

INQUIRY INTO THE 2022 REVIEW OF THE WORKERS COMPENSATION SCHEME CFMEU SUPPLEMENTARY QUESTIONS

1. *What role are you aware of does SafeWork NSW currently play when investigating and dealing with a suicide at a workplace, or where there is a strong suspicion that the death was a result of workplace stress?*

The CFMEU is aware of a single incident of SafeWork NSW investigating a suicide in the NSW construction industry. In that situation, the death occurred at the site where the worker had taken his own life by jumping from a crane on the site overnight. The investigation was largely undertaken to confirm whether it was a suicide or an accident. To the best of the CFMEU's knowledge, SafeWork NSW did not investigate whether work was the cause or a significant factor in the worker's mental state.

The CFMEU is unaware of SafeWork NSW investigating any other suicide in the construction industry.

2. *How many investigations are you aware of that SafeWork NSW has undertaken into suicides in workplaces where your organisation has coverage of?*

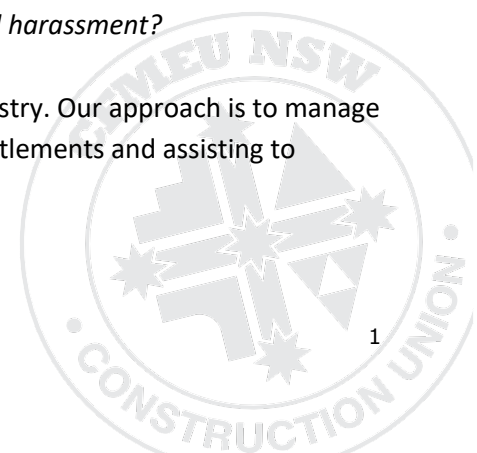
Please see answer to question 1.

- a. *To your knowledge, how have the findings from any investigations been incorporated into public policy, practices, procedures and guidelines?*

The CFMEU is not aware of any investigations or findings that could be incorporated into public policy.

3. *Is data available as to how many suicides there have been in the last five years in workplaces that you have coverage of, directly attributed to workplace issues such as overwork, bullying and harassment?*

The CFMEU does not collect data on the number of suicides that occur in the industry. Our approach is to manage each incident as a single event and assist the families with accessing any legal entitlements and assisting to organise counselling with Foundo Blue for the co-workers left behind.



4. *Is there any data on which workplaces or areas that your organisation has coverage of that has the highest levels of workplace psychological claims?*

The CFMEU does not collect data on which workplaces or areas have the highest levels of workplace psychological claims. The CFMEU's experience in this area indicates that there is no specific sector that is likely to result in a higher incidence of psychological claim. The matters that we have dealt with traverse trade, company size and region.

However, the CFMEU is aware of a particular Sydney based construction site that is currently responsible for several enquiries from workers seeking advice about potential workers compensation claims for psychological injury or potential bullying claims. This site is NSW government project currently being managed by a large well known commercial builder. The toxic work environment on this site has resulted in an exodus of workers from the site. The incidence of concerns from this site is unusual.

- a. *If so, has the data been utilised to influence the development of public policy, practices, procedures and guidelines?*

There has been little to no consultation with the construction industry, particularly the CFMEU and its members, regarding psychological trauma in the industry.

The CFMEU through its partnership with Construction Industry Drug and Alcohol Foundation through the Foundo Blue program, has filled the gap in this area without having to rely on public policy. Since public policy, practices, procedures and guidelines have not been adapted to deal with the unique structure of the industry, the CFMEU and its members have focussed on providing assistance at the time it is needed without having to wait for public policy to catch up.

5. *How should SafeWork NSW continue to implement, regulate, police and report on the observance of the Code of Practice?*

While the CFMEU acknowledges the importance of the Code of Practice, it has yet to be utilised in the construction industry. We are not aware of SafeWork NSW attempting to engage the industry on this important initiative. We do not see the Code of Practice being put into practice in the industry nor do we see SafeWork NSW checking compliance with the Code of Practice.

We would like to see SafeWork NSW engaging with health and safety representatives (HSRs) as to how the Code of Practice could be adapted to the unique structure of the industry and how the Code of Practice can be used in conjunction with the Foundo Blue program that is already a key initiative in our industry.

6. *What role do you think SafeWork NSW should play in workplaces where there are high levels of psychological stress and increased psychological claims?*

SafeWork NSW needs to work closely with SIRA and icare to identify patterns among the workers compensation data to identify sectors that need intervention. Once those sectors are identified, SafeWork should use its investigative powers to uncover the factors that may cause psychological symptoms and use its improvement notices or prohibition notices to influence a change in behaviour.

Once the notice has been issued, SafeWork should attend the workplace to ensure that change has actually occurred, unlike with its current practice where they accept correspondence from the PCBU as sufficient to lift the

notice. This is an unacceptable way to regulate any kind of safety hazard. SafeWork needs to take its monitoring role more seriously and actually attend the workplace to confirm that the changes took place.

If there is a continued failure to comply, then SafeWork should use its regulatory powers to their full potential whether that be enforceable undertakings or public prosecution. Either way SafeWork needs to publicise its regulatory action to ensure the message filters through to other duty holders.

