

UNIONS NSW

Standing Committee on Law and Justice

Inquiry into the 2022 Review of the Workers Compensation Scheme

Hearing – Thursday 8 September 2022

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?**

I am not aware of any involvement by SafeWork in any suicides that occur in the workplace, whether there is or isn't a strong suspicion that the death was a result of workplace stress.

In my previous workplace a member of the public took his life in our workplace carpark which was connected to a residential building. SafeWork was not involved even though this was an extremely traumatic workplace incident for all workers.

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

Unions NSW is the peak body for unions in NSW. Unions NSW does not have coverage of workplaces. Our members are affiliate unions.

Unions NSW meets with affiliate members monthly and has posed this question to our affiliates. Out of affiliates in attendance no affiliate has been aware of any investigations into a workplace suicide.

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

Unions NSW has no knowledge of any investigations occurring.

Unions NSW acknowledges the progress and improvements that have been made to legislation providing guidance and mandating the implementation of control measures to eliminate and minimise psychosocial hazards in the workplace. We welcome the Code of Practice Managing Psychosocial Hazards at Work. We also acknowledge and thank SafeWork NSW with providing unions an opportunity to be involved in the consultation process in the development of this Code of Practice.

Unions NSW congratulates the NSW Government on the prompt adoption of the new Model Regulations Clause 55a-d.

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?

Unions NSW cannot find any data. A search on the SafeWork NSW website provides links to mental health awareness information etc. A search of SafeWork Australia provides no results. The Australian Bureau of Statistics provides some studies on suicides however these are not suicides that relate specifically to workplaces or can be attributed to workplace issues.

A. List by calendar year if possible?

NA

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?

Unions NSW is unable to locate any data from Australia.

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

NA

b. If not, who should be collecting and analysing the data?

The State Regulator of workplace safety, SafeWork NSW, should collect and analyse this data. A workplace suicide is a serious workplace incident. It is a workplace fatality, and all workplace fatalities should be investigated by the workplace safety regulator. Investigating fatalities is necessary because failures in systems of work and/or a failure in control measures need to be identified to prevent future workplace fatalities. Collecting and analysing this data would enable both the regulator, workplaces and workers to identify patterns in industries, identify hazards, identify any failures of industries or workplaces to eliminate or minimise hazards, and most importantly work can be undertaken to prevent further workplace suicides.

Currently police respond to these fatalities. With the absence of the Safety Regulator the investigation into the death will not change the systems of work, the culture of the workplace, the failure to adequately implement control measure or prevent further workplace deaths.

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

The Code of Practice should be heavily promoted by SafeWork NSW to businesses, workers and Health and Safety Representatives. Unions NSW is not aware of any strategies to promote the Code of Practice. Unions NSW is aware of affiliate unions promoting the Code of Practice among its members. In most cases when members are shown the Code of Practice they have not had any previous exposure to it. This would suggest that workplaces are generally not actively promoting it, using it, sharing it, providing training on it etc.

A training program similar to the training of Entry Permit Holders and Health and Safety Representatives developed by the SafeWork NSW TACS department would be useful.

Inspectors who inspect workplaces where psychosocial hazards are reported should ensure the PCBU is aware of the Code. Where assistance is needed SafeWork should work with PCBUs and workers to ensure the Code is implemented successfully.

SafeWork NSW has struggled with the regulation and policing of psychosocial hazards. The increase in psychological claims in the workers compensation scheme would suggest psychological hazards are not being effectively controlled. Ideally, the new clause in the Regulations along with the Code of Practice, should assist the Regulator with enforcing the Duty of the PCBU in s19 of the *Work health and Safety Act 2011*.

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 should investigate a workplace where there appears to be a significant pattern of reporting or claims, or a workplace

where a worker, other or union makes a formal complaint to SafeWork NSW.

Where psychological hazards are present and are not controlled in anyway, SafeWork NSW should consider prosecution in some situations.

Unions NSW does not oppose education. Training, education and the provision of information play an important role in the identification and control of hazards. Where it is clear that this method will not change behaviours, or that there are systemic issues that will likely cause imminent or immediate harm, prosecution should be considered.

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 NSW must be a stand-alone regulator with independent oversight. Unions NSW believes the merge of the safety inspectorate into one large regulatory authority was not appropriate.

SafeWork NSW must be adequately staffed with highly trained inspectors across NSW. Unions NSW does not believe it is currently adequately staffed to meet the needs of businesses or workers across NSW.

SafeWork NSW must focus on its core business. Regulating safety in NSW. This means enforcing safety. Its current focus on research, publishing information and providing education is not preventing injuries or deaths. Previously WorkCover NSW provided employers and unions with grants (WorkCover Assist Grant), to undertake research and workplace safety projects. Unions NSW believes this was a good system as it allowed the Regulator to concentrate on

enforcing safety and workplaces could undertake projects and training relevant to their individual needs.

SafeWork NSW must respond to requests for assistance from unions to enforce safety. This includes assisting unions to gain entry to workplaces. And where a concern has been raised, investigating this.

