

## **Unions NSW**

### **Post-hearing responses**

Appearance before the Standing Committee on Law and Justice on Tuesday 7 November 2017 for the Statutory Review of the *State Insurance and Care Governance Act 2015*.

### **Questions on Notice**

**The Hon. WES FANG:** I draw you back to the example you were highlighting earlier when you said there was an example where a claim had been rejected. You could not get an inspector to visit a worksite where almost all the employees had the same injury occurring. As to an anecdotal example, can you provide hard evidence on that?

**Ms MAIDEN:** It is one of the stories attached to the submission of last year.

**The Hon. WES FANG:** It is another one?

**The Hon. LYNDA VOLTZ:** It is in another submission.

**Ms MAIDEN:** I cannot remember the name off the top of my head but I can provide that on notice. It was a retailer in the southern part of the State, so a large employer that you would expect would have systems in place to deal with these kinds of issues. The worker concerned was stacking shelves and the shoulder injury she got was incredibly common in her workplace and yet her claim was denied because the independent medical officer said that it was age related. She was a woman who was around the age of 60, as I recall. I can provide on notice the reference to the correct story.

Annexure A Stories from the Unions NSW Return to Work Inquiry contains three stories relating to workers who have been injured working for large supermarket retailers. Natalie's story on p23. Danielle's story on page 87 and Carmela's story on p106.

**The Chair:** Are you suggesting that the 2015 legislative changes that created SafeWork have resulted in a more dangerous workplace if there are fewer inspections? Is there evidence of that?

**Mr DAVID SHOEBRIDGE:** I thought that their position was that nothing much had changed.

**Ms MAIDEN:** Yes, that is my position, Mr Shoebridge.

**The CHAIR:** I was not asking Mr David Shoebridge the question.

**Mr DAVID SHOEBRIDGE:** But I thought that is what they said quite explicitly.

**Ms MAIDEN:** My position is not that it is worse, I do not think, but I am open to be corrected. But my position, and you can see from the data, is that it has been declining and getting worse over a number of years. That trend has continued with the creation of SafeWork NSW, not because of the creation of SafeWork NSW.

**The CHAIR:** You say the data of claims?

**Mr DEGUARA:** Of enforcement activities.

**Ms MAIDEN:** Enforcement activity data.

**The CHAIR:** But not the claims.

**Ms MAIDEN:** That trend has not been reversed by the creation of SafeWork NSW. I suppose in some instances that trend has continued so it has got worse. But given that we saw a trend beforehand, I do not think you can link it to the creation of SafeWork NSW. But it has not been the panacea to solve the systemic problems with a lack of enforcement activity from the relevant statutory body that existed before SafeWork NSW was created.

The Unions NSW First Statutory Review of the Work Health and Safety Legislation 31 December 2016 notes at p5 that the re-introduction of formal tripartite consultation, abolished in 2012, would go a long way towards improving the effectiveness of workplace safety and SafeWork NSW's capacity as a regulator.

The review goes on to note at p14 that prosecutions remain at an historic low and that only once there is a more proactive approach by the Regulator to prosecute will workplace deaths and injuries decline significantly.

Unions NSW would encourage the Committee to revisit the Unions NSW First Statutory Review of the Work Health and Safety Legislation 31 December 2016, and consider the implementation of the 9 point plan presented in this submission.

**Ms FLORES:** I guess our hope may have been that if one organisation was left basically to deal with safety that may improve, simplify or streamline matters, but that has not been our experience. I meet regularly with affiliates and we discuss health and safety. A lot of the information I have is anecdotal but I am

hearing time and again that SafeWork does not enforce the law. They often remove PINs that are quite legitimate. I have a few examples. I do not know if the AMWU has put in a submission but they certainly have had experiences where health and safety representatives have issues PINs which SafeWork inspectors have then removed and these have been for significant issues such as forklifts that do not work and have faulty lights and beeps and what have you. I could probably take that on notice and get more information to you but time and again I hear from affiliates very worrying stories about SafeWork's lack of enforcement of regulations.

Two matters specific to the Australian Manufacturing Workers Union (AMWU).

### **Matter 1.**

HSR works in a ship building enterprise in Newcastle. Following consultation the HSR issued a PIN on the PCBU. The PCBU sought a review of the PIN as per s100 of the *Work Health and Safety Act 2011*. The inspector conducting the initial review cancelled the PIN due to a technical issue noted as 'formal defect'.

The HSR made an application under s224 for an internal review. In this application the HSR disputed the Inspectors decision under section 98 and s 102(1)(b) of the *Work Health and Safety Act 2011*.

The decision of the internal review supported the issuing of a PIN by the HSR and the reasons why the HSR disputed the Inspectors decision to remove the PIN however the PIN was not re-instated and the health and safety breach was not addressed.

David Henry of the Australian Manufacturing Workers Union was the Official assisting the HSR in this incident.

### **Matter 2.**

The HSR worked in a heavy rail overhaul engineering enterprise in Auburn Sydney. Following consultation with the PCBU the HSR issued a PIN. The PCBU did not comply with the PIN and so the HSR contacted SafeWork referring to s99 of the *Work Health and Safety Act 2011*. The Inspector attends the workplace and cancels the PIN. The HSR then made an application under s224 requesting an internal review of this decision. The HSR stated that the Inspector made a decision to cancel the PIN where no request had been made under s100 to review the PIN, and had the PCBU made a request for a review,

the period of time in which a review can be requested had been exceeded. The Inspector failed to address the contravention made under s99.

The decision of the internal reviewer supported the HSR's position. The PIN was not re-instated. The original contravention was not dealt with.

David Henry is the Official assisting with this matter at the Australian Manufacturing Workers Union.