

Healthy and Safe Work

Introduction

1. Healthy and safe work is a fundamental human right and essential to decent work. Every worker has an equal right to a healthy and safe working environment irrespective of their employment arrangements or personal attributes.
2. Health is the dynamic balance of physical, mental and social wellbeing, including the ability to adapt and self-manage disease or infirmity. Good work can contribute to our health and wellbeing by providing a secure income, sense of purpose, opportunities for growth and development along with important social networks and supports.
3. Work, including working conditions, work practices, workplace culture, work-life balance, injury management programs and relationships within workplaces are key determinates of health and wellbeing.
4. Workers must be protected from all hazards and risks at work, including psychosocial and physical hazards and risks.
5. A safe and healthy working environment can only be achieved through the realisation of other fundamental rights at work including the right for workers to organise collectively through their unions.
6. Workers and their representatives must be consulted about all matters relating to their work including how work is to be organised and allocated in a manner that eliminates exposure to hazards and ensures that work is healthy and safe, as well as injury management, return to work and rehabilitation policies and procedures.
7. Workers who are injured or made ill from work must be afforded the highest level of support, including financial and vocational support, to seek treatment, rehabilitate and return to meaningful, healthy and safe work.

Death, Disease, Injury and Illness in Australian Workplaces

8. Congress notes with concern that approximately 200 workers are killed at work every year. Additionally, more than 5,000 people die each year from work-related diseases.
9. It is estimated that as many as 1 in 10 cancers in men and 1 in 50 cancers in women are linked to work exposures and in recent years there has been a large increase in work-related lung diseases, such as silicosis, associated with old and new industries.
10. Every year more than half a million Australian workers experience a work-related injury or illness with more than 100,000 having an accepted workers' compensation claim for more than one week's absence from work due to injury or illness. Disturbingly more than 1 in 5 workers every year will experience a work-related mental health issue with psychological illness and injury now the fastest growing compensable injury in Australia.
11. On almost every indicator Aboriginal and Torres Strait Islander workers reported higher levels of exposure to risks and lower levels of employer action to protect their physical and psychological health.
12. The rise of vulnerable working arrangements, including, but not limited to insecure work and temporary migration is linked with poor safety outcomes. Congress notes that workers in these arrangements face significant barriers in raising health and safety issues and participating in genuine consultation.
13. The rise of some forms of insecure work such as 'gig' and other platform work are driven by a desire to transfer the risk from employer to the worker and threaten their right to a safe and healthy working

environment. These arrangements further threaten their right to organise and elect HSRs and access workers' compensation and rehabilitation for work-related injury and illness.

14. Similarly, the use of subcontracting and labour hire arrangements increase the risks that workers are exposed to by blurring the line of sight for employers over the safety of workplaces and obscuring responsibility for workplace conditions.
15. Young and inexperienced workers, particularly apprentices and trainees, are particularly vulnerable to injury at work. Over the five years to 2020-21, there were 11,490 serious workers' compensation claims for apprentices and trainees. Over the four year period from 2016-17 to 2020-21, the number of serious claims for apprentices and trainees rose by 41% from 1,684 to 2,375 despite the number of apprentices and trainees in training increasing only 13%.

Voice at Work – the role of unions and health and safety representatives

16. Congress affirms that it is essential to the dual objective of growing the movement and improving health and safety at work, that workers join and are actively organised through their unions on matters related to health and safety. Representation of workers through their union delegates and elected Health and Safety Representatives (HSRs) are key components to healthy and safe work.
17. Congress recognises the critical role worker elected HSRs play in improving health and safety at work, and commits to the provision of ongoing support and advice for all HSRs where this is sought. Congress views the representation of workers through their HSRs and union delegates as key components to healthy and safe work and commits to supporting worker representatives to uphold and enforce worker rights to safety. Congress further commits to organise around safety matters that are important to union members and educate union members broadly.
18. Congress acknowledges that worker elected HSRs are a critical determinant of healthy and safe work and reaffirms the right of workers to be effectively represented by an elected HSR, that best and most conveniently enables the workplace health and safety interests of employees to be represented, taking into account the number of workers in a Work Group, the nature of the work and work arrangements and locations where work is undertaken. Workers must be supported, including by regulators, in their choices of the appropriate organisation of Work Groups. Congress supports legislative change to prevent PCBUs from discouraging or hindering workers from requesting the establishment of a work group and/or nominating for election as an HSR.
19. HSRs must be easily accessible to the workers they represent and employers must facilitate access and the time necessary to undertake their representative role. HSRs must be paid and provided with the means and transportation to physically attend any workplace in the Work Group at the request of a member of the Work Group. Congress supports legislative change to allow for site, regional and roving HSRs.
20. All HSRs should have the right to access training and relevant HSR conferences, as recommended and endorsed by their union in paid work time, and paid the usual remuneration they would have received had they been at work as well as all out-of-pocket expenses paid by the employer. Casuals should not be discouraged from or disadvantaged when undertaking paid training as HSRs.
21. The focus of HSR training courses should be to provide the necessary knowledge and skills to assist HSRs in their functions and exercising of their powers under health and safety law and should be delivered face-to-face. HSR training should not be competency based and the undertaking or completion of training should not limit an HSR in exercising any of their powers.
22. Congress affirms the right of all HSRs to seek the assistance, whenever desired, from the union representative of their choice from the relevant registered union on any matter related to health and safety including where there is an immediate risk to the health or safety and to order that work cease. Unions must also be recognised as a party principal to work health and safety disputes, including as they relate to the negotiations of Work Groups.

23. HSRs must be consulted on all relevant matters and have the right to access all information relevant to the health and safety of the workers they represent and must not be obstructed by employers misusing the concepts of 'privacy', 'intellectual property', legal privilege' and 'confidentiality' as a means to prevent access to deidentified information relevant to health and safety.
24. Congress supports strengthening WHS laws to ensure that breaches of the provisions protecting HSRs from discriminatory, coercive and misleading conduct be upgraded to criminal offences. Congress notes that too often WHS regulators fail to effectively prosecute breaches of laws protecting HSRs. Congress calls for regulators to actively and forcefully prosecute employers' discrimination, coercion and misleading conduct towards HSRs.
25. Congress reaffirms that:
 - a. Unions should be defined as 'eligible persons' entitled to seek review of every type of reviewable decision listed at s 223 of the Work Health and Safety Act (except for Items 5 and 6, which relate to the forfeiture and return of seized things) and Part 11.2 of the Model Work Health and Safety Regulation;
 - b. Disputes and offences under health and safety laws to be dealt with in specialist courts and tribunals by judges and arbitrators with expertise and experience in industrial and WHS matters;
 - c. Unions should have standing to pursue proceedings for a contravention of a WHS civil penalty provision;
 - d. The powers of union permit holders and inspectors should have extra-territorial application, to the extent that a jurisdiction's legislative powers allow, this includes mutual recognition of all training undertaken;
 - e. Union permit holders who have lawfully entered a workplace to investigate a suspected contravention under health and safety laws should be permitted to remain on the premises to investigate other safety issues which they become aware of after the initial entry. Similarly, a permit holder who has lawfully entered a workplace under another law for a different purpose (e.g. to hold discussions with potential members under s 484 of the Fair Work Act 2009) should be able to lawfully remain on the premises to investigate a suspected contravention (or contraventions) of the health and safety laws where they become aware of safety issues after the initial entry;
 - f. Permit holders should have the right to enter and access remote workplaces with employers required to facilitate transport to and from the worksite for the purposes of exercising their rights;
 - g. Union permit holders and HSRs should be authorised to:
 - Take photographs, video and/or voice recordings and measurements, conduct tests with any tool or device, and make sketches or other recordings;
 - Review and make copies of documents relevant to the suspected contravention;
 - Issue PINs (or similar) and direct work to cease; and
 - Interview workers.
 - h. PCBUs must cooperate with the permit holder in the provision of records and other materials relevant to the request.
26. Australian unions commit to campaigning for legislative change to reinsert broad health and safety matters, particularly in relation to HSRs, into awards and agreements.
27. Australian unions commit to improving our organising capacities by increasing the numbers, and improving the density and diversity of, union-trained and democratically elected Health and Safety Representatives (HSRs).