As stated in our submission Unions NSW along with the Australasian Meat Industry Employees Association of NSW met with SafeWork NSW on a number of occasions during 2021 to seek assistance in a matter relating to a large abattoir in NSW where members had raised safety concerns. As a result of raising a safety concern directly with management one worker was dismissed. SafeWork NSW advised the union to take the matter to the Fair Work Commission. SafeWork NSW did not investigate the safety concern. When the union was denied entry SafeWork NSW advised the union to take the matter to the Industrial Relations Commission. Unions NSW and the relevant union simply wanted SafeWork NSW to investigate and resolve the safety concerns raised by workers.

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

As stated in the previous answer the regulator must be a stand-alone regulator that focuses its efforts on enforcing safety.

There must be independent oversight of the regulator. A Committee that operates similarly to this Law and Justice Committee would be a good starting point.

The regulator must be adequately staffed to do this.

The regulator must have the full backing of its executive and the Minister to enforce the WHS Act and Regulations within workplaces. Unions should be given powers to prosecute, as was the case under the previous Act.

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?

Unions NSW does not have data on secondary psychological injuries. Unions NSW coordinates the Injured Worker's Campaign Network. This is a network of approximately 350 injured workers. A large number of these workers have sustained secondary psychological injuries as a result of the workers compensation system.

The network is coordinated by Ruby Bouwsema. Ruby would be happy to discuss this with the Law & Justice Committee and can be contacted

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

Yes. SafeWork NSW must have powers to enter residential settings which are also operating as a workplace.

Unions NSW believes that there is some capacity under s170 of the *Work Health and Safety Act 2011* for an inspector to enter a residence that has also operated as a workplace.

Unions NSW would support the strengthening of this to ensure that Workplace incidents and fatalities that occur in a residence that has also been used as a workplace are thoroughly investigated to prevent further risks and to prosecute where necessary.

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?

Essential workers were under enormous psychological pressure throughout COVID-19. This was particularly so before vaccinations were available. For these workers doing their job meant literally placing their life, and the lives of their loved ones at risk.

Throughout natural disasters and the pandemic essential workers kept the State going. They cared for our health, educated our children, kept our society nourished and ensured public spaces were clean and free from bacteria and viruses. Their work was critical to the ongoing functioning of society, however the rewards for their efforts were minimal.

Where these workers had legitimate health and safety concerns the regulator was absent. All responsibility for health and safety appeared to be transferred to the Health Department, the Premier and Health Minister through the use of Public Health Orders.

While these Orders were necessary to ensure public safety and limit the containment of the virus prior to public immunisation, this did not assist those workers who could not work from home.

The cap on public sector wages has been a kick in the guts for these workers, as well as workers in similar work in the private sector, whose employers have aligned pay increases with public sector wages. As the Teacher's federation has said, 'More Than Thanks' is required. A wage increase that makes life easier for these workers would go a long way in reducing the psychological stress many of these essential workers are still under. It may also encourage workers to stay in work that they are finding increasingly difficult and untenable.

Our hospitals continue to struggle. Covid has not ended. Staff are dangerously overworked.

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

Both the Police Force and SafeWork NSW have important roles to play after a workplace fatality. In some cases the fatality will fall within the Crimes Act and criminal penalties may need to be imposed.

When a fatality occurs in a workplace SafeWork NSW must conduct an investigation into the fatality to assess how the fatality occurred, what control measures were in place, what risk assessments had occurred etc. The current laws are preventative and when they fail it is the job of the regulator to ascertain how they failed. This is vital to preventing further harm.

A. Can you provide details on what you believe their respective and combined roles should entail?

Unions NSW will provide a case example to illustrate how the two should work together.

In 2019 an experienced psychiatric nurse was making his regular home visits. He had a daily list of clients to visit. Unions NSW understands the list of clients was very long.

Home visits provide psychiatric patients with the opportunity to live independently within the community. Psychiatric nurses administer medication in the home environment and provide regular health checks.

In this instance the psychiatric nurse was checking in on a patient as his father had requested a welfare check. It is unclear as to why this welfare check was not conducted by the Police.

The nurse was with a social worker. The workers could not find a parking space in Balmain so the nurse suggested the social worker continue to look for a parking space while the nurse go in to visit the patient. This was because only the nurse could administer medication

The patient stabbed the nurse to death.

The outcome. The Police arrested the patient.

SafeWork did not conduct an investigation. They said they were unable to enter the residence because it was a residence.

The problem with SafeWork's failure to investigate this fatality is the system of work which failed this worker will not be investigated and changed. Nurses continue to enter the homes of patients. A similar situation could arise again. An investigation by the regulator would hopefully bring about a change in the way in which work is performed and would hopefully prevent future injuries or deaths.

The PCBU has not been held to account for placing this worker in a situation which led to his death. Only an investigation by SafeWork followed by penalties would do this.

Unions NSW supports the introduction of Industrial Manslaughter into the WHS Act. Unions NSW does not believe the penalties for causing the death of a worker are enough to incentivise PCBU's to prevent serious workplace injuries or deaths.

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