of discussing the pro’s and con’s of what will be installed. After this the niceties ceased and the company called WorkSafe to remove the cease work and the PIN.

Two WorkSafe Inspectors attended the worksite to inspect the hide puller and have discussions with all of the relevant people. Then a group meeting took place where the Inspectors handed down their findings.

The inspectors read through minutes taken in discussions about the issue and the injury report books finding many similar injuries to different workers since the issue had first been addressed quite some time beforehand - with no attempt to rectify the problem, which had become worse over time.

Due to this and the fact that a lot of meatworks now operate with a single stage ram to avoid this type of injury the inspectors upheld the PIN. The inspectors also issued a Prohibition Notice on the hide puller. This meant that until the hide puller was in a safe working order – decided by the inspectors - no work could occur using this machine. That is, they supported the HSR’s cease work.

As the beef chain cannot operate without the hide puller the inspectors field report allowed for the company to offer the employees “suitable alternative duties” to cover the wages the company would have to pay under the Act. The company requested that the HSRs and Union delegates stay back for a meeting to make allowances for the labourers to be given suitable duties and decide what is suitable for the slaughterers.
The next day the HSR was informed at about ten o’clock that the beef chain

would be closed for three weeks due to “general maintenance” and all beef chain employees would be “stood down” until further notice. The HSR could clearly see the untruths in this turn of events but was told “bad luck - we can close for renovations whenever we want to. It is our company”.

One of the WorkSafe Inspectors was called again on conference call. The company played the same card with the Inspector saying “it has nothing to do with the decision laid down the previous day, they had been planning to renovate the hide puller and surrounding area for some time this just moved the plans forward. After a lengthy and heated discussion the Inspector once again gave the employer the choices on hand:

- follow the Prohibition notice;
- fixing the hide puller and paying the workers leaving what was “suitable duties” for the company and the Union/Employees to work out; or
- appeal formally; OR
- be taken to the Magistrate’s court for a breaches of the Act

The issue was resolved after that call. After all the company’s resistance to providing a safe working machine, the company located, purchased and installed a single stage ram in three days! Some workers were provided suitable alternative duties the others were paid for the days when safe work was not available.

The AMIEU submits that one would be hard pressed to ignore these risks. HSR perform their role to improve the lives of themselves and others - and as Worker One said:
This is a letter of concern regarding HSR rights and powers being reduced in Queensland. I cannot help but to think what this could mean for the workers and work places if these legislations are passed on into our state.

There is no doubt that this would mean more injuries and less consultation between employers and employees for best and safest practice in the work place.

Every worker has a right to representation, and with confidence in our states laws, legislation and training practice’s it has been proven that rights HSR’s have in this state reduced injuries in our work places. With twenty years experience in the meat industry I have seen many injuries that could have been prevented where workers have had no representation, many injuries that have been prevented due to Victoria’s OH&S laws and rep rights.

Therefore the AMIEU fails to see why and where the desire for limiting HSR powers and functions arises. Even though Victoria has not adopted the model law it is the state where HSRs have had the rights to: issue PINs; cease work in situations of immediate risk; and seek advice with any of their functions. In Victoria the HSR powers and rights have been in place since 1985. A thorough review of the Victorian Act by Chris Maxwell QC found that workers representation was key to improving health and safety and recommended strengthening the role of HSRs.

The empirical evidence does not exist; rather the contrary is true - HSR with powers and functions are a positive contribution to improving health and safety performance.

3.7 Which aspects of health and safety representatives’ powers and functions (if any) should be changed?

The AMIEU would suggest that any review of the health and safety representatives powers could (and should) be made stronger than is currently provided in the model

Act and adopted by the states and territories. These should be:

- HSR right to issue PIN and direct a cease work for imminently unsafe work to apply from the date of election to the role of HSR
- HSR right to seek assistance from outside the workplace and the removal of reference to Entry Permit holders in Section 71[4]. The incorporation of this provision was opposed as it confuses the right of assistance to a Health and Safety Representative with the right of workers to request for an investigation or consult with their union about WHS matters.
- the right of HSRs to choice of training provider on the condition that at least 14 days notice is given to their employer of attendance at an approved course and the ability for the regulator to assist in any disagreement about the attendance at an approved course [a right which exists in Victoria and has done so for decades]
- the right of HSR to have 5 days training in the first year, 3 days training in the second year and 2 days training in the 3rd year of their 3 year tenure
- the removal of the right of the regulator to make application for disqualification of a HSR
- the removal of the words 'Improper purpose' from section 65 and replaced with "intent to cause harm".