A tripartite, best practice work health and safety and compensation system

28. Australian unions are supportive of a best practice, nationally consistent legislative scheme for work health and safety matters, which provides the highest level of protection from hazards and risks and ensures that all workers are able to exercise their rights and entitlements, regardless of their working arrangements, where they live and the location of their work.
29. Congress reaffirms that best practice, nationally consistent arrangements are needed for all injured workers in terms of rehabilitation, return to work programs and compensation. While the long-standing aim of establishing a national scheme to deliver these outcomes remains valid, Congress acknowledges that this is not the only way to achieve this objective. As such, Congress affirms that achieving national consistency and world's best practice in these areas is of paramount importance.
30. Congress notes the decision, by consensus, of the ILO's International Labour Conference in 2022, to include the right to a safe and healthy working environment in the ILO Declaration on Fundamental Principles and Rights at Work. Health and safety now joins protections against forced labour, child labour, the right to collective bargaining and freedom of association as the fundamental rights in the world of work. This decision designates the Occupational Safety and Health Convention, 1981 (C155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (C187) as fundamental Conventions.
31. Congress supports a clear, unqualified duty to ensure the health and safety of workers and others. Congress believes that the burden of proving that the control of a risk was not reasonably practicable should reside with the duty holder.
32. Congress supports amendment to health and safety laws to clarify that decision makers at the top of industry structures (such as retailers and head contractors) are required to identify who is performing work right down to the bottom of these to identify, eliminate or minimise health and safety risks facing all these workers in the supply chain.
33. Congress urges all jurisdictions, to prosecute breaches of health and safety legislation in extended supply chains including chains with overseas elements, where the person conducting a business or undertaking is based within Australia. Where the model laws are not applied within the jurisdiction inspection powers of Australia's health and safety laws, regulators must be matched to the overseas reach of the duties of the relevant Work Health and Safety Act.
34. Congress notes the 2018 Review of the Model WHS Laws and its thirty-four (34) recommendations to improve the rights and protections afforded to workers and their representatives. Whilst Congress acknowledges the efforts made by governments in implementing these recommendations, in particular in the priority areas of mental health, workers' and HSRs rights and justice for killed and injured workers, there remain recommendations that are yet to be agreed or implemented that are critical to improving the health and safety of working people, including:
 - a. Incident notification – requiring PCBUs to notify of a broader set of deaths, injuries, illnesses or exposures including exposure to psychosocial hazards;
 - b. The application of risk management principles to all hazards and not just limited to those dealt with in WHS Regulations.
35. Congress affirms that in order to ensure compliance with work health and safety laws, there needs to be effective enforcement of the legislation, including a more active approach to prosecutions by the relevant WHS regulators. To this end, Congress supports the right of the relevant registered unions to initiate prosecutions for breaches of work health and safety laws in all jurisdictions, as existed in the Occupational Health and Safety Act 2000 (NSW).
36. Congress acknowledges the importance of tripartism and genuine consultation with workers' representatives. All work health and safety, compensation and rehabilitation laws and regulations must be developed, reviewed and maintained in a tripartite manner. Changes to work health and safety

(WHS) and workers' compensation entitlements should only be made following genuine consultation and agreement with workers and their union representatives.

37. Congress supports legislative change that would require Safe Work Australia to hold and make publicly available a register of offenders (PCBUs and Officers) and to refer them to the Australian Securities and Investments Commission or other corporate or sector specific regulator, the details of companies and their directors charged with offences under the various WHS Acts and other OHS Acts for disqualification.
38. Congress calls for the Corporations Act (2001) (Cth) to be amended to require that upon notification to a state regulator of a charge under health and safety legislation, or upon notification of a death, serious injury or disease, no corporate changes to the relevant employing entity or entities can be made, without an order of the relevant court of superior record, approving such change as having no bearing on potentially liable officers or potential corporate liability.
39. Further, the model WHS legislation should be amended to include a provision in relation to personal liability, to hold to account individuals in decision-making positions of authority, such as company directors, for any instances of criminal negligence resulting in the death of a worker.
40. Union representation in all governing and regulatory bodies that provide oversight, advice and compliance on work health and safety matters is critical. Representation is best achieved through membership on relevant boards or committees that ensures workers have a voice in the procedures and administration that govern their health and safety at work.
41. Congress reaffirms that changes in health and safety law must be supported by:
 - a. An adequately resourced and qualified inspectorate capable of taking action to ensure that employers are meeting their duties; and
 - b. Sharing of data, knowledge and compliance enforcement between sector-specific safety regulators (e.g. Quality and Safety Commissions) and workplace health and safety inspectorates across jurisdictions, and
 - c. Decent and sufficiently financed workers' compensation entitlements for injured workers and their families.
42. Congress notes that the governance arrangements in many jurisdictions do not meet the tripartite requirements set out ILO Convention 187 and does not extend to other bodies with similar, industry-specific roles. To this end, Australian unions shall seek legislative change to guarantee union representation on all relevant WHS bodies, or where relevant bodies do not exist enable their formation, including:
 - a. Safe Work Australia (SWA);
 - b. Comcare;
 - c. The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA);
 - d. The Seacare Authority;
 - e. The Safety Rehabilitation and Compensation Commission (SRCC);
 - f. The Australian Maritime Safety Authority (AMSA);
 - g. The Asbestos and Silica Safety and Eradication Agency (ASSEA)
 - h. The Aged Care Quality and Safeguards Commission;
 - i. The NDIS Quality and Safeguards Commission, and
 - j. The Australian Industrial Chemicals Introduction Scheme (AICIS).

43. To improve the governance arrangements, enhance transparency, and to encourage best practice and information sharing, Safe Work Australia should be properly constituted as a national tripartite body with equal representation of government, employers and unions to lead the development and coordination across all jurisdictions of all work health and safety and workers' compensation for all industries.
44. Congress acknowledges the unique risks associated with electrical work. States and Territories should ensure there is separate legislation for dealing with electrical licensing and electrical safety with a standalone electrical safety regulator which is adequately resourced with appropriately trained and qualified electrical safety inspectors. Federal safety regulators should ensure that distinct electrical safety divisions are created within the regulator which are adequately resourced with appropriately trained and qualified electrical safety inspectors.
45. Congress also recognises that the Federal Government has considerable power and responsibility to promote the health and safety of workers in taxpayer-funded sectors. This extends to marketized social services, like the NDIS and aged care, where funding is provided by the government but directed by consumers. In these quasi-markets, government should act as a responsible market steward by providing sufficient funding to support WHS (e.g. safe staffing levels, supervision, staff training, HSRs), setting WHS standards for organisations in receipt of public funding and ensuring industry regulators are well-funded and proactive.
46. Congress acknowledges that the licensing of Electrical Work is a fundamental safety requirement, directed at eliminating the human cost to individuals, families and the community of death, injury and destruction that can be caused by electricity and that Electrical work should only be performed by individuals that hold an electrical work licence authorising an individual to perform that electrical work.

Gender specific health and safety issues

47. Exposure to work health and safety risks, hazards and issues and the impacts hazards may have on the health outcomes for women may be different to that of male workers. Research relating to work health and safety issues has traditionally been based on male populations and therefore does not provide sufficient data on the gendered impact of risks and hazards.
48. Congress notes that too often WHS standards and practices are based on the assumption that a worker has a man's physiology. This failure to account for women's and gender diverse physiologies leads to worse OHS outcomes for women and gender-diverse workers. Congress urgently calls for a comprehensive review of all jurisdictions' WHS regulations and codes of practice to ensure that they account for the needs of women and gender diverse workers' physiologies.
49. Congress acknowledges that women and gender diverse people are disproportionately impacted by some work health and safety risks such as workplace violence and harassment, gendered violence, including sexual harassment.
50. Congress laments that some women workers and trans, intersex and gender diverse workers are still denied fundamental facilities such as access to safe, secure and dedicated facilities such as toilets and changing rooms.
51. Additionally, many women workers, including but not limited to those in male-dominated industries are not provided with fitting, appropriate and suitable personal protective equipment, tools and clothing.
52. Congress will undertake gender analysis of work health and safety issues to determine any differences between workers, and the particular needs of women and gender diverse workers to ensure an appropriate policy and campaign response.

Sexual and Reproductive Health

53. Congress notes that different life stages are associated with specific sexual and reproductive health issues, including menstruation, chronic health problems (such as endometriosis and polycystic ovary syndrome), fertility, pregnancy, breastfeeding, return to work after childbirth, perimenopause and menopause.

54. Congress understands that symptoms experienced by women during these life stages is a workplace issue as it can impact women's ability to fully participate in work in a healthy and safe way. Research shows that during life stages such as menopause, many women leave the workforce because of the impact it has on work and the lack of workplace support to effectively manage the symptoms.
55. Congress supports the development of a Regulation and Code of Practice which details the specific health and safety hazards and risks which can arise in relation to reproductive health, including pregnancy, breastfeeding mothers and mothers returning to work after giving birth as well as menstruation and menopause. The Code of Practice should provide information on the reproductive hazards associated with manual and ergonomic tasks, nightwork, chemicals, biological agents, and the impact that symptoms of reproductive health can have on work and the provision of and access to appropriate facilities, equipment and reasonable control measures and adjustments to ensure women can work in a healthy and safe way.
56. Congress supports the development of educational material and a union campaign in relation to the specific work health and safety hazards and risks which may arise in relation to reproductive health, menopause, pregnancy, breastfeeding mothers and mothers returning to work after giving birth.

Aboriginal and Torres Strait Islander Health and Safety

57. The Diversity Council Australia has shown that cultural load is the often invisible, additional workload borne by Aboriginal and Torres Strait Islander people in their workplaces, where they are either the only Aboriginal and Torres Strait Islander person or one of a small number of Aboriginal and Torres Strait Islander peoples. The Cultural Load has large and measurable impacts on the emotional, social, and mental wellbeing of Aboriginal and Torres Strait Islander workers.
58. All workplaces must recognise that Aboriginal and Torres Strait Islander workers hold a unique position in Australian society, bringing with them to that workplace a lived experience of navigating the cultural interface and colonial systems and structures rooted in their oppression and upheld by colonial narratives. All will have experienced racism and discrimination either overtly or covertly or both throughout their lives manifesting in racism induced trauma. Experiences of workplace racism and discrimination often compound this, causing conditions such as racialized PTSD due to a failure to understand and identifying racialized psychosocial hazards in the workplace. All workplace WHS policies, processes and initiatives in the future must be developed and designed in the workplace using an Aboriginal and Torres Strait Islander centred, decolonial and intersectional lens to address any potential racialized psychosocial hazards and to eliminate them exponentially.