SafeWork NSW needs to abandon its “desktop inspections/audits” in favour of proactive and reactive personal engagement through workplace visits.

- a. *Please specify how you think an effective regulator should deal with the issues including how to prevent injury in the first place and ensure that findings from injuries or deaths are translated into safer workplaces?*

SafeWork often undertakes a “blitz” where there have been repeated examples of a particular types of incidents, whether that be falls from heights or crane incidents. Unfortunately, most of those “blitzes” tend to be more focused on whether the correct paperwork is in place than physically entering the workplace to determine if the correct procedures are being used. Good intentions do not result in meaningful action.

As mentioned above, SafeWork needs to engage with SIRA and icare to uncover patterns in psychological claims and then conduct a “blitz” on high risk sectors as a form of proactive engagement. Upon attending the workplace to ensure compliance, SafeWork should not only check the paperwork but speak to the HSRs and delegates, without the presence of the PCBU, to determine what factors are likely to lead to psychological symptoms. It is naïve to think that SafeWork will be able to identify those factors from the PCBU’s paperwork. From the CFMEU’s experience, most PCBU’s does not create documents that confess to non-compliance, it’s the implementation of the plans that is problematic.

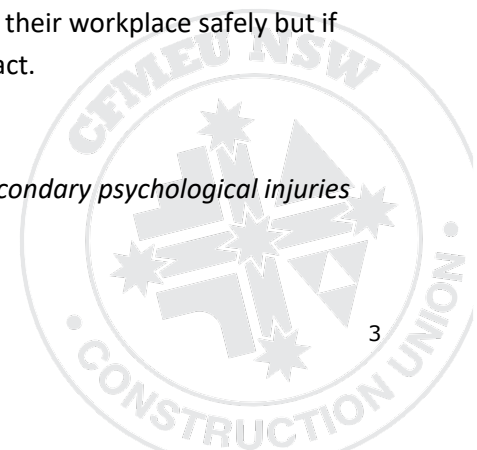
SafeWork also needs to take regulatory action and publicise that action to provide an example to other PCBU’s in the State. A “what not to do” approach can be educative however, SafeWork appears to shy away from such an approach. This regulatory action should lead to extensive monitoring of the workplace to chart the change. This workplace can then be used as a case study to show PCBU’s how to embrace compliance.

- b. *In your opinion, what needs to change for the regulator to become more effective?*

The regulator needs to turn up and be willing to engage with workers and their representatives on all safety hazards. It needs to be willing to enter the workplace and investigate without solely focussing on the paperwork. The regulator needs to issue notices to PCBU’s and follow up on their progress in person. It needs to respond quickly to non-compliance and where appropriate use the full range of regulatory powers at its disposal.

Education is important but the lack of follow through indicates that SafeWork is unwilling to prosecute or penalise non-compliance. SafeWork can tell people how they should manage their workplace safely but if there is no consequence to non-compliance, that instruction has limited impact.

7. *What data is available in workplaces that your organisation has coverage of on secondary psychological injuries that result from dealing with the workers compensation system?*



The CFMEU has fewer psychological claims than other industries due to the proactive awareness campaign and training program Foundo Blue.

Secondary psychological claims in the construction industry do occur but are more likely to be caused by the exit from the workplace than dealing with the system itself. Due to the hierarchical nature of subcontracting in our industry, return to work is often a more of a dream than reality with the builder having the most impact on whether injured workers can return to the construction site.

The lack of return to work options means that workers suddenly find themselves lost, without direction and stuck at home for the first time in their working lives. When your work is physical in nature, based outside, involves long hours and allows you to work with large groups of people, to suddenly have all that ripped away from you can be detrimental to your mental health. To suddenly be confined to indoors, with no work mates to lean on and all this time to fill, a worker can find themselves in a state of despair and listless.

8. *Should SafeWork NSW have the legal capacity to enter residential settings where there has been a workplace accident or death?*

If the residential setting is a workplace where a fatality or accident has occurred, it should be amenable to investigation by the regulator. Many tradespeople and construction workers operate in the residential sector, their injuries and fatalities should be the subject to the same level of investigation and consequential actions as any other workplace death or injury.

9. *What is your experience of SafeWork NSW responses to the psychological pressures associated with essential workers dealing with COVID-19 and the recent bushfires and floods?*

Our experience with SafeWork during the height of the pandemic was not positive whether that be for physical or psychological risks. During the height of the pandemic the CFMEU worked closely with the construction industry to develop appropriate procedures and protocols to keep construction workers safe. This engagement occurred without the involvement of SafeWork NSW.

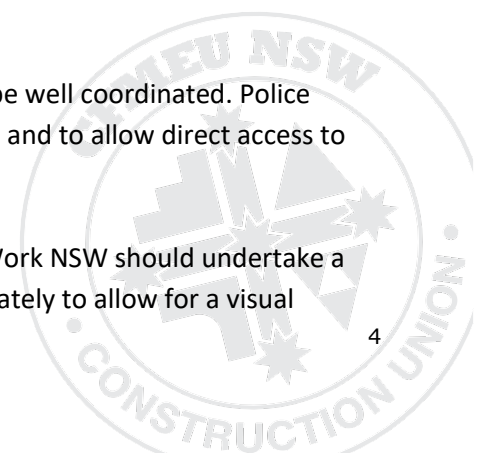
With SafeWork inspectors being redirected to monitor compliance with the various health orders and the remaining inspectors being required to work from home, the industry saw very little of SafeWork NSW during the height of the pandemic. It was quite disappointing.

