

TOUCHED BY CHRISTOPHER FOUNDATION

Submission for the Independent Review of SafeWork NSW by the Hon. Robert McDougall KC

1.0 About our Foundation

Touched by Christopher was established in July 2019 after the tragic death of Christopher Cassaniti, who was crushed by a collapsed scaffold at a construction site in Macquarie Park. Christopher's death touched many people in the community and the parents, Robert and Patrizia Cassaniti were overwhelmed by the outpouring of financial and emotional support. They started the foundation to give back to help families in the same situation that have lost a loved one in the construction industry.

We are a registered charity and foundation that allows us to help families, who have lost a loved one after a workplace death in New South Wales.

In this capacity, we have had extensive dealings with Safework NSW and other regulators across the country.

2.0 The performance and effectiveness of SafeWork NSW's compliance and enforcement functions.

2.1 Introduction

Touched by Christopher Foundation welcomes the opportunity to make a submission to the Safework Review.

While it is understood that:

'specific cases and detailed issues raised can be considered as part of the Review, the Review will not make determinations relating to specific work health and safety cases. The Review's focus will be on identifying deficiencies and recommendations at the organisational level.'¹

This submission will look at lessons that can be learnt from the death of Christopher.

It primarily focuses on incidents at the Macquarie Park site prior to Christopher's death and whether Safework NSW response to these clear safety issues at the site was adequate.

While we acknowledge that safety must be the responsibility of the PCBU's involved, it is our belief, based on evidence outlined below, that if Safework NSW had regulated Christopher's workplace adequately, that he would still be alive today. Tragically, it is clear from the *Sydney Morning Herald's* and NSW Government parliamentary hearings that examined other fatalities where Safework had clear information about multiple serious workplace safety concerns, this is not the only example where the regulator should have intervened earlier and more effectively to oversee workplace cultures and thus save lives.

¹ "Terms of Reference – Independent Review of Safework NSW by the Hon Robert McDougall KC, accessed online 7 November 2022.

Safework NSW interactions with Ganellan Pty Ltd and other subcontractors at the Macquarie Park site where Christopher died were examined on 28 October 2022 at an NSW Parliament supplementary estimates hearing, undertaken by Legislative Council Committee 4 (Customer Services and Natural Resources). This hearing was called after Safework NSW failed to adequately answer questions asked at a estimates hearing on 7 September 2022.

This hearing also followed up on issues highlighted by Adele Ferguson in the *Sydney Morning Herald* during October 2022, including issues with Safework's IDMP process and inability of the regulator to keep sites safe despite notifications or requests for service indicating serious safety issues.² At the hearing the Legislative Council Portfolio Committee 4 focused on:

- Events leading up to the death of Christopher Cassaniti on 1 April, 2019
- The failure of Safework to investigate the serious Cooma reservoir explosion on 4 January 2020
- Allegations of bullying and concerning results from the People Matters Surveys for Safework NSW
- Aussie Skips fatality on 24 May 2018
- Numbers of inspectors at Safework NSW
- Issues with the IDMP process

Some of these issues will be briefly commented on following Section 3.0.

2.2 Issues with incomplete Information given by Safework NSW to the hearing regarding interactions at Lachlan's Line site.

Before analysing information about the incidents at the Macquarie Park Lachlan's line site before Christopher's death, it is important to look at the implications of the incomplete information Safework NSW gave to the committee before the 28 October hearing commenced.

The hearing in part focused on information gained through 'further supplementary questions' asking Safework NSW to provide information about their actions and timing of these actions following any 'Requests for Service' (RFS) or notifications at Ganellan's Macquarie Park site.³

Answers to these further supplementary questions were released prior to the hearing on 20 October 2022 and the relevant section found in Attachment 1 of this document.⁴ The questions were answered in a table format and outlined a number of serious incidents that occurred on the site from 30 July 2018.

² "Workplace safety scandal: auditor-general launches six-month investigation into failings", SMH, October 14, 2022.