Decriminalisation of sex work – application of industrial protections

59. Congress supports the endeavours of State and Territory Governments in improving the rights of all workers, including the reforms of State and Territory Governments to decriminalise sex work.
60. Congress recognises that where State and Territory Governments in Australia have not decriminalised sex work or are in the process of considering decriminalising sex work, that these workers still face barriers in accessing union membership, work health & safety (WHS) and other industrial protections under the Fair Work Act when compared to other workers. The criminalisation of work and workers in jurisdictions that have not afforded these protections by decriminalising sex work adds to increased risk of those workers experiencing discrimination.
61. Congress is committed to ensuring that all workers, regardless of occupation, have equal access to rights and protections under the Fair Work Act, to WHS protections, anti-discrimination laws, and workers' compensation rights in their workplaces. Congress will work to identify and remove barriers, including criminalisation and discrimination, experienced by sex workers by recommending decriminalisation of sex work to ensure that all workers in Australia have fair and equal access to WHS/Industrial and Anti-Discrimination protections.

Protection from Hazards and Risks

62. Congress believes all workers should have the right to the highest level of protection against all hazards and risks associated with work.

63. Congress notes that all work-related hazards and associated risks are best controlled at the source and eliminated from the work environment. When that is not possible then all action must be taken to minimise the risks to health and safety, both physical and psychological, to as low as possible using a hierarchy of controls.
64. Congress supports developing Regulations and Codes of Practice for hazards and risks that are understood and for which there are clear and effective methods of controlling. These include, but are not limited to emerging and neglected areas of risk such as heat and extreme weather events and disasters, traffic management, air quality and vibration.

Mental Health

65. Congress acknowledges that the changing nature of work creates a heightened exposure to psychosocial hazards. Work intensification across all industries, but in particular the service sector, has led to significant increases in mental ill health. Outsourcing, privatisation, corporatisation and competitive tendering of previously stable full-time jobs further exacerbates this trend and has led to a large increase in the number of workers in insecure employment arrangements. Congress also recognises the psychosocial hazards and worker privacy issues associated with unregulated electronic monitoring and workplace surveillance of employee performance.
66. In the care and support economy, individualised funding models have contributed to a growth in sole trading arrangements, as well as work becoming increasingly isolated, unsupervised, and carried out in another person's home, leaving workers exposed to a plethora of psychosocial hazards with few support networks.
67. Congress recognises the significant impact of secondary psychological injuries that occur as a result of the psychological impact of an injury, deficient responses to a primary injury, including the management of rehabilitation and return to work plans. Secondary psychological injuries must be legally presumed to form part of any existing workers' compensation claim. Unions support a review of rehabilitation and return to work processes to include triage requirements in order to minimise the risk of secondary psychological injuries. Congress also calls for stronger action from regulators and governments to address work-related and scheme-related risk factors. More must be done to minimise the impact of factors within the control of employers and insurers on durable return to work outcomes.
68. Congress recognises that workers who develop injuries, or illness, as a result of exposure to workplace psychosocial hazards, are likely to suffer stigmatisation and discrimination. Employers and regulators must recognise that as a consequence, disclosure and discussion of these injuries/illnesses may prove difficult for workers, and Health and Safety Representatives.
69. Congress notes that many workers providing frontline services are at increased risk of exposure to trauma that leads to stress, anxiety and mental-ill health. Congress is concerned that these risks are normalised by employers and PCBUs who fail to take reasonable steps to identify and control these risks. Congress calls on governments to strengthen regulation, monitoring and support to those workers to identify WHS hazards early, and mitigate them to the greatest possible extent, and supports measures such as the development of a Health and Social Assistance Industry code of practice.
70. The continued failure of employers and regulatory agencies to control exposure to psychosocial risks continues to have flow-on effects to workers' families and the general community. This contributes to disparities in health, and over time, to social inequality.
71. Congress notes the recent introduction of a psychosocial hazard regulation and accompanying Code of Practice that requires PCBUs to identify, assess and control, using a hierarchy of controls, psychosocial hazards. This broad regulation includes risks associated with occupational violence and aggression. Unions will continue to monitor its effectiveness in tackling issues including but not limited to safe workloads and staffing levels and consider whether further regulator change is required. Congress supports the creation of a specialist teams within the inspectorate in each jurisdiction to ensure compliance with psycho-social hazard codes of practice.

Psychosocial Safety for Migrant Workers

72. Congress supports the protection of migrant workers, in all industries, by Australian workplace WHS laws. Migrant workers must not be discriminated against or impacted by psychosocial hazards inadvertently in the workplace through the application of Australia's migration regulations, policies and procedures.

Bullying and Harassment

73. Congress acknowledges that workplace bullying is a work health and safety issue which must be identified, assessed and controlled to the same degree as other hazards.
74. Harassment at work, in all its forms, has consequences for workers' health and safety – both physical and psychological.
75. The experience of racial and sexual harassment by Aboriginal and Torres Strait Islander workers has been highlighted by the ACTU and other research and must, like all forms of harassment, be treated as a workplace health and safety risk.

Occupational Violence

76. Occupational violence is a WHS risk management issue as well as a possible criminal act. Congress calls on amendments to appropriate legislation to include a WHS psychological risk management chapter that includes provisions to assess and control violence.
77. Congress notes the increase in violence and harassment of front-line workers during COVID and the introduction of laws in some jurisdictions which created a specific offence for spitting or coughing on public officials, and workers in health, retail, transport, airports and the ADF. Congress supports the introduction of laws to protect all workers in all jurisdictions from third party violence and harassment including a new criminal offence when a third party (customer/client) assaults, abuses or threatens a worker, including sexual assault or threats. These laws should also include nationally consistent banning provisions.
78. A specialist inspectorate should be established and tasked with reducing violence through higher order controls such as Crime Prevention Through Environmental Design (CPTED) research.
79. Congress opposes the increasing acceptance by employers of violence in the workplace, particularly where workers work alone and/or where exposure to antisocial and violent behaviour was once the responsibility of police or trained security.
80. Congress supports a Regulation and Codes of Practice to cover all workers, with particular reference to those workers at increased risk of workplace violence including those vulnerable to random attacks at work.
81. Congress also calls for appropriate resourcing of police and other law enforcement to ensure workers are better protected from harm and responses to threats of harm or actual harm are timely and enable enforcement of the law.

Gendered Violence

82. Gendered violence is any behaviour, action, system or structure that causes physical, sexual, psychological or economic harm to a worker because of their sex, gender, sexual orientation or because they do not adhere to dominant gender stereotypes or socially prescribed gender roles. Gendered violence includes:
- a. Violence experienced by women because they are women;
 - b. Violence experienced by a person because they identify as LGBTIQ;
 - c. Violence experienced by a person because they don't conform to socially prescribed gender roles or dominant definitions of masculinity or femininity;
 - d. Witnessing gendered violence directed at someone else, such as a co-worker.

83. Examples of gendered violence include (but are not limited to) behaviours and actions such as:
- a. Stalking;
 - b. Intimidation;
 - c. Threats;
 - d. Verbal abuse;
 - e. Ostracism;
 - f. Rude gestures;
 - g. Offensive language and imagery;
 - h. Put downs;
 - i. Sexual innuendo/insinuations;
 - j. Sexual suggestions or unwanted sexual advances;
 - k. Sexual assault and rape;
 - l. Systems of work that exclude some people from participating in work;
 - m. Work practices that cause some workers to not be able to participate fully in a workplace;
 - n. Not providing private toilets, showers and change areas.
84. Gender inequalities, sexism, homophobia, biphobia and transphobia at work drive gendered violence at work, and often constitute gendered violence itself. Gendered violence can be perpetrated by those who are strangers/external to the workplace, and those that are internal to the workplace (including clients, inmates, patients, students and customers), work peers and managers.
85. Congress calls on unions and employers to take positive and concrete steps to:
- a. Eliminate gender inequalities and inequity that exist in the workplace;
 - b. Overcome gender segregation where it exists;
 - c. Eradicate cultures of sexism;
 - d. Eradicate homophobia, biphobia, intersexism and transphobia;
 - e. Promote the benefits of gender equality and workplaces that are inclusive of workers from a range of backgrounds, experiences and identities; and
 - f. Develop and encourage attendance at union run courses for organisers, delegates and HSRs.
86. Congress notes the Respect@Work recommendations regarding the misuse of non-disclosure agreements and calls on unions and employers to take positive steps to end their misuse in cases of workplace sexual harassment.

