



5 August 2019

Michelle Baxter
Chief Executive Officer
Safe Work Australia
2 Phillip Law Street
Canberra ACT 2601

Dear Ms Baxter,

Re: Consultation Regulation Impact Statement (RIS) – Recommendations of the 2018 Review of the model WHS laws

The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 275,000 nurses, midwives and carers across the country.

Our members work in public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both a professional and industrial organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

Through our work with members we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

The ANMF welcomes the opportunity to provide a submission to the Consultation RIS. Outlined below are the ANMF's answers addressing selected questions in the Consultation RIS. In addition, the ANMF supports the submissions of the Australian Council of Trade Unions (ACTU) and the New South Wales Nurses and Midwives' Association (NSWNMA).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Annie Butler'.

Annie Butler
Federal Secretary

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ANMF Journals

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Consultation RIS – 2018 Review Recommendations

Submission template

What is your name?

Australian Nursing and Midwifery Federation

Psychosocial risks (Recommendation 2)

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

The ANMF frequently assists members with psychosocial risks through its network of paid officials. ANMF members often confront bullying, occupational violence and fatigue in their workplaces.

The ANMF has a range of policies on psychosocial risks including:

- Fatigue Prevention (updated May 2019);
- Prevention of occupational violence and aggression in the workplace (updated November 2018);
- Rostering (updated February 2019); and
- Workplace stress prevention (updated May 2019)

A recent joint study by the NSWNMA and the University of Technology, Sydney (UTS) identified that the impact of violence is far reaching on nurses and midwives. Of the 3,612 respondents, there was a reported injury rate of 28% because of an episode of violence. Two-thirds of participants reported that they had not been provided with adequate information, support and follow-up after an episode of violence. Most survey participants believed that violence was an inevitable part of their job and that it was increasing in severity and frequency.¹

Sexual harassment, which is a type of psychosocial hazard, is a concern to the ANMF and its members. An ACTU survey conducted on this issue in late 2018, was completed by nearly 10,000 workers, including ANMF members. This survey found that less than half of workplaces where respondents had worked had proper preventative measures in place, including mandatory training for staff, a clear workplace policy, an effective complaints mechanism, or access to workplace health and safety processes.²

Despite the evidence of an increase in psychosocial risks, the 2018 Review found that there is a widespread view that psychosocial health is neglected due to the lack of WHS Regulations that contend with it. The lack of regulation makes it more difficult to assist ANMF members who have encountered psychosocial risks, as it can be more difficult to explain processes and rules to members without anything that specifically addresses psychosocial hazards in detail. In addition, mechanisms currently available place too much emphasis on individual reporting of issues, like sexual harassment, rather than a WHS framework that would encourage the significant cultural change necessary.

¹ Dr Jacqui Pich, 2018. *Violence in Nursing and Midwifery in NSW*, NSWNMA and UTS, 3-33. Online: <https://www.nswnma.asn.au/wp-content/uploads/2019/02/Violence-in-Nursing-and-Midwifery-in-NSW.pdf>

² ACTU, 2018. Sexual Harassment in Australian Workplaces Survey Results, ACTU, 8. Online: https://www.actu.org.au/media/1385284/a4_sexual-harassment-survey-results_print.pdf

Employers, particularly smaller ones without dedicated resources, can be more challenging to deal with when they have no clear and obvious source of their legal obligations.

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

Implementing Option 2 would have a positive practical impact on the ANMF, its members and those who employ them. WHS regulations that specifically address psychosocial risks would provide clear legal rights for workers and could help to address information gaps identified by participants in the Pich report.

Identifying control measures for psychological risks, as Option 2 envisages, would also provide employers of ANMF members clear guidance on their obligations, which is an overall benefit to the health sector.

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

The ANMF strongly supports *Option 2 – Include requirements for managing psychosocial risks in the model WHS Regulations*.

This option will be best for the ANMF and its members because it will provide clearer rules around psychosocial risks, which is a growing area of concern for ANMF members. Providing a clear legislative framework within which to manage psychological health issues would assist all stakeholders.

- **Is the state of knowledge on psychosocial hazards, risks and control measures widely accepted and well established? Please support your answer with evidence.**

The ANMF contends that the state of knowledge on psychosocial hazards, risks and control measures is not widely accepted and well established.

As recently as 2007 employers disputed the concept of stress as conceptualised in the Victorian government's *Stresswise* guide. In addition, employers did not consider stress to be a major issue in the private sector³ despite increasing mental health claims.⁴

The Pich report found that nurses and midwives working in NSW experienced an episode of violence in the preceding six months at a rate of over 50%.⁵ The sheer volume of nurses and midwives who suffer from occupational violence clearly demonstrates that control measures are rarely implemented and not well established.