4.1 Which areas of the model WHS Regulations are concerns for you and how could they be improved?

The Issues paper fails to contextualise the background for the writing of Model regulations and Codes of practice. There are Model Regulations for

- Asbestos
- Confined Spaces
- Construction Work
- Demolition Work
- Managing Electrical Risks at the Workplace
- Excavation Work
- Managing the Risk of Falls at the Workplaces
- General Workplace Management
- Lead
- Hazardous Chemicals in the Workplace
- Hazardous Manual Tasks
- Noise
- Plant
- Major Hazard Facilities

All of the hazard specific regulations reflect the need to control risks which already have or continue to take a significant toll on Australian workers. For example,

- the industrial epidemic of asbestos related disease – one of highest incidence in the developed world;
- the persistence, every year, of deaths related to entry into confined spaces and the still common misconceptions about working in confined spaces [9];
- construction work -- In Queensland, the fatality rate has grown from 3.3 to 5.5 fatalities per 100,000 workers between 2004-2005 and 2008-2009 and the non-fatal workers' compensation claim rate has grown from 16.9 to 18.5 claims per 1,000 workers over the same period.[10]

[99] Inspector busts confined spaces myths: 9th April 2014 OHS Alert

[10] Queensland Work Health and Safety Board (2012)*Construction Industry Report*, 22nd February, 2012 p.1

- lead is a centuries old poison for which the Australian exposure standard has not been changed since 1948 whilst the NHMRC is currently recommending a significant lowering of the standard for the general public;
- hazardous chemicals of which up to 38 known human carcinogens are still in use in Australian workplaces
- hazardous chemicals which cause asthma and dermatitis agents contributing to considerable morbidity and to workers leaving employment;
- machinery hazards which persistent in causing maiming hand injuries and in manufacturing during the latest five year period caused 17 fatalities[11];
- hazardous manual handling that still accounts for 41% of serious workers compensation claims in manufacturing industry[12];
- hazardous noise exposures are still found in many workplaces despite the multitude of SFARP effective control measures available for this well described hazard [13]
- the updating and use of the safety case approach for major hazards facilities followed loss of life at Australian facilities and major industrial tragedies in the oil and gas industries world-wide .

AMIEU submitted in 2011 a number of recommendations to improve the WHS Regulations.

4.2 Which areas of the model WHS regulations (if any) are more burdensome than beneficial?

The AMIEU has seen no evidence of increased burden on employers or workers with the introduction of Model WHS.

The burden is not from the legislation, but from employers who see workers as disposable. Sound legislation and quality information are required, to ensure that all organisations implement risk management as part of normal business practice.

4.3 **How could these requirements be changed and what impact would this**

[11] **OHS figures don't lie,** Alan Johnson 27 June 2014 Ferret Newsletter. Data in the report shows that in 2011/12 (the most recent figures available) manufacturing was the second most hazardous industry in Australia, with an overall incidence rate of 20.9 serious workers compensation claims per 1000 employees. Over the five year period from 2007/8 to 2011/12, 113 manufacturing workers died from work-related injuries, at a rate of 2.21 fatalities per 100,000 workers. The most common causes of death over the five-year period were being hit by falling objects (22 fatalities); vehicle incidents (21 fatalities) and being trapped by machinery or between stationary and moving objects (17 fatalities); falls from a height (14 fatalities) and being hit by falling objects (13 fatalities). Over the same period, body stressing was the most common cause of injury and accounted for 41% of serious claims, followed by being hit by moving objects (18%), and falls, trips and slips of a person (15%). [ferret.com.**au a manufacturing industry newsletter]**