Racism

87. Congress recognises that racism, like bullying and gendered violence, negatively affects the health and safety of workers. Workers from diverse racial and ethnic backgrounds have a heightened exposure to workplace hazards such as occupational violence and harassment and workplace discrimination. Research confirms that adults who frequently experience racism are almost five times more likely than those who do not experience racism to have poor mental health and 2.5 times more likely to have poor physical health. Racism damages health both directly and indirectly. In fact, the strength of the association between physical ill-health of experiences of racism is similar to the strength of association

between smoking and physical ill-health. The greater the frequency of racist experiences, the worse the health outcomes.

88. Congress calls on employers and unions to take steps to:
- a. Eliminate racism and the cultures of racism that exists in the workplace;
 - b. Develop education and training programs to address racism including mechanisms to encourage reporting of incidents of racism;
 - c. Encourage the active participation in workplace health and safety structures of Aboriginal and Torres Strait islanders and workers from Culturally and Linguistically Diverse backgrounds; and
 - d. Develop and encourage attendance at union run courses for organisers, delegates and HSRs.

Offshore and Maritime Safety

89. Congress supports the harmonisation of health and safety laws in sector specific schemes covering seafarers and offshore oil and gas industry workers and that differences should only occur where they provide stronger protections and rights for workers and their unions.
90. Congress acknowledges current jurisdictional overlap and some regulatory gaps in these sectors. The introduction of a Code of Practice has improved safety in the stevedoring industry, but this should be strengthened to be a regulation.
91. Congress is committed to ensuring that International Maritime Organisation (IMO) Conventions and International Labour Organisation (ILO) Conventions to which Australia is a signatory are restored in the offshore oil and gas sector.
92. Australian unions will pursue improvements to the current legislation to ensure that union officials have right of entry and access to remote workplaces, with employers required to facilitate transport to and from the worksite for the purposes of inspecting work and meeting with members to discuss health and safety matters.
93. Until such time as NOPSEMA becomes a more effective, full service regulator, Congress opposes any attempts to introduce legislative change enabling the states to confer their oil and gas safety powers in state waters to NOPSEMA.
94. Congress calls on the government and NOPSEMA to ensure that the workforce and trade unions representing the workforce are actively involved in genuine consultation on OHS in the industry, aimed at improving safety performance. In particular, Congress calls on:
- a. The government to amend Schedule 3 of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 to provide for the appointment of at least 1 representative nominated by relevant trade unions to the NOPSEMA Advisory Board;
 - b. The government to align the OPGGS Act with the model WHS Act and the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 with the model Work Health and Safety Regulations 2011, unless there is a good reason not to do so;
 - c. NOPSEMA to provide a range of support to HSRs including:
 - Funding of dedicated HSR Support Officers;
 - Better training for HSRs based on HSR courses accredited by NOPSEMA after a tripartite panel of key stakeholders including unions, has assessed the merits of proposed training programs and providers consistent with the current approach to approving training under Seacare and Comcare;
 - Maintaining a publicly available up-to-date register of all HSRs and the training they have received;

- Mandating the ability for HSRs to gain remote electronic access to the safety case for a facility; and
- Mandating rights of inspection of facilities prior to commissioning by accredited HSRs and relevant officials of offshore unions.

95. The decommissioning of offshore facilities is recognised as posing serious hazards to workers and the environment due to the dismantling and lifting of materials, toxic waste, and other safety concerns. A survey of the varied practices in Australia, the UK, and Norway demonstrates the need for uniform national law between the Commonwealth and Australian states. It is recognised that the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships represents best practice in the demolition of vessels and hydrocarbon facilities and Australian workers will benefit from its application.
96. Congress supports the introduction of a 'Decommissioning work card' that workers apply to NOPSEMA for validation of their work experience. This, along with a 'Decommissioning Licence' for contractors to be implemented through the OPGGS Act Regulations will ensure that companies carrying out offshore decommissioning work have a minimum of 10 years' experience in the Australian offshore industry, that they operate with a reputationally sound standing, and employ qualified workers with a minimum of 5 years' experience.

Mine Safety

97. Congress supports the retention and strengthening of separate, industry specific risk-based WHS legislation for mining.
98. Congress supports the principle of a "Site Safety and Health Representative" (SSHR) and "Industry Safety and Health Representative" (ISHR) of worker participation at both workplace and industry level in the black coal mining industry.
99. Congress supports the establishment and maintenance of independent, properly resourced, stand-alone mines inspectorates in the mining states and territories of Australia.
100. Congress calls on the Australian Government to take immediate steps to ratify the International Labour Organisation (ILO) Safety and Health in Mines Convention, 1995 (ILO C 176).

Alcohol and Other Drugs

101. Congress notes the harmful effects that alcohol and other drugs (AOD) can cause workers, their families and fellow workers. Congress notes that performance of work under the influence of alcohol or other drugs puts everyone at serious risk. Congress calls on employers and governments to work together using a preventative harm minimisation approach which focuses on rehabilitating workers experiencing drug dependence and provides education assistance and services to those whose substance use can lead to impairment at work.
102. Congress notes there is little evidence of the link between AOD usage and workplaces incidents to justify the growth in testing regimes across Australian industries, and calls on governments and industry to consider the health, work and social context of AOD usage in preference to focusing on punitive action against individual workers, as a deterrent, which may compound the damage.
103. Congress urges employers to focus on identifying impairment, due to any number of factors, such as fatigue, exposure to chemicals, or inadequate workplaces systems of work which may lead to workplace incidents, rather than the use of testing for alcohol and other drugs (AOD) outside the purpose of the impairment-based approach.
104. Congress also notes that workers with a dependence on substances may also have experienced trauma or face other life stresses. Congress urges employers and governments to invest in service and peer support mechanisms for workers encountering issues with AODs, designed and led by workers, for workers, which connects them to support networks and services, instead of punitive and disciplinary approaches.

105. Congress notes successful worker-led interventions such as the CFMEU Victoria Blue Hats program to prevent suicide, the New South Wales union-led drug, alcohol and gambling service Foundation House led by the CFMEU, ETU and HSU, the Victorian union movement's efforts to open their own worker-led rehabilitation service called The Crossing and the Mates industries programs and urge all unions party to congress to commence work with members and their employers to initiate accessible services for their members.
106. Congress notes the limitations of testing mechanisms, including oral, urine and breath testing. Where alcohol and other drugs testing is conducted, it should only be considered as a last resort and with clear evidence that general awareness drug and alcohol training has occurred prior. Impairment due to AOD can be effectively managed through direct observation and supervision.
107. Congress notes with concern, where blanket bans on drugs have been implemented, there arises a potential interference with, a workers effective prescribed treatment or management of medical conditions and a conflict with the Disability Discrimination Act. Congress calls on all Australian governments to ensure that their legislation does not create this conflict, and call on the introduction of legislation which will protect workers using medication from any workplace discrimination (including any injury to their employment) in the absence of evidence of additional risk or adverse impairment due to such medication.
108. Congress also notes the limitations of roadside testing for presence of drugs, most notably medicinal cannabis, contrasted to testing for impairment of drugs, as is used for driving under the influence of alcohol. This inconsistent approach to testing can leave some workers, if convicted, without a means of transport for work, despite posing little safety threat to other drivers, sometimes for using legally-prescribed medication. Congress calls on governments to reform roadside drug-testing approaches to test for drug impairment while supporting road safety.

Occupational Lung Disease

109. The increase in workers being diagnosed with well-known and well recognised lung diseases such as Coal Miners Pneumoconiosis, silicosis and other chronic lung diseases highlight the failures of corporate responsibility, current regulation and the enforcement of general health and safety duties.
110. Currently there are few specific regulatory measures that PCBUs are required to implement to prevent exposures to harmful dusts, fumes and vapours. Consequently, Australia has the tragedy of young workers facing unemployment due to disability and shortened life spans. This is against the backdrop of large, very profitable international companies knowingly supplying hazardous products such as high silica content engineered stone to many small businesses. Health monitoring and screening of workers is a critical measure in the early identification of disease to confirm that control measures remain effective, and where not enable early intervention to prevent further exposure as well supporting workers.
111. The guiding principle for the prevention of work-related illness and in particular occupational lung disease is the application of the hierarchy of control. This should be combined with a comprehensive systematic approach that focusses on prevention but also includes work on improving treatment options and the provision of safer alternative work for those affected by dust disease.
112. Congress supports the banning of the manufacture and use of engineered stone using both a prohibition in our work health and safety laws as well as an importation ban.
113. Congress supports health-based exposure standards for all hazardous dust and substances. Congress supports the Workplace Exposure Standard reduction to 0.02mgm/m³ for respirable crystalline silica immediately.
114. Congress supports the establishment of a national notifiable dust disease system for all occupational lung disease.
115. Congress supports regulations under all health and safety laws to control for all exposures to respirable hazardous dusts, fumes and respiratory allergens.
116. Congress supports the review of outdated workplace exposure standards to align with developments in medical science, such as reducing the time-weight exposure limits for formaldehyde to 0.1ppm.
117. Congress notes the inadequacy of statutory workers' compensation schemes when supporting workers with chronic illnesses such as lung disease like silicosis or pneumoconiosis. Equally Congress acknowledges the cost shifting of this burden away from employers to victims and the community. Congress supports improved workers' compensation arrangements for these victims that are funding by those that cause the harm.

