

Submission  
No 48

**INQUIRY INTO HEALTH IMPACTS OF EXPOSURE TO  
POOR LEVELS OF AIR QUALITY RESULTING FROM  
BUSHFIRES AND DROUGHT**

**Organisation:** Unions NSW

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Inquiry into the health impacts of exposure to poor levels of air quality resulting from bushfires and drought



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## **Inquiry into the health impacts of exposure to poor levels of air quality resulting from bushfires and drought**

### **Introduction**

Unions NSW welcomes the opportunity to make a submission to the Legislative Council's Inquiry into the health impacts of exposure to poor levels of air quality resulting from bushfire and drought.

Unions NSW supports the submissions of our affiliate unions.

Unions NSW is the peak body for NSW Unions. Unions NSW represents approximately 60 affiliated unions comprising over 600000 members. These unions represent a diverse range of workers from both blue and white-collar industries.

Unions NSW is extremely concerned that climate change will continue to create conditions similar to the 2019-2020 summer conditions. The bush fire season will now begin earlier and end later, creating extremely poor air quality for months on end as was predicted in the Garnaut Report in 2008. The Report predicted this would become evident by 2020 and without significant Government action and changes to policy, we are likely to expect similar conditions annually.

Unions NSW affiliates were inundated with calls from members concerned about their own health throughout these months with questions seeking information about safe outdoor working conditions.

Unions NSW has worked at times with the Thoracic Society and it has been made clear to us that that there are many unknowns at this stage that may not reveal themselves for years to come, as workers develop illnesses due to excessive smoke exposure. The Thoracic Society has informed us that there is no safe level of breathing in forms of dust and whilst the lungs can expel some particles we do not know at this stage what the outcome will be of summer 2019-2020 and may not for many years. Of course of this is to continue

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throughout each summer this is extremely concerning and will have grave effects of worker's health.

The Work Health & Safety Act 2011 (The Act). Division 6 – Right to cease or direct cessation of unsafe work, allows an individual worker, s 84 to cease unsafe work. It also allows an elected and trained Health and Safety Representative to direct that unsafe work cease, s85.

### **83 Definition of “cease work under this Division”**

In this Division, "**cease work under this Division**" means:

- (a) to cease, or refuse, to carry out work under section 84, or
- (b) to cease work on a direction under section 85.

### **84 Right of worker to cease unsafe work**

A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

### **85 Health and safety representative may direct that unsafe work cease**

- (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.
- (2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after:
  - (a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work, and

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(b) attempting to resolve the matter as an issue under Division 5 of this Part.

(3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under Division 5 of this Part if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.

(4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).

(5) The health and safety representative must inform the person conducting the business or undertaking of any direction given by the health and safety representative to workers under this section.

(6) A health and safety representative cannot give a direction under this section unless the representative has:

(a) completed initial training prescribed by the regulations referred to in section 72 (1) (b), or

(b) previously completed that training when acting as a health and safety representative for another work group, or

(c) completed training equivalent to that training under a corresponding WHS law.

### **86 Worker to notify if ceases work**

A worker who ceases work under this Division must:

(a) as soon as practicable, notify the person conducting the business or undertaking that the worker has ceased work under this Division unless

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the worker ceased work under a direction from a health and safety representative, and

(b) remain available to carry out suitable alternative work.

### **87 Alternative work**

If a worker ceases work under this Division, the person conducting the business or undertaking may direct the worker to carry out suitable alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties.

Unions NSW is extremely concerned that the above provisions of the Act are not working effectively to protect workers and are in most cases leading to disputation where the Person Conducting a Business or Undertaking determines that the workers are taking unprotected industrial action under the The Fair Work Act.

Anecdotally Unions NSW has always been made aware of disputes between the Electrical Trades Union, The Maritime Union and employees.

The Act is clear that the worker is not stopping work. The worker is waiting to be directed to undertake safe work where they feel the work they have been directed to do is unsafe or is in an unsafe environment.

Unions NSW foresees further disputation over poor air quality during bushfire season and throughout the massive government tunneling projects.

Unlike outdoor work, controls can be put in place to keep air levels at a safe level tunnels. This is not the case during bushfire season.

We propose that PCBU's who engage high numbers of primarily outdoor workers, begin to plan for ongoing situations where there will be days unsuitable for outdoor work and discuss suitable arrangements with the relevant union.

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We are deeply concerned that workers are having to argue with their employer about whether work is safe or unsafe. If a worker does not feel safe they should not be forced to debate this with the PCBU. The worker is able to determine this as an individual. As stated the worker is not refusing to work. The worker is refusing to undertake unsafe work or work they feel may put their health or safety at risk.

Unions NSW thanks you for the opportunity to discuss this important matter and would welcome any opportunity to speak further on this topic.