[12] Ibid

[13] OHS Alert Monday 14th March 2011 *Workplace noise hazards still rife*; reported that WorkSafe Western Australia *"found that excessive noise is prevalent in nearly one in three workplaces, despite being recognised as a hazard for "many years". The noisiest industries were construction and manufacturing. WorkSafe acting commissioner Lex McCulloch said many employers had not had the risk assessed by a competent person and "had no basis for formulating an effective noise control and management program". "In other workplaces, although the noise hazards had been identified, the only action taken was the provision of personal hearing protectors," he said, adding that a "higher order" of controls needed to be in place*

have?
Not applicable
4.4 Which areas of the model WHS Regulations (if any) are unnecessarily prescriptive and therefore limiting compliance options?
The AMIEU has no evidence to support any claim that the WHS framework, which is performance based, is detrimental to productivity, quite the contrary. The examples listed in the Issues Paper include First Aid, Emergency Plans and Issue Resolution. The AMIEU submits that all of these reduce regulatory burden. Various State governments have spent probably millions of dollars informing residents about the necessity of have a domestic evacuation plan, in case of fire. Juxtaposed against the claim in the Issues Paper that emergency plans may be too prescriptive is curious. A PCBU controls the work and the workplace – it will save them and workers considerable harm if evacuation plans are known, understood and practiced. We would also draw attention to the fire brigade report on the fire that destroyed the Belandra Abattoirs in 2001. There had been no emergency practice runs and it was sheer luck that no workers were killed. The Issue Resolution Regulation allows flexibility by setting minimum requirements and allowing workplaces to decide what can best suit their own circumstances. The AMIEU has no information which would indicate that these Regulations, which have existed for decades in Victoria, have created regulatory burden.
4.5 **How could these requirements be changed and what impact would this have**?
Not applicable
4.6 Which areas of the model WHS Regulations are difficult to comply with or unworkable in practice?
The daily impact of noise induced hearing loss is very significant for AMIEU members –manufacturing accounts for 40% of noise induced hearing loss workers compensation claims, and research indicates that these claims represent 25% of eligible claims. There are mechanisms to alleviate practical difficulties and given the human costs the AMIEU sees no evidence to support a change in the regulations. The AMIEU notes that a major employer group, AiGroup has recently not supported the proposal to remove the requirement for audiometric testing.
4.7 How could these requirements be changed and what impact would this have?
SWA should carefully consider the impacts of changing any of the model Regulations at this stage, and should hold off pending a further review and evaluation in 2015-2016.
5.1 What role should approved Codes of Practice have in the legislative framework?
As the ACTU submitted to SWA during the recent downgrading of previously agreed Codes of Practice to Fact Sheets and Guides, the AMIEU finds no evidence to support the claims in the paragraphs above. The ACTU comments are worth while re stating:

The ACTU strongly opposes the Agency's narrow interpretation and the resulting removal of relevant essential elements from these Codes**.** Clause 275(3)(a) only refers to what a court MAY have regard to, this does not prescribe what is in or not in a CoP. The purpose of Codes is well established and should not be altered. The appropriate starting point for any analysis of what should be contained in these Codes should have been the current wording of approved Model Codes

The revised wording in the revised Codes '*What is a Code of Practice'* is opposed. Codes are not limited to providing *'information'* on hazard ID, risk assessment or risk control. They provide practical guidance for duty holders to achieving the standards of health, safety and welfare **required** under the WHS Act and the Work Health and Safety Regulations (the WHS Regulations) and therefore must include all components of the risk management process ie from Clauses 32 to 38 of the Model WHS Act, the information, training and instruction provisions from Clause 39 and where relevant the PCBUs duties on licensing from Clauses 84 and 85. The proposed Standard wording for Risk Management is a diminution of current Code provisions and is opposed.

The package overall inconsistently applies and does not reflect the legislative requirements. For example:

- Industrial lift truck refers Officers to Interpretative Guide on section 27, Cranes and Rural Plant do not
- Reg 199 is referred to in the Amusement Devices Code but is not in Industrial Lift trucks, Rural Plant or Cranes. [Reg 199 Suppliers must provide to the buyer written notice of the condition of the plant, any faults identified, and, if appropriate, that the plant should not be used until faults are rectified]

<u>Fact Sheets for small business and workers</u>

The ACTU sees little value in the Fact Sheets as currently written. According to para 10 of Agenda Paper Item 3, '*The fact sheets have been written for small businesses and workers and provide straight- forward summaries on key topics. The aim is to help businesses understand their work health and safety obligations and provide workers with accessible information about workplace hazards.'*

We do not agree that the fact sheets achieve this stated purpose:

- Are they for all workers or just workers in small business?
- The Fact Sheets are inconsistent in their language
- Most importantly, workers and small business owners do not have the same duties - workers do not 'manage' risks and the ACTU opposes any such suggestion.

The agreed role of Approved Codes under the WHS, as endorsed in December 2009 is supported and the AMIEU sees no reason to change this position.