Asbestos

118. Asbestos in all its forms was finally banned in Australia after a lengthy campaign by unions and victims' groups on 31 December 2003. Despite this, more than 6 million tonnes of asbestos-containing materials (ACMs) is still estimated to be in residential, commercial and public buildings throughout Australia. Each year more than 4,000 deaths are attributed to exposure to asbestos, making Australia one of the deadliest countries in the world on a per capita basis. Congress confirms its long-held position that asbestos in all its forms is a known hazard and persistent environmental carcinogen and must be eliminated from the built environment.
119. Congress supports the ongoing role of the independent Asbestos and Silica Safety and Eradication Agency and the Asbestos and Silica Safety and Eradication Council. Australian unions will continue to lobby governments for the adoption and implementation of:
 - a. A national strategic plan for the elimination of ACMs by 2030;
 - b. Changes to our WHS laws that will enable prioritised removal of ACMs from workplaces as opposed to in situ management;

- c. WHS Regulations should be amended to prohibit asbestos removal except by a licensed removalist;
 - d. Requirement from landlords to undertake asbestos assessments and advise tenants of the presence and locations of ACMs;
 - e. Require homeowners to undertake asbestos assessments and disclose at the point of sale;
 - f. Governments to introduce policies that incentivise and encourage removal such as tax deductibility;
 - g. Governments to become best practice landlords and tenants of commercial and residential buildings.
120. Congress calls on all levels of government to work with the union movement and a broad spectrum of asbestos organisations in the establishment and ongoing work of the Council so that we can extend and implement successful and safe asbestos awareness, control and eradication programs across the nation.
121. Australian unions support nationally accredited asbestos awareness training as well as the registration and oversight of training organisations that can deliver the course. The WHS Regulations should be amended to require asbestos awareness training for all workers who are at risk of exposure to asbestos due to the nature of their work prior to commencement. This training should also be a mandatory component in all tertiary and other vocational training courses relating to the building and construction industry and allied industries with modifications made to enable identification and safe work methods for each occupation.
122. Congress notes and supports the Asbestos and Silica Safety and Eradication Agency establishing a standing committee, made up of representatives of the community, workers and government of all levels, for the purpose of driving improved management (including identification, warnings, removal, demolition, remediation, dumping) of asbestos from the built environment. The standing committee should coordinate the removal of asbestos from the built environment, to implement and make funding arrangements for asbestos removal activities (including Asbestos Content Certificates) and asbestos waste management. The standing committee should be chaired by a person with accountabilities to the appropriate Federal Minister. This may entail the establishment of a position such as Asbestos Commissioner with the statutory authority to second and advocate for appropriate resources from the public sector.

Asbestos Removal Funding

123. Congress is concerned that asbestos is not being systematically removed from our environment except when an exposure occurs or public attention is drawn to the presence. A number of government reports have recommended significant action and funding, yet no government is prioritising the removal of asbestos from the built environment due to funding shortfalls.
124. Congress proposes the establishment of an asbestos eradication fund that is levied on all construction materials so that these functions of asbestos removal can be adequately resourced.
125. Congress proposes that jurisdiction asbestos waste levies be removed to minimise incentives for dumping.
126. Congress supports local governments and waste management organisations to build the infrastructure and employ the personnel necessary to safely receive small amounts of asbestos-containing materials locally to avoid dumping.

Asbestos in Our Region

127. Despite the ban on asbestos in 2003, Australia is still receiving imports of asbestos. The inspectorial regime in place to police this ban is inadequate. Due to the prevalence of asbestos in Asia, Australian workers are now frequently seeing asbestos-containing manufactured materials and plant components imported into Australian workplaces, reducing the effectiveness of the Australian asbestos ban. Congress calls on Border Force and WHS Regulators to work together to increase their efforts to stop

the importation of asbestos products using greater inspection and compliance mechanisms than is currently undertaken.

128. To effectively prevent the illegal importations of ACMs, Border Force must introduce “after-barrier” policing and be provided a specific head of power to enable notification and removal at the expense of the importer. The “mistake of fact” defence, which absolves importers from responsibility after importation where they accepted the imported materials were asbestos-free when they were not, must be abolished.
129. Congress notes that the use of asbestos has escalated rapidly in the Asia-Pacific region. India, Indonesia, Thailand and Vietnam are some of the major consumers of asbestos, as asbestos industries in Russia and China seek new markets, following bans in Australia and Europe.
130. Congress commends the work of Australian unions and Union Aid Abroad-APHEDA to support workers, unions and communities in the Asia-Pacific region to ban asbestos and programs to educate and protect workers and their families from exposure. Congress supports efforts by Union Aid Abroad-APHEDA to develop a regional asbestos prevention program, building on the important progress it has achieved in Vietnam, Laos, Indonesia and the Philippines. In concert with APHEDA and national unions in our region, the ACTU and affiliated unions will work to institute national bans in each country where possible, and to support control regimes as a first step towards a ban.
131. Australian unions condemn the international asbestos industry’s efforts to block the listing of chrysotile asbestos as a substance on the Prior Informed Consent list of the Rotterdam Convention. Australian unions believe that the Rotterdam Convention is deeply flawed because of its requirement for unanimity to have a substance listed. In addition, the process has now become corrupted due to the failure of the Rotterdam Secretariat to admit unions and NGOs as observers in the Contact groups, unique of all the UN Environmental Program Conventions.
132. Australian Unions support changes to the Rotterdam Convention that prevent the listing of asbestos and other highly hazardous chemicals. Australian unions support the creation of a stand-alone treaty, modelled on the Minamata Treaty, to further regulate and where possible, ban asbestos.
133. Australian unions commit to increasing the capacity of and support for our international partners, unions and civil society groups such as asbestos support groups, in their campaigns to ban the use of asbestos in their countries and to reform these Conventions.
134. In addition to the above, and as part of a coordinated international campaign, the ACTU and Australian unions will work with the international workers’ capital movement to encourage divestment in manufacturers of asbestos products and to ensure that construction companies are discouraged from using asbestos in countries where its use is still legal.

Chemicals and Cancer

135. Australia’s regulatory approach to chemicals is uncoordinated and differs across governments and sectors of the workforce. The current regulatory system lags behind many international developments and reform is consistently stymied by vested industry interests. Under the neoliberal demand for ‘deregulation’, worker and community health is jeopardised.
136. In order to protect workers and the community from the harmful effects of chemicals, Australian unions will campaign and lobby for the reduction in the use of toxic substances at work and associated risks by:
 - a. Advocating that all chemicals, both those currently in use and ‘new’ chemicals introduced into Australia, undergo rigorous assessments;
 - b. Advocating that the relevant chemical regulators (in particular Australian Industrial Chemicals Introduction Scheme (AICIS) and the Australian Pesticides and Veterinary Medicine Authority (APVMA)) are adequately resourced, independent, and have genuine consultative structures which guarantee union participation and involvement;
 - c. Advocating for the adoption of a Toxic Use Reduction approach;

- d. Advocating for a progressive phase out of International Agency for Research on Cancer (IARC) Group 1, followed by Group 2A carcinogens linked to occupational cancer;
 - e. Advocating for a modification of the European Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) to Australian conditions; and
 - f. Promoting communication in the supply chain about the safe use of chemicals through Safety Data Sheets (SDS) provision and chemical safety alerts.
137. Australian unions will lobby and campaign for the establishment of a single regulatory chemicals body to develop and implement a cohesive policy on the assessment, registration and management of chemicals.
138. Australian unions will also campaign for the development of an effective recognition of occupational cancer by workers' compensation systems and the adoption of ILO Convention 121.

Persistent Organic Pollutants

139. All workers must be protected from the harmful impacts of persistent organic pollutants (POP). Congress notes all chemicals listed in the Stockholm Convention on Persistent Organic Pollutants and calls on the Commonwealth government to ratify each of the chemicals listed in the Stockholm Convention, and calls on all governments to ensure that WHS laws adequately protect workers from exposure to POPs.

Nanomaterials

140. Nanomaterials can be hazardous because of their small size, large surface area and altered toxicity. Substances that are non-hazardous in larger form can pose new risks in nano-form. There is also evidence that some forms of carbon nanotubes that have a similar shape to asbestos fibres can cause the onset of mesothelioma, which has resulted in these being classified as 'hazardous'. Concerns regarding the health risks of nanomaterials are greatest for workers, who are more likely to be exposed more routinely, and at higher doses than the general public.
141. Congress affirms it is the right of every worker to know what hazards may be present in the work environment and that this right includes the potential hazards of nanomaterials. Congress calls for products containing manufactured nanomaterials to be clearly identified in both Safety Data Sheets (SDS) and labels, to ensure implementation of effective identification and control measures. Consistent with this, where products are produced in nano-form, SDS must relate to that nano-form, rather than to its bulk counterpart.
142. Congress calls for the introduction of specific regulation of nano-forms of existing substances by Health and Safety and other regulators.
143. Congress calls on government to develop effective legislation incorporating the precautionary principle for nanomaterials. A precautionary approach requires mandatory, nano-specific oversight mechanisms to account for the unique characteristics of the materials. Within those mechanisms, the protection of public health and worker safety requires a committed focus on critical risk research and immediate action to mitigate potential exposures until safety is demonstrated. Specifically, Congress calls for:
- a. The classification of nanoscale chemicals as new chemicals under AICIS and other regulators;
 - b. The development of new standards for the handling of nanotechnology;
 - c. Mandating the labelling of all commercial products containing nanomaterials;
 - d. The establishment of a tripartite body to oversee implementation of this regulatory framework;
 - e. Development and improvement of hazard identification, assessment and control mechanisms for nanomaterials;
 - f. Enforcement of the requirement to disclose all chemicals and the labelling of all commercial products, new exposure standards, including via a well-resourced inspectorate; and,

- g. Monitoring of the health impacts on Australian workers involved in nanotechnology and investment in related medical research.