³ Robert Stensholt, 2007. A report on the Occupational Health and Safety Act 2004: Administrative Review, Public Accounts and Estimates Committee, Victorian Parliament, 44

⁴ Worksafe Victoria, 2017. WorkSafe Victoria Annual Report 2017, Victorian Government, 4. Online: <https://content.api.worksafe.vic.gov.au/sites/default/files/2018-06/ISBN-WorkSafe-annual-report-2017.pdf>

⁵ Pich, *op. cit.*, 72

The lack of widely accepted and well-established control measures is also evidenced in the selective reporting of episodes of violence by nurses and midwives. More than two-thirds of nurses and midwives admit that they only reported “some” and not “all” episodes. Workplace culture was widely quoted as a reason to not report violence.⁶

- **Do you have suggestions for what prescriptive psychosocial regulations might look like?**

The ANMF supports the submission of the NSWNMA in its submission to the 2018 Review in terms of what prescriptive regulations might look like concerning their content:

“Amendments to the WHS Regulation (are) to incorporate psychosocial hazards, including provisions around occupational violence and aggression; bullying; workloads and fatigue.”⁷

Workplace entry by HSR assistants (Recommendation 8)

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

The findings of the 2018 Review identify how people who work for unions registered under the *Fair Work (Registered Organisations) Act 2009* are singled-out for unfavourable treatment. A person who works for an unregistered union would not be affected by the decision in *ABCC v Powell*⁸.

Whilst many ANMF officials do gain WHS and Fair Work permits, it is not the intent of the model WHS laws to restrict who can assist an HSR in the way the *Fair Work Act 2009* does.

The ANMF also draws the attention of Safe Work to the NSWNMA Submission to the 2018 review. The NSWNMA stated that having to get an FWC permit is an “additional hurdle for union officials... given that this does not apply to any other person and these are the people that an HSR is most likely to be able to gain this support from.”⁹ The ANMF supports this submission.

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

Option 2 will save money and time for unions, as some union officials would not need to complete right of entry training if they are only entering premises as an HSR assistant.

⁶ Pich, *op. cit.*, 74

⁷ NSWNMA, 2018. Submission by the New South Wales Nurses and Midwives’ Association: Comment on the 2018 Review of the Model WHS laws, NSWNMA, 7. Online:

http://www.nswnma.asn.au/wp-content/uploads/2018/04/2018-Review-of-the-model-WHS-laws_April-2018.pdf

⁸ *Australian Building and Construction Commission v Powell* [2017] FCAFC 89

⁹ NSWNMA, *op. cit.*, 21

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

The ANMF strongly supports *Option 2 – Work to clarify union officials may assist an HSR without a Fair Work permit*. It will be the best option for the ANMF because it will reduce unnecessary training, saving time and money.

Choice of HSR training course (Recommendation 10)

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

Multiple branches of the ANMF currently conduct training for HSRs. This is done either directly by the branch or through an arrangement with a registered training organisation (RTO).

This training is specific to nursing, midwifery and the health environment in general. This specific training enhances the HSR training experience making it more relevant to HSRs from this industry.

ANMF members have expressed concerns that they have been sent to HSR training directed at other industry groups. This training has not properly addressed hazards and risk specific to health and how the regulatory regime affects their workplace. This is one area of disagreement over HSR training.

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

The practical impact of allowing HSRs to choose their own training provider is that there would be less disputation between workers, their unions and employers. This benefits the health and safety of all workers and PCBUs in the health sector.

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

The ANMF strongly supports *Option 2 - Allow HSR choice of training provider*.

The Category 1 offence and industrial manslaughter (Recommendation 23a & b)

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

Occupational violence is a huge concern to ANMF members. This is demonstrated by numerous initiatives ANMF branches have undertaken to address this issue. For example, the Victorian Branch of the ANMF has developed a *10-point plan to end violence and aggression in the Workplace* in conjunction with the Victorian Government. It also has a dedicated webpage and an app where members can report occupational violence.

In New South Wales, occupational violence is of such concern that the Pich report was produced last year. The report's conclusion provides a compelling reminder of how serious occupational violence is to nurses and midwives in NSW, and ultimately Australia:

“The levels of violence experienced by nurses and midwives working in healthcare in NSW would not be tolerated in other industries and goes against the requirements of workplace health and safety guidelines to provide a safe working environment. This violence is reported to be increasing in both severity and frequency...”¹⁰

Tragically, even with initiatives like those discussed above, occupational violence can lead to workplace deaths in extreme cases. This has occurred in numerous health facilities throughout Australia. In such circumstances, the interests of justice must be considered for the victim and their family.

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

The ANMF strongly supports *Option 4 - Implement both Recommendations 23a (Include gross negligence in the Category 1 offence) and 23b (Introduce an industrial manslaughter offence)*

- **What do you see as the main limitations of the model WHS laws in deterring breaches of the health and safety duties?**

The main limitations of the model WHS laws in deterring breaches are that the penalties for failure to comply with WHS obligations are too low. In addition, the penalties do not accomplish the crucial role of ensuring society's expectations are met when it comes to the application of consequences for exposing workers to risk of death or serious injury.

¹⁰ Pich, *op cit.*, 77