5.2 Which model Codes of Practice do you use and how do you use them?

Although the time table was short the AMIEU was able to get an indication from HSR about Codes of Practice they use. In decreasing order of usage these are:

Manual handling
Confined spaces
Hazardous substances
First aid
Noise

5.3 What improvements could be made to the model Codes of Practice to make them more useful?

The Issues Paper and the agency SWA appear to have misinterpreted the role of Codes of Practice. Codes provide information on the risk controls which a PCBU can use in meeting their duty to control risk so far as reasonably practicable. The AMIEU refers the reader to comments made by Barry Sherriff about the role and function of CoP. Rather than creating red tape the Codes cut red tape, by providing a one stop shop for a particular risk or category of risks eg construction work, hazardous substances, noise.

The AMIEU would also draw attention to the requests to the Maxwell Review of the Victorian Occupational Health and Safety Act 1985. Small business requested more and stronger role of Codes of Practice so that they could know that using the solutions in the codes constitutes compliance

5.4 **Does it make any difference to you if guidance is presented in a Code of Practice or in other formats such as guides or fact sheets**?

Because of the evidentiary status of Codes, workers and HSRs are able to get the attention and prompt action from employers. Such a response is not forthcoming when the information is presented in guides and fact sheets which are short, not comprehensive and are just "information". The credibility and worthiness of Codes of Practice is demonstrated in workplaces that are aware of them and by the answers HSRs gave to our quick survey [see above].

Guides and Facts sheets are useful to publicise the existence of Codes and Regulations. They are essentially marketing tools, to inform work sites of Codes which give duty holders the information they need to be able to meet the SFARP test. Codes contain well known and reliable risk control measures. It's an enigma to the AMWU why duty holders and governments which to remove or limit Codes from the regulatory framework.

5.5 **Is the level of detail in the model Codes of Practice appropriate? Please provide any examples of where material in a model Code is overly complex**.

Not applicable

5.6 **What impact would allowing regulators to develop codes specific to their jurisdiction without national tripartite consultation have? Please provide evidence or examples**.

Australia is a signatory to ILO Convention 155 which provides for tripartite consultation. In particular, Articles 4 and 15 of ILO Convention 155 requires that governments, workers representatives, and employer representatives should "formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.

The question above refers to the "national" tripartite consultations. The AMIEU is concerned and notes that tripartite forums are being removed by State governments and note that developing codes of practice without tripartite consultation is therefore not only bad policy development, but may also be in contravention of Australia's international obligations. Moreover, it would appear to be a breach of s274 of the Model WHS Act, which provides that Codes of Practice may only be approved, varied or revoked following tripartite consultation.

5.7 **What alternatives can you suggest to improve timeliness and flexibility in**

delivering codes? Would these alternatives involve any financial costs or benefits? Please provide evidence or examples.
In the lead up to the proposed national harmonisation of WHS laws undertakings were given by governments across the country that harmonisation would not result in lower WHS standards. This should be the litmus tests for jurisdictional flexibility. Against this backdrop, the recent action of the Queensland government in dispensing with the need for a tripartite approach in the development of new WHS standards and codes is a matter of serious concern. The tripartite involvement of governments, employers and unions has been at the heart of WHS standard making since the 1980s and has a proven track record in contributing to WHS improvements. Since 2000, it has also been instrumental in developing national targets for reductions in work related injuries and fatalities, and more recently the national WHS harmonisation process. The behaviour of the Queensland government reflects an approach to WHS not only threatens to wind back the progress that has been made in achieving a national approach to WHS regulation but also the long established principle that workers and their representatives must be involved in the decision-making processes on WHS issues.
General comments – do you have any issues you would like to raise which you do not feel are dealt with in the feedback provided above.
General Comments can be found at the beginning of this response. There are mistakes in the Appendices **Appendix B right of entry for suspected contravention** Victoria: This is broadly similar to the provisions in the model WHS laws, with the exception of the requirement to give notice and produce the entry permit to the HSR. AMIEU Comment: This sentence infers that the giving notice is similar to giving 24 hours notice for investigation of suspected contraventions as per the Queensland May 2014 amendments. It is not. The provision only requires that the union official does this upon entry to the site. **Appendix D HSR power to direct a cease work** Victoria: The information provided is incomplete. The Victorian OHS Act provision is different in that the exercising of this right is **not dependant upon** the attendance at accredited training. The AMIEU supports the Victorian legislation on this matter rather than the WHS.