Noise and Hearing Loss

- 144. Occupational noise-induced hearing loss (ONIHL) is a significant health and safety and economic problem in Australia. The economic burden of ONIHL is mainly borne by workers and their families and the wider community with workers' compensation being fairly limited with a high threshold for eligibility.
- 145. Exposure to occupational noise is associated with many adverse effects besides loss of hearing. It has also been linked to fatigue, stress and hypertension and make workplaces inaccessible for workers with disability. Proper workplace and equipment design and adequate management practices can control occupational noise levels and workers' exposure, thereby reducing the risk of hearing loss and other adverse effects. Despite this, employers' usual preferred method of control is personal hearing protection which should be the last resort.
- 146. Excessive noise should always be reduced at its source where practical. 'Buy Quiet' policies should be introduced in all noisy workplaces.
- 147. Australian unions will campaign to have a noise exposure standard of 80dB(A) and a lower exposure standard where ototoxins are used in the workplace as well as the provision of information, training and health monitoring to workers.
- 148. The whole person binaural impairment compensation threshold for hearing loss should be set at 1% in all jurisdictions in accordance with best practice research and guidelines.

Biological Hazards

- 149. Congress recognises that there are a growing number of workers potentially exposed to animal and human vector biological hazards. The COVID-19 pandemic has highlighted the need for risk management of biological hazards. Congress calls on all governments to amend the WHS laws to include a chapter on risk management of biological hazards.

Climate Change

- 150. Congress notes that unless governments take serious action climate change will create more hazardous working conditions for many workers. As the climate warms, more workers will be exposed to the deleterious effects of working in the heat, such as with increased injuries caused by increased physical demands or hazardous air quality such as what occurred across eastern Australia during the prolonged 2019-20 bushfire season.
- 151. Congress notes that there are currently no regulations requiring employers to take action to prevent exposures to unhealthy hot conditions or the hazardous air we breathe. Current air quality guidelines provide inadequate protection for both workers and the community. A Toxics Use Reduction framework would contribute to improved air quality.
- 152. Congress will advocate for safe and healthy air quality standards applicable to workplaces and the outside environment, and for enforcement of those standards by health and safety regulators and public health authorities.
- 153. Workers will also be exposed to hazardous conditions caused by increased storm activity and floods. The potential of flood and storm related hazards must be taken into account at the point of design and approval for new construction of worksites as well as when sites are rebuilt or renovated following storm or flood events.

Insecure Work

- 154. Congress acknowledges that insecure work, in its many forms, is linked with poor safety outcomes and has negative impacts on the physical and psychosocial health of workers. Congress notes the provision of secure, ongoing work is a key factor in improving health and safety outcomes for all workers.

Congress also notes that women and young people are disproportionately affected by these realities, as women and young people are more likely to be in insecure work.

155. Research uniformly shows that insecure work is associated with increased risk of illness and injury, more severe injuries, is a contributor to psychological risk (including stress, bullying, racism, all forms of harassment, and gendered violence), and results in poorer health outcomes for workers. Workers lacking secure employment and predictable hours of work face significant difficulties in raising health and safety issues due to the nature of their employment arrangements and conditions.
156. Congress supports legislative change which minimises the incidence of insecure work and recognises and improves outcomes by removing exposures to unhealthy and unsafe work arrangements, irregular and unpredictable patterns of work and public funding for services to be provided with a preference for direct and ongoing employment.
157. These risks are especially heightened in the so-called 'gig' economy, where the rights accruing to regular workers as employees are routinely denied, exposing such workers to heightened risk of injury and often removing their capacity to seek compensation or damages and unknowingly exposing vulnerable people to legal liability. Congress supports clarifying and extending primary duties to platform operators and broader regulation that prevents platforms from undermining direct employment by undercutting their competitors.
158. Congress recognises the impact that insecure work can have on the right of ill and injured workers to access leave entitlements, workers' compensation and suitable rehabilitation programs. Again, this is likely to disproportionately affect women who more often have caring responsibilities yet have no access to that leave when employed insecurely.

Temporary migrant workers

159. Congress notes that temporary migrant workers are often provided with inferior access to safety training and workplace health and safety consultation. Congress also notes the particularly vulnerable position that temporary migrant workers are often placed in due to the reliance of the worker on their employer to maintain not only their employment but also their visa or residency. This makes safety consultation and issue resolution difficult and places too much power with the employer and in many cases prevents temporary migrant workers from making workers compensation claims. This also sets a lower standard for all workers and means that temporary migrant workers are often underrepresented by, or have no access to, unions.
160. Congress is committed to ensuring that Australia shifts the balance of skilled migration away from temporary to providing permanent pathways for workers.
161. Congress calls on the state, territory and Commonwealth governments to target regulatory action in workplaces where significant numbers of temporary visa workers are present, and specifically amend the immigration laws to prevent employers who threaten or terminate a worker for raising a safety issue, or who have a poor safety or rehabilitation and return to work record, from employing more international workers.
162. Further regulations should apply to employers who wish to employ temporary visa workers, and businesses should only be allowed to engage temporary visa workers if they have demonstrated a strong health and safety record with no major breaches and provide WHS training, consultation, and education to their labour force in the appropriate language and format.

Injured Workers – Workers Compensation Entitlements

163. All workers who are injured or become ill in the course of their work have the right to the financial, medical, rehabilitation and vocational support necessary to fully recover, rehabilitate and return to meaningful work.
164. With extremely high levels of work-related injury, disease and death a shameful reality in Australia, Congress reaffirms its position that the rights of injured workers are of fundamental significance.

165. Congress expresses grave concern for the widespread and systemic incidence of ill and injured workers being subjected to a range of coercive, intrusive, inappropriate and discriminatory practices by employers, such as:
- a. Employers, insurers and employer representatives attending medical consultations/appointments with ill and injured workers;
 - b. Employers forcing ill and injured workers to attend company doctors rather than allowing workers to choose their own doctor;
 - c. Workers who have previously sustained an injury being subjected to constant medical assessments and functional capacity assessments even though their treating doctor has cleared them to return to work;
 - d. Medical information being used by third parties and without the consent of workers;
 - e. The growth and use of corporate doctors; paid for by the employer and providing care more aligned to the employer's rather than the injured person's benefit;
 - f. Failure by employers to properly implement and comply with workers' return to work plans and to provide suitable duties;
 - g. The use of the 'lawful and reasonable' direction to force workers to reveal medical information and attend unnecessary 'independent' medical assessments;
 - h. Medical certificates and suitable duties/return to work plans not being adhered to and workers being forced to return to work prematurely;
 - i. Injured workers being informed by their employer that as a result of a past or present injury, they pose a 'risk' to the business or organisation and consequently face the termination of their employment;
 - j. Employers' inappropriate use of the 'inherent requirements of the job' exemption to justify terminating workers' employment;
 - k. Employers and third parties engaging in private discussions with workers' treating doctors without the worker's knowledge or consent;
 - l. Employers and third parties requesting workers' full medical history which goes well beyond the information needed to effectively deal with a workplace injury or disability;
 - m. Workers being required to attend periodic medical assessments with company doctors when they are not ill or injured;
 - n. Reasonable accommodations and adjustments not being made to allow injured workers to return to work;
 - o. Employers insisting on 'fit for work' or 'full clearance' certificates from workers after a period of personal leave or annual leave;
 - p. Growth in use of early intervention programs that are designed to discourage workers from making a claim for compensation; and
 - q. Large employers and Government Departments insisting that 'pre-injury duties' must be at the previous worksite when equivalent positions exist across multiple sites.
166. Australian unions will continue to pursue legislative protections which ensure there are decent, fair and appropriate work health rights for all workers.
167. Australian unions will seek to have research commissioned which explores the nature, scope and scale of work health rights issues occurring in Australian workplaces and identifies the gaps in the current legal framework.

168. Congress opposes the misuse of 'duty of care' by employers as a discriminatory mechanism against workers. Congress opposes the use of medical examination and 'fitness for work' testing or examination - either as a punitive measure or as a means of limiting access to employment.

Workers' Compensation

169. Congress notes that the last time the predecessor of Safe Work Australia, NOHSC, undertook research into the full death toll arising from work was 2003. The 2003 estimate of total deaths from traumatic injury and disease was between 3000-8000 deaths per year. Congress calls for Safe Work Australia to undertake such research at regular intervals as part of the National WHS Strategy.

170. Congress recognises that effective rehabilitation and return to work programs, as well as the provision of economic security through workers' compensation arrangements, are critically important to injured workers, their families and the wider community.