To the extent that construction workers are considered essential workers, to the best of our knowledge, SafeWork has made no attempt to respond to the psychological pressures of COVID or the recent natural disasters.

10. *Following a workplace death, how should SafeWork NSW and the Police Force work together to deal with the matter?*

Following a workplace fatality, the work of the police and SafeWork NSW should be well coordinated. Police should secure the scene to ensure that there is no tampering of relevant evidence and to allow direct access to the site of emergency services and trauma support services.

Once the site is secured and the cause of death is not as a result of a crime, SafeWork NSW should undertake a thorough investigation of the incident. SafeWork should attend the scene immediately to allow for a visual



inspection while the emergency services are doing their work so that they have a better understanding about how the scene was altered during any rescue efforts. This will also allow SafeWork to commence the investigation as soon as the emergency services depart the scene.

11. *Further to your evidence provided on page 4 of Hansard you state you are concerned about the NSW Government and SIRA's lack of consultation regarding changes to the workers compensation system. How do you envisage any future changes to the workers compensation system should be brought?*

The CFMEU is concerned that in the race to implement the McDougall recommendations the context in which the recommendations were made has not been appreciated. Many of the recommendations in relation to changes to benefits were not presented to all stakeholders before the recommendation was made. There are some recommendations that are strongly opposed although that is not apparent in the McDougall report as they were not presented to all stakeholders as an option.

The comments at the hearing were directed at the consultation regarding the Commutations provisions that were proposed and have now been delayed. McDougall recommended opening commutations up to more injured workers. SIRA then issued a discussion paper on the benefits recommendations with many stakeholders expressing a view that commutations are a complex and important benefit that should be subject to further consultation, or a working group. Despite the stakeholders calling for more consultation, a Bill was introduced which included changes to the commutation provisions. For such an important issue, this was not an appropriate level of consultation.

Regard also needs to be given to the interplay between the different provisions caught up in the McDougall recommendations. Changes to commutations may require changes to the way impairment is calculated which may also impact on medical expenses. They are all intertwined and cannot be addressed in isolation of each other. Too many provisions are dependent on other provisions. A clumsy approach can have unintended consequences and can have a negative impact on injured workers and other stakeholders.

When you consider the McDougall report on a whole, it implies a complete rework of the system which requires careful consultation and drafting. In fact McDougall recommends combining all the legislations, guidelines and regulations to reduce the complexity. There is no point making large changes to the system if you intend to also reduce the complexity.

It is more appropriate for the government and SIRA to convene a working group similar to that from the Parkes Project to consider how all the recommendations can be implemented while also reducing complexity and consolidating the provisions. This piecemeal approach is going to create more problems than solutions. It cannot be done quickly and it should not be rushed.

- a. *Do you have any evidence that the NSW Government is seeking to undertake changes to the workers compensation system in a piecemeal fashion?*

The main example is the commutation provisions which were included in the first draft of the *State Insurance and Care Legislation Amendment Bill 2022*. The current commutations provisions rely on an injured worker meeting a whole person impairment threshold. However, McDougall also recommended changing the WPI system to something more suitable. If the intention is to introduce changes to WPI, changing the commutation provisions now when you may have to change them again later seems counter productive.

- b. *Have you been involved in any consultations that are looking at proposed reforms and improvements to the workers compensation system? If so, can you provide details?*

The CFMEU did make submissions in response to SIRA's discussion paper on the McDougall recommendations. As part of those submissions, there were a number of provisions that we suggested specialised separate consultation.

We were not consulted on the draft of the *State Insurance and Care Legislation Amendment Bill 2022*. Our only consultation on that Bill was with the Opposition.

We are also aware that SIRA has begun the process of "modernising" the workers compensation legislation. We have not been asked to be involved in this process.

- c. *How would psychological claims be dealt with if the workers compensation system processed them with a whole of work?*

The CFMEU does not understand the question.

However, the CFMEU suggests that psychological claims should be managed by specialist case managers who have some expertise in dealing with psychological symptoms. We are aware that EML previously employed specialist case managers for such a purpose, however those case managers experienced burn out. EML could manage the incidence of burn out by drawing on the experience of employers in the social and community services sector.

12. *How have new regulations which allow for longer working hours in the construction industry, including workplaces operating for longer hours on weekends effect the mental health of workers in your opinion?*

The construction industry is characterised by long hours with most workers being required to work six days a week. Construction sites operating to longer hours have put a massive amount of pressure on workers and their families mental health. The new regulations mean that many workers feel they are less able to reject additional hours as they are considered to be "legal" putting pressure on these workers to accept these additional hours.

Construction, Forestry, Maritime, Mining and Energy Union
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