<https://www.smh.com.au/politics/nsw/workplace-safety-scandal-auditor-general-launches-six-month-investigation-into-failings-20221013-p5bphh.html>, "Safety watchdog ignored warnings at site where worker died", October 29, 2022, <https://www.smh.com.au/business/workplace/safety-watchdog-ignored-warnings-at-site-where-worker-died-20221028-p5btto.html>

³ Budget Estimates 2022-23, Further Supplementary Questions, answers due by 20 October 2022 <https://www.parliament.nsw.gov.au/lcdocs/other/17914/Answers%20to%20further%20supplementary%20questions%20and%20attachments%20-%20Fair%20Trading.pdf>

The answer only outlined notifications (coded in the table with a prefix 2- before the WSMS number) in the year before Christopher died and unfortunately failed to answer questions regarding:

- i. when inspections occurred (as requested in supplementary question 10ii.)
- ii. any requests for service, asked in question 10 (which are coded in the Safework WSMS system with a prefix 1- before them).

Safework NSW's failure to answer these questions meant a fuller picture of their response to safety incidents onsite was not able to be investigated at the hearing.

The fact that no information was given as to how soon inspectors went to the site after an incident would have allowed committee members to carefully examine how soon Safework inspectors were able to follow up to the incidents and determine what information would be available to inspectors when investigating incidents.

Safework NSW highlighted 5 serious notifications that occurred on the Ganellan site from 30 July 2018.

After the inquiry 3 further notifiable incidents and 1 request for service became apparent when the opposition persisted and asked for more information *after* the hearing. This information can be found in Appendix 2)⁵ This information would never have come to light had they not done this.

One of these notifications that occurred on 26/9/18 only sent to the committee after the hearing, was again to do with scaffolding issues where a component wasn't braced properly – an issue that directly led to Christopher's death in April 2019, information that would have been important for the hearing to examine.

Safework stated that 'the additional incidents were identified through searching variations to the site address description in the data repository for SafeWork NSW'.⁶

It is concerning that Safework were unable to find these notifications prior to the 28 October hearing and points to issues with their database. It may have been an issue that the PCBU has described in different way in their table that has come directly from their database. Their table (answers to question 10) refers to 'GN Residential Constructions Pty Ltd, and also Ganellan Pty Ltd. If Safework cannot easily find data about worksites, it is likely they are unable to gain a holistic understanding of a site over time.

It appears further incidents at the site were never notified to Safework NSW. These have been found in a preliminary examination of the 2022 S052 Safework NSW call for papers. Due to the number of documents in the SO52 we are unable to examine all the papers and believe more unreported incidents on the site could be in those documents.

Furthermore, after being questioned at the inquiry about why they had given no information about requests for service at the site, Safework took the question on notice, and submitted its answers on 28 October 2022⁷ and indicated that there was only one request for service at the site in the year before the fatality. No information was given as to who made this request for service – information which is also important to ascertain what was happening in terms of reporting. It is interesting that on a site which clearly was marred by numerous safety breaches that only one request for service was received. This correlates with

⁵ See Question 2, Supplementary Questions, answers received 24 November 2022.

⁶ Ibid.

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<https://www.parliament.nsw.gov.au/lcdocs/other/18051/Answers%20to%20Questions%20on%20notice%20-%20Fair%20Trading%20supplementary%20-%20received%2024%20November%202022.pdf>

information given to the Cassaniti family after Christophers death, that workers were too scared to report serious safety incidents for fear that they would lose their jobs.

It also highlights the fact that Safework appears to be reliant on responding to individual external notifications or requests for service to ascertain if PCBU's are safe or not. It is recommended that where there is compelling evidence of a lax safety culture at a site, Safework should undertake inspections of sites whether they are requested to attend or not through a request for service or notification.