171. Accordingly, Congress reaffirms its position that after sustaining a physical or psychological work-related injury, all workers are entitled to comprehensive and quality rehabilitation services that accord with the biopsychosocial model of rehabilitation and to return to suitable and decent employment. Further, injured workers are entitled to compensation that restores their health and employment as close as possible to that enjoyed prior to their injury, including full access to superannuation and leave entitlements.

172. Congress reaffirms its position that improvements and consistent arrangements are needed for all injured workers in terms of rehabilitation, return to work programs and compensation. This includes removing barriers to claiming for secondary psychological claims, following a physical injury, and providing a right to pre-approved adjustment to injury counselling for any worker that seeks to engage in it.

173. Congress calls for all jurisdictions to explicitly include maintenance of all rights, benefits and medical payments for temporary visa workers, regardless of whether they reside in Australia or overseas.

174. Congress reaffirms its opposition to the current neoliberal use of competition between schemes to reduce benefits available to injured/ill workers. Workers' compensation should be available on a no-fault basis where an injury 'arises out of or in the course of employment', even where it is the aggravation of an existing injury or disease.

175. Australian unions call on all workers' compensation jurisdictions to implement Deemed Diseases provisions and/or update their Deemed Diseases lists in accordance with Safe Work Australia (SWA) Deemed Diseases in Australia Report 2018 and any revisions that expand the list. Lists of Deemed Diseases based on the International Labour Organization's List of Occupational Diseases under Convention 42 created in 1934 are out of date and woefully inadequate.

176. Australian unions will:

- a. In consultation with Trades and Labour Councils (TLCs) and affiliates continue the development of best practice elements of a rehabilitation and compensation system to be used as the benchmark for national and state-based negotiations and campaigning; and
- b. Work with TLCs and affiliates to coordinate lobbying, organising and campaigning at the state and other jurisdictional levels to maintain and raise standards in each jurisdiction.

177. Australian unions commit to supporting injured workers and to ensuring that education about rehabilitation, return to work arrangements and compensation issues are included in training for delegates, HSRs and union members.

178. Congress calls for all jurisdictions to make publicly available, in real time, workers' compensation scheme data, including data relating to claim decisions, administrative review of insurers' decisions, appeals and scheme performance.

179. Congress calls for improvements to workers' compensation schemes to be made in the form of:
- a. Comprehensive coverage of all workers, including 'gig' and the employment relationship, including on journeys to and from work, and during recess breaks;
 - b. Provisional liability for weekly benefits and medical expenses;
 - c. A return to a basis of 'no-fault' compensation for all workplace injury and diseases;
 - d. Abolition of the illegitimate use of 'whole of body assessments', which act to reduce compensation and limit access to statutory lump-sum payments and common law remedies via legislated minimum thresholds;
 - e. Introduction of genuine rehabilitation options, including full technical or tertiary retraining;
 - f. Removal of time limits and step downs on weekly payments that effectively shift the injured worker onto social security benefits;
 - g. Maximising the resources in a scheme by removing profit incentives to third parties, thus ensuring that benefits are distributed to workers;
 - h. All workers' compensation regulators must be appropriately resourced to carry out their functions properly, including through an increased emphasis on prevention and compliance;
 - i. The system of scheme agents and self-insurers should be abolished and all workers' compensation functions should be internalised within the regulatory authorities;
 - j. Meaningful tripartite consultation must be a central part of the scheme;
 - k. Journey claims and recess claims shall be covered by the scheme;
 - l. Premiums must recover the costs of the system as well as encourage safe work practices;
 - m. Worker's compensation authorities should be given greater enforcement tools to ensure compliance; and
 - n. Fast and effective conciliation and arbitration of any workers' compensation matter in dispute by an independent tribunal.
180. Congress calls on the Federal Government to establish an inquiry as a matter of urgency to examine the extent of cost shifting by workers' compensation schemes and insurers onto injured workers and government services, including the public health system and social security.
181. Congress notes that most workers' compensation jurisdictions terminate payments for international workers once they return or are returned to their home country. This creates an incentive to not rehabilitate the worker and also creates a cheaper category of workforce if they are injured. This reduced cost of injury has the potential to reduce the incentive to maintain a safe workplace with this vulnerable group of workers.
182. Congress calls on all jurisdictions to provide adequate workers' compensation to temporary visa workers to at least the same level and duration as the local resident workers when injured, and to likewise provide adequate support to the worker's dependents in cases of a workplace fatality.
183. Trade unions must have the power to enforce compliance with workers' compensation law together with rights of entry, inspection and other investigative powers.
184. The relevant tribunals or commissions should provide a cost free, quick, easy, effective and legally binding mechanism to resolve disputes about all aspects of the workers' compensation system.
185. Return to work should be elevated as a central tenet of workers' compensation by:
- a. Placing an absolute obligation on employers to provide suitable duties;

- b. Preventing termination of employment unless the worker agrees that their injury management plan states that the return to work goal is a different job and a different employer; and
 - c. Providing incentives for the employment of injured workers.
186. Weekly payments should be set at a level equivalent to an injured worker's pre-injury average weekly earnings irrespective of their fitness for work and should not be subject to any caps or step-downs, and adjusted to take into consideration cost of living increases.
187. Costs associated with medical and all related treatment, as well as supplements to loss of income for childcare or other expenses should be covered for workers' compensation purposes with no arbitrary caps or limits.
188. Work capacity reviews and decisions should be removed from the workers' compensation legislation. Consideration of a worker's functionality should be properly addressed as part of their rehabilitation plan.
189. 'Reasonable management action', and like provisions, must be removed from all jurisdictions' workers' compensation provisions.
190. Congress notes the benefits of psychosocial rehabilitation to workers, particularly in assisting with overcoming non-work related barriers that may be impacting upon their capacity to return to work and/or perform activities of daily living, and call on all jurisdictions to expand the scope of rehabilitation services provided to injured workers to include psychosocial rehabilitation.

Self-Insurance

191. Congress opposes self-insurance for employers as it creates a conflict between profit generation and administration of workers' compensation claims, and generally limits access to benefits, compromises privacy, undermines the premium pool and discourages workers from exercising their rights. However, Congress recognises that self-insurance currently exists in all jurisdictions. Therefore, Congress acknowledges that existing self-insurance arrangements must only be continued if the employer has an exemplary record in health and safety and a demonstrated commitment to workers' rights. Further, self-insurance licenses must be automatically revoked in cases where there is a workplace death or serious injury and/or repeated non-compliance.
192. Congress believes that the administration of workers' compensation by self-insurers must be conducted by arrangements that separate the insurer from the employer, in the same manner as the relationship between a private insurer and the employer as a client, to fully protect workers' privacy.
193. Congress calls for workers to have access to an independent body which can review an employer's self-insurance status. Further, employers seeking to become, or to remain, self-insurers must be able to demonstrate that the majority of their workers genuinely favour this option. Self-insurers must be able to demonstrate good consultative practices with workers and their elected representatives and unions.

Rehabilitation

194. Congress calls upon employers and governments to work with unions to provide rehabilitation services that achieve maximum recovery and prepare injured workers, wherever possible, to return to their previous position. In cases where this is not possible, then workers must be redeployed to the most suitable position in respect of their aptitude and capacity and provided with vocational and other support to return to employment that is comparable to their pre-injury employment.
195. Congress calls upon governments to work cooperatively to ensure that existing rehabilitation services are properly accredited, coordinated and expanded so that they are accessible to all injured workers. Congress recognises that in many cases the current rehabilitation practices applied to injured workers does not always facilitate their return to suitable and meaningful employment. As such, effective rehabilitation services and programs must also deliver genuine opportunities to meet this objective.

196. Congress believes that for rehabilitation services to be effective they must:
- a. Be implemented properly and without regard to the insurers' cost assessments;
 - b. Ensure that employers' health and safety management systems enable the immediate reporting of injuries;
 - c. Return workers to their fullest capacity in their workplace, community, family and life;
 - d. Return workers to safe, meaningful and durable employment as early as possible;
 - e. Actively involve unions and their members in consultation and decision-making;
 - f. Have the commitment of the employer to the above aims; and
 - g. Be independent of the employer or insurance company.
197. Congress recognises that rehabilitation services are part of an injured workers reasonable medical treatment, as such injured workers alone must be provided the right to choose their rehabilitation provider to ensure that the injured worker is regarded as the providers client making them central in the provision of rehabilitation service.
198. Congress supports the development by unions and employers of rehabilitation policies and programs that are based on the following principles:
- a. Voluntary participation by the injured worker;
 - b. Respect for the worker's privacy;
 - c. No loss of income while participating in the program, including the accrual of leave and employer superannuation contributions;
 - d. Eliminating or controlling the hazard that caused the injury;
 - e. Consistency with the medical advice of the worker's own doctor;
 - f. Employer cooperation in the provision of suitable duties, modified work environment and retraining of redeployment opportunities;
 - g. Access to the advice and assistance of multi-disciplinary professional teams;
 - h. The injured worker's right to choose their rehabilitation provider;
 - i. That rehabilitation be provided to the injured worker at the closest possible location to their home or workplace;
 - j. The development of appropriate and effective individual return to work plans, including rehabilitation goals developed in consultation with and agreed to by the injured worker;
 - k. An individual assessment of the injured worker and their workplace;
 - l. The adaptation of the workplace to suit the injured worker's capacity;
 - m. The development of an appropriate timetable for returning the injured worker to their previous position, or the most suitable alternative, that is consistent with the level of their capacity;
 - n. The involvement of union representatives and injured workers in decisions concerning alternative duties, rehabilitation programs and retraining; and
 - o. The commitment by all parties to provide an environment in the workplace that is supportive of the injured worker with adequate training of workers, supervisors and management in the rehabilitation policies and procedures adopted.

199. Regulatory authorities must enforce workers' rights to rehabilitation and to return to work.
200. The employer must ensure that participation in a rehabilitation program itself will not prejudice an injured person. Participation in a rehabilitation program must not deprive injured workers from accruing and accessing annual leave, long service leave, parental leave and any other forms of leave that an injured worker is entitled to use. Furthermore, an injured worker must not be dismissed or have their employment damaged because of a work-related injury or any resulting temporary impairment. In the event of dismissal of the injured worker or damage to their employment, the applicable tribunal will be empowered to review and remedy the situation.
201. All workers must be provided with a comprehensive statement detailing their entitlements regarding rehabilitation and return to work.

Seacare and Maritime health and safety

202. Congress supports the retention of Seacare as a national scheme of workers' compensation and health and safety for Australian seafarers as an independent statutory authority operating under Commonwealth legislation. It should be retained as an independent statutory authority with tri-partite governance. Congress calls on the Australian Government to reduce the exposure of the scheme to private insurers and to support the establishment of a sole-provider national workers' compensation scheme for seafarers.
203. Congress notes that, for workers at sea who have been injured and are returning to work, it is often appropriate and desirable to place that worker with another employer to undertake rehabilitation. Australian unions support the development of group training approaches to ensure workers can be placed in meaningful jobs while rehabilitating.
204. Congress urges the Federal Government to allocate budget funding to the Australian Maritime Safety Authority (AMSA) to enable it to properly perform its OHS Inspectorate functions under the Occupational Health and Safety (Maritime Industry) Act 1993 (OHS (MI) Act).
205. Congress calls on the Federal Government to harmonise the OHS (MI) Act and Regulations made under that Act with the model WHS Act 2011 and WHS Regulations.

Comcare

206. This policy sets out ways in which unions and Comcare should work together to maximise WHS and workers' compensation outcomes consistent with Comcare's statutory functions. Specifically, this policy sets out initiatives to ensure:
- a. Comcare co-operatively and proactively interacts with unions and Health and Safety Representatives (HSRs) given their role enunciated in WHS law;
 - b. That unions are able and encouraged to perform their role in helping to ensure compliance of WHS laws;
 - c. Unions be able to have elected HSRs in workplaces and in turn support HSRs;
 - d. Unions be able to effectively represent injured workers before and during the workers' compensation process;
 - e. As far as is permissible by law, Comcare shares with unions data on claims, notifiable incidents, HSR engagement and other information relevant to hazards management and intervention programs.
207. Require Comcare, in consultation, to develop a stakeholder engagement policy which mandates regular consultation with stakeholders, including union stakeholders, on matters including but not limited to:
- a. Regulatory approach;
 - b. Campaigns;

c. Resource allocation.

208. Given the SRC Act does not include objectives, insert objectives which address the interests of workers.

209. The Comcare scheme apply to workers that are:

- a. Performing work as part of a Community Development Program;
- b. Workers engaged by employers covered by the SRC Act from the gig economy (e.g. Airtasker); and
- c. Other similar schemes (amend s.631(c) of the Social Security Act 1991).

210. Congress calls for the establishment of a tri-partite Ministerial Advisory Council, whose principal function would be to provide advice and carry out any request made by the responsible Minister. Further functions should include the monitoring and review of the effectiveness of the Commonwealth Safety Rehabilitation and Compensation & WHS legislation, the regulator/s of these laws, and the SRCC against their respective functions and the legislation's objects and develop any guidance or jurisdictionally specific Codes of Practice as might be required.

Comcare as a WHS Regulator

211. That Comcare shall ensure its WHS regulatory functions are adequately resourced and to this end, shall:

- a. In state and territories where Comcare does not have staff permanently based, conclude shared resources agreements with the relevant state and territory regulator and appoint nominated state and territory Inspectors as Comcare Inspectors with dual appointment;
- b. Regularly review the number, training requirements and placement of Inspectors in consultation with stakeholders.

212. Require Comcare to have a proactive approach in relation to unannounced workplace visits in substitute for their current regulatory model which is principally audit focused and reactive (incident based).

213. Require Comcare to maintain separation between compliance and business engagement activities.

214. Require Comcare to develop a Workforce Engagement Policy with the following features:

- a. Regular and active engagement by Comcare with Health and Safety Representatives (HSRs), including but not limited to industry-specific campaigns and with an emphasis on HSR training;
- b. Provision by Comcare of a dedicated HSR support officer and HSR resources including web-based resources;
- c. Comcare undertaking industry-specific communications and consultations with HSRs;
- d. The convening by Comcare of an annual one-day training conference for HSRs in each state and territory.

215. Create new statutory positions of Director of Work Health and Safety Prosecutions and an Inspector General, who shall be appointed by the Minister.

216. That sentencing guidelines be developed in consultation with stakeholders for adoption by the relevant courts.

217. Following consultation with the Safety, Rehabilitation and Compensation Commission, that the Minister issue written directions to Comcare regarding the funding formula to be applied to WHS enforcement activities.

Comcare as a workers' compensation scheme

218. Make such changes that are necessary to the Comcare scheme to implement the following:
- a. Amend the SRC Act to provide for the provisional liability of claims;
 - b. Comcare's liability dispute resolution system in Comcare is bureaucratic and notoriously slow. Given the increased number of scheme participants in various non-public sector workplaces, the claims resolutions provisions of the SRC Act be amended as follows:
 - The claims process is based on a single decision about liability being made within 21 days of the claim being lodged and;
 - Disputes are determined by a dedicated compensation tribunal resourced to ensure early mediation and prompt dispute resolution;
 - Cost of legal representation met by the scheme unless vexatious litigant.
 - c. Substantially increase the amounts paid for non-economic loss in recognition of the fact that the current benefit has remained unchanged for 40 years. These amounts should be indexed to ensure they retain their value.
219. Early intervention initiatives under the Comcare scheme should be limited to those that are supported by medical advice, following a worker having made a claim and involve injured workers in meaningful work.
220. Fair access to workers' compensation requires workers performing the same role in the same jurisdiction to have access to the same level and quality of coverage. This principle is undermined by Comcare's self-insurance licensing scheme. Self-insurance commonly affords workers reduced entitlements, and a more onerous and time-consuming claims process, relative to the scheme otherwise in force in the relevant State or Territory. To avoid sanctioning further injustice, Comcare must prohibit the issue of further self-insurance licenses, and deny the renewal of licences currently on foot, other than to government authorities.

Safety, Rehabilitation and Compensation Commission (SRCC)

221. That the WHS jurisdiction of the SRCC be broadened to include the Australian Public Service (APS).
222. That when the SRCC makes licensing decisions, it is required to apply a test for the protection of workers, to demonstrate that no employee would be worse off as a result of the granting of a license application.
223. That the license compliance and performance model (LCPM) be externally reviewed.
224. With respect to Comcare licensees, that the SRCC be given sufficient powers of enforcement for use in situations where license conditions are not being complied with.
225. That the SRCC has the ability to grant an initial license or a license extension for a period up to, but no greater than four years.
226. That the licensing policy of the SRCC enable in practice, the revocation of the licenses of non-conforming licensees.
227. That the licensing policy (and other relevant policies) of the SRCC enable in practice, the inclusion of special conditions to a license of a licensee.
228. To ensure that licensees comply with their legal and license obligations, the SRCC shall implement a licensing policy which requires a comprehensive audit:
- a. Prior to the granting of an initial license and the extensions of a license;
 - b. At least once during the life of each licensing period; and

- c. At any time required by the SRCC.
229. That the licensing policy of the SRCC require licensees to report the details of any breach of a license condition and that such breaches trigger an obligation on the licensee to show cause why the license should not be terminated.
230. Broaden the scope of the powers and functions of the SRCC to enable itself to own its own motion, and to do any of the following:
- a. Provide advice to the Minister on proposed legislative instruments, prosecution guidelines and any WHS and/or workers' compensation related matter;
 - b. Commission research;
 - c. Develop and approve Codes of Practice;
 - d. Review any aspect of the Comcare scheme;
 - e. Make submissions to Parliamentary inquiries.
231. Provide the Minister with the ability to appoint an SRCC member as Deputy Chairperson.
232. That policies of the SRCC be reviewed at least every two years.
233. Reform the Safety, Rehabilitation and Compensation Act 1988 (as amended) so it is able to effectively discharge functions as a tripartite consultative forum under the Work Health and Safety Act 2011.
234. A function of the SRCC shall be to monitor patterns and trends in Comcare prosecutions.
235. A function of the SRCC shall be to monitor the collection, use and disclosure by Comcare of data on investigations.