Finally, the lack of full information given to the hearing by Safework raises questions as to what information was given to lawyers and barristers working on the Safework prosecutions with regards with Christopher's death. A judge would be far more likely to hand down a stronger fine if they were fully cognisant of the history of risky workplace practices at a site. We would like to know whether Safework gave a full historical account of workplace incidents to their legal team when they were working on these cases.

2.3 Summary of incidents before Christophers Death

A table highlighting information about incidents in the year before Christophers death is outlined below. This table includes all the information given before during and after the PC4 October hearing where the Committee questioned Safework about the Lachlans line site. It also includes information gained from examining the Safework S052 call for papers, which is highlighted.

Date 2017	Incident	Safework Response/Inspection
November 22, 2017	<p>██████████ from ██████████ emails letter draws attention to grave concerns" regarding the company's "approach and performance in respect of the health and protection of construction workers', the "severe nature of these issues and poor response from ██████████" and requests the company engage safety experts and "install appropriate fall protection".⁸</p>	
Friday 1 December 2017	<p>██████████ (Development director ██████████ writes to Safework "As mentioned, ██████████ is greatly concerned that a major incident, or worse, a fatality may occur from ██████████ poor (workplace health and safety) management practices"</p> <p>SMH article above.</p>	

⁸ ['A fatality may occur': letter reveals concerns over building site where teenager died \(smh.com.au\) May 25 2019 article.](http://www.smh.com.au/news/a-fatality-may-occur-letter-reveals-concerns-over-building-site-where-teenager-died/2019/05/25)

Monday 4 December 2017	<p>██████████ Development director ██████████ ‘talks’ to ██████████ (Safework inspector) relating to WHS issues at site, discusses providing more information about issues.⁹</p> <p><i>Was this talk onsite.</i></p>	Inspection?
Tuesday 5 December 2017	<p>██████████ performs an inspection on Lachlans line site.</p> <p>Emails ██████████ ██████████ WHS Safety Officer with the report of his site inspection. Mentions inadequate fall protection. No change from last inspection. Says will look at traffic control on Wed morning.</p>	
Wednesday 6 December 2017	<p>██████████ WHS Safety Officer ██████████ performs an inspection at lunchtime. Found ‘serious safety concerns on site’. Writes up report which is sent to ██████████ containing 39 issues with the ██████████ site.</p> <p>Photos show no traffic control, protection from outrigger, workers in excavation not using hard hats or protection from falling objects, no stretcher access, improper fall protection.</p> <p>Contacted Ganellan safety officer who take possession of site from 11 December.</p>	<p>According to Govt ‘a Safework NSW inspector did attend the site on 6 December 2017 following a request for service from ██████████ (answers to further supplementary questions).</p> <p>3 notices were given¹⁰ – falls from heights due to incomplete barriers etc at Halifax St end.</p>
Friday 8 December 2018	<p>██████████ emails ██████████ Safework inspector. Refers to two inspections they have performed.</p> <p>“I would appreciate the opportunity to meet with you on site again. Can you let me know the time when you are available...”/</p> <p>.....“I’m cogniscent we have an opportunity to set the bar high from the outset with Ganellan. Perhaps you might</p>	

⁹ Information gained from SMH journalist via GIPA who gave this to the Cassaniti family and is available on request.

¹⁰ Answer 24 Supplementary Questions for hearing on 28 October 2022

	<p>give me a call to confirm the timing?"</p> <p>Mentions ██████████ correspondence in response to ██████████ raising concerns, however unsafe practices remain.</p> <p>Asks for an opportunity to meet again on site. Asks for availability, next Thursday or Friday morning (14th or 15th December).</p>	
11 December 2017	Ganellen takes possession of site.	
Wednesday 13 December 2017	<p>██████████ Safework replies to ██████████ copies in ██████████ (WHS) and ██████████ Safework.</p> <p>Thanks them for offer to meet on site, however says will 'complete this matter' and ensure compliance with identified issues.</p> <p>If you have further concerns contact Safework, or a general question, contact ██████████</p>	██████████ <i>does not appear to mention he has inspected site and issued notices</i>
14 December 2017	A Safework inspector attended the site ¹¹	No information given on what this was for.

Date	Incident	Safework response
2018		Safework states no Safework visits in Feb 2018. ¹²
Friday 2 February 2018	██████████ saying he's heard ██████████ at Safework has attended the site recently – wondering if any actions Safework needed Ganellan to comply with.	
April 2018 (info re year before death)		According to initial Government answers 'there were no relevant RFS or notifiable

¹¹ Question 26, supplementary questions due 24 November 2022.
<https://www.parliament.nsw.gov.au/lcdocs/other/18052/Answers%20to%20Supplementary%20Questions%20-%20Fair%20Trading%20supplementary%20-%20received%2024%20November%202022.pdf>

¹² Question 11, Further supplementary Questions, due by 20 October 2022.
<https://www.parliament.nsw.gov.au/lcdocs/other/17892/Compiled%20further%20supplementary%20questions%20-%20PC%204%20-%20Fair%20Trading%20-%20Budget%20Estimates%202022-2023.pdf>

		incidents between April till July 2018. ¹³
3 May 2018	Safework receives a Request for Service ¹⁴ Report to Safework that a crane was being operated with a load over the public road and traffic with out there being a designated dropping zone. ¹⁵	
10 May 2018	Inspection	Safework inspection for the 3 May RFS – 7 days after the incident.
30 July 2018	Concrete malfunction notification – hit a concreter in the head.	<i>3 inspections (when did these occur)</i> 1 prohibition notice to cease use. 4 Improvement notices (<i>what for? What was cancelled and why?</i>) 2 s171 notices. All notices were complied with.
24 September 2018	Crane jib collision with dropped rope of luffing crane.	2 inspections -no dates given 2 improvement notices. What were the revised system of work requests?
26 September 2018	2 scaffolders identified bowing scaffold. Work ceased and the area was sealed off. “Scaffolding engineer found a component wasn’t braced properly”.	Inspector visit – when? No notices ‘as PCBU had conducted a review and had implemented control measures by the time of the inspection. (What were they?) <i>This information was not given to original questions and only found in table of 24 November 2022.</i> ¹⁶

¹³ Question 27, supplementary questions due 24 November 2022.

¹⁴ Question 28, Ibid.

¹⁵ This information was only given in questions answered on 24 November 2022, see Question 1.

¹⁶ See Supplementary Questions for 28 October 2022 hearing – where this information is missing. See page 3. <https://www.parliament.nsw.gov.au/lcdocs/transcripts/3074/Transcript%20->

20 November 2018	Loading platform prop fell 5 levels.	<i>Inspector attended – when?</i> <i>Why no other notices?</i> S171 notice (for information eg, engineering details/installation procedure). at very least should have been a s195 prohibition).
12 December 2018	Worker falls 2 m from scaffold	This information is from the Safework S052. ¹⁷ There appear to be no notification to Safework regarding this incident. A toolbox meeting occurred on 13 December
13 December 2018	Piece of timber falls between scaffolding and building and hit ground on level 10 and then a bricklayer causing small bruise to his shoulder. Work was ceased.	Inspector visit (when?) S155 notice. <i>This information was not given to original questions and only found in table of 24 November 2022.</i> ¹⁸
17 December 2018	Scaffold modified by subcontractors	This information is from the Safework S052. ¹⁹ There appear to be no notification to Safework regarding this incident.
20 December 2018	Concrete line exploded and whipped around, injuring workers. Minor injuries sustained.	Inspector visit (when?) 3 Improvement notices (was this the same company from incident of 30/7/218)
21 January 2019	Bricklayer fell from scaffold after a spreader bar was removed.	Inspection – <i>When did it occur?</i> 1 Improvement Notice re incomplete scaffold S171 notice – what for? <i>How far did he fall? What was</i>

%20Portfolio%20Committee%20No.%204%20-%20Fair%20Trading%20-%2028%20October%202022%20-%20CORRECTED.pdf

¹⁷ Information from Safework SO52, Tranche 2, Box 5, c(iv) 1043.

¹⁸ See Supplementary Questions for 28 October 2022 hearing – where this information is missing. See page 3.

<https://www.parliament.nsw.gov.au/lcdocs/transcripts/3074/Transcript%20-%20Portfolio%20Committee%20No.%204%20-%20Fair%20Trading%20-%2028%20October%202022%20-%20CORRECTED.pdf>

¹⁹ Safework S052, Tranche 2, Box 5, c(iv)1012.

		<i>the injury</i>
1 April 2019	Christopher dies. Another worker also seriously injured	
26 May 2019	SMH article by Kylar Loussikian	
May/June 2019	Safework statement on SMH article and Safework's role. See appendix 3.	

2.4 Analysis of Incidents and Safework NSW response

2.4.1 Safeworks assertion that Christophers death was not foreseeable.

Touched by Christopher Foundation do not agree with Safework NSW's assertions at the hearing where Safework disputed that the hazardous overall safety culture at the Macquarie Park site was highly likely to lead to injury or death. This also appeared to be the case in their statement on their website following media coverage of Christophers death which can be found in Appendix 3. This is even more surprising given Judge Scotting also asserted this fact in the *Safework v Gannellen* case.

The transcript quoted below highlights Safeworks stance:

The Hon. ANTHONY D'ADAM: As we touched on earlier around the question of safety culture, when you go on to a site to do compliance work, **isn't it appropriate that the inspector takes into account the overall safety culture? Rather than looking at this particular incident, this particular safety breach, shouldn't you be taking a look at the holistic picture and saying, "Hang on, there's not sufficient vigilance being applied at this site in relation to safety matters"?** The culture is clearly an issue here that, overall, presents a hazard. Is that something that the inspectors take into account?

.....The Hon. ANTHONY D'ADAM: I suppose what I am getting at is that someone died on this site, as you well know, and a number of safety issues have been identified by the regulator. **Isn't it fair to say that that your risk-based, preventative approach catastrophically failed in this situation?**

.....MEAGAN McCOOL: As I mentioned, the incidents prior to the lead-up to the scaffolding collapse **didn't provide an insight that that was foreseeable.** The PCBUs at that time, as I said, were managing controls, **there were no incidents in relation to scaffolding. It was a tragic incident** that, obviously, we take very seriously, including the work we've done with the families. But in relation to making that, I guess, allegation, there's no information that would support, as I said, that we could foresee that there was going to be that scaffolding collapse two years after the [REDACTED] matter or in the incidents prior.

.....The Hon. ANTHONY D'ADAM: Wasn't there an incident on 22 January 2019 where a bricklayer fell from the scaffold as a result of the scaffold not being properly secured?

MEAGAN McCOOL: There was a spreader bar that had been removed, but that's not indicating that the scaffolding wasn't erected. It was a worker had removed a component.

The Hon. ANTHONY D'ADAM: Isn't there something wrong with the compliance approach being taken by SafeWork if you're focussing on the specific incidents rather than looking at the whole safety environment at a site?

MEAGAN McCOOL: We do look—we do a full site inspection. So, in terms of while we're looking at the incident, we do look at other things there. Again, in the information we have, there's no information to suggest that we weren't doing full inspections or looking at other things than what the incident related.....²⁰

Notwithstanding evidence given after the hearing regarding further issues with the scaffolding, surely the overall culture of the site and ongoing serious safety issues should have led Safework to investigate the site, or shut it down.

Information from the Safework SO52 shows that an inspector who looked at the sites safety records would have also seen that tampering with the scaffold was an ongoing issue. Even without doing this the history of dangerous incidents should have set the alarm bells ringing. Even though inspectors did follow up the incidents (and we are not given anyu information about how far after the incidents these inspections occurred) compliance actions did not appear to lead to any cultural changes on the site.

Safework's response to follow up questions about their statements at the inquiry are also concerning, stating they were satisfied the site was managed in accordance with a national triage model, copied out below:

Q 32. "Given the serious nature of the notifications in the year before Christopher Cassaniti tragic death, is the regulator satisfied that they were dealt with in an appropriate manner, for example issuing section 171 notices following a loading platform falling five levels on 20 November 2018?"

A 32. The notifications were managed in accordance the National Triage Decision Making model, the SafeWork NSW Categorisation matrix, and the NSW High Profile Events matrix. In the timeframe available to respond, SafeWork NSW has been unable to conduct a review of the incident responses to form a view on the appropriateness or otherwise of the Inspector response."²¹

If this is how the triage decision making model works, it needs to be reassessed. Overall site culture must be taken into account as well as the specific incidents themselves.

2.4.2. Timeliness of inspections after incidents reported

It is concerning that the request for service regarding a crane operating dangerously was only followed up 7 days after the RFS. ²² Safework did not initially admit this when they answered the question taken on notice:

"ANSWER: In the year before the fatality, one Request for Service (RFS) was received by SafeWork NSW on 3 May 2018. This resulted in an onsite visit by an Inspector". ²³

²⁰ Page 5 and 6 hearing transcript 28 October 2022.

<https://www.parliament.nsw.gov.au/lcdocs/transcripts/3074/Transcript%20-%20Portfolio%20Committee%20No.%204%20-%20Fair%20Trading%20-%2028%20October%202022%20-%20CORRECTED.pdf>

²¹ Question 32, Supplementary Questions received 24 November 2022.

²² See question 1 a and b, Ibid.

After being asked again about requests for service, Safework finally answered that:

“In the year before the fatal workplace incident involving Mr Christopher Cassaniti, one Request for Service (RFS) was received by SafeWork NSW in relation to the workplace. The RFS was received on 3 May 2018. (a) The RFS concerned an allegation of a crane being operated with a load over the public road and traffic without there being a designated dropping zone. (b) In response to the RFS, a SafeWork NSW Inspector conducted a site inspection on 10 May 2018. On the basis of that inspection, **the allegations made in the RFS were not substantiated. Consequently, no further action was taken.**

It is not clear whether the RFS was not substantiated because the visit only occurred a week after the dangerous incident was reported.

This is in line with other answers given to previous estimates hearings about their response to requests for service for silicosis. See for example Safework’s answer to a question at estimates in March 2022 about a RFS about dry cutting:

“On 16 February 2021 SafeWork NSW received a complaint from a member of the public regarding dry cutting of an engineered stone benchtop on a public street in Pymble. The Request for Service (RFS) was registered as Category 2 – High. On 20 February 2021 an Inspector visit was conducted to the residential construction site that was the subject of the complaint. A benchtop had been installed *and no dry cutting was taking place at the time.* Business details for the company contracted to provide the benchtop were obtained. The Inspector visited the business, observing the factory was clean; with wet fabrication methods, ventilation booths, appropriate respiratory protection equipment (RPE), safety data sheets and safe methods of clean-up. Workers had been health screened and fit-tested. No notices were issued.²⁴

It is ridiculous for Safework to assert that no dry cutting was occurring at the time given the inspection took place 4 days after the benchtops were cut. This looks like a regulator who is trying to cover up the fact that they did not attend the incident in time to give the PCBU a fine for seriously risky workpractices. Even more concerning is the fact is the Safework icare SO52 on silicosis revealed the exact same PCBU received an improvement notice for not providing workers with appropriate PPE after this incident occurred.

Safework should report on how soon after an incident they inspect.

2.4.3 Lack of understanding of key WHS concepts by senior Safework personnel at the hearing.

Touched by Christopher is concerned by the lack of understanding of Safeworks coding and key information that was shown in the October hearing. For example when asked about a reference number beginning with a 2 on the table outlining incidents at the Macquarie Park site Safework executives said the number referred to the incident’s category which is incorrect.

The Hon. ANTHONY D'ADAM: You can see that there's a code, a reference number. Can you tell me what the reference number means? MATTHEW PRESS: That'd be the reference number taken from the WSMS reporting system. The Hon. ANTHONY D'ADAM:

²³

<https://www.parliament.nsw.gov.au/lcdocs/other/18051/Answers%20to%20Questions%20on%20notice%20-%20Fair%20Trading%20supplementary%20-%20received%2024%20November%202022.pdf>

²⁴ Questions on notice, page 9,

<https://www.parliament.nsw.gov.au/lcdocs/other/17004/Responses%20to%20Questions%20taken%20on%20Notice%20-%20Minister%20for%20Small%20Business%20and%20Minister%20for%20Fair%20Trading.pdf>

What does a reference number that begins with a "2" mean? MATTHEW PRESS: I couldn't tell you. I'd have to hand over to Ms McCool, who deals with that detail. MEAGAN McCOOL: It would generally relate to the category, so it's a category 2.²⁵

Safework executives who were on the IDMP panel did not know the prefix 2-before the WSMS number referred to notifications while those with a 1 referred to a RFS. Thus they were not able to tell the inquiry that no requests for services were given to the hearing, something that should have been obvious to them when looking at the Table that was being examined at the time (found in Appendix 1).

The Hon. ANTHONY D'ADAM:Mr Press, were there no requests for service?
MATTHEW PRESS: You'll have to allow me time to look through my files, Mr D'Adam.²⁶

It is also of concern that Safework executives at the same hearing were also were not able to answer serious questions about how the IDMP worked particularly their statements that the Cooma watertank explosion was not investigated because there was no injury or death as a result of the catastrophic failure of the tank— a statement that shows a fundamental misunderstanding of the IDMP's risk based framework.

It seems clear that the executives on the IDMP panel should have qualifications which give them the ability to deal with WHS matters. None of the senior managers appear to have a diploma of Government Inspection and Senior Managers are not required to have a Certificate 4. We are concerned that those sitting on the panel, who are making major decisions about what should be investigated or prosecuted do not have the qualifications or experience to do so.

2.4.4. Lack of visits outside of notifications or requests for service.

The issues around safety issues at the Macquarie Park site before these dates examined at the hearing were examined in the previous inquiry. This was for the period when [REDACTED] managed the site and was highlighted in emails obtained via GIPA showing [REDACTED] CEO of [REDACTED] and also safety specialists working for [REDACTED] were alarmed at lax site safety, e [REDACTED] with regards to risks around falls from heights and emailed Safework with concerns because they wanted to ensure that when Ganellan took possession of the site on 11 December 2017 that they should immediately rectify all safety concerns.

It is concerning that given these concerns were raised by [REDACTED] that Safework NSW did not appear to visit the site between early December 2018 and May 2018. Doing so would have allowed them to ascertain whether the site was being run in a safe way. As noted above, it appears that Safework only visited after a notification or request for service occurred. Safework should ensure they should visit sites where there is clear evidence of a poor safety culture and ensure the culture is cleaned up.

3.0 Poor culture at Safework – turnover of Inspectors

It would appear from multiple inquires that there is an issue with bullying and workplace culture at Safework with a high turnover of inspectors. It is important that Safework answer the following questions asked at the October Hearing:

²⁵ <https://www.parliament.nsw.gov.au/lcdocs/transcripts/3074/Transcript%20-%20Portfolio%20Committee%20No.%204%20-%20Fair%20Trading%20-%2028%20October%202022%20-%20CORRECTED.pdf>, page 4.

²⁶

<https://www.parliament.nsw.gov.au/lcdocs/other/18051/Answers%20to%20Questions%20on%20notice%20-%20Fair%20Trading%20supplementary%20-%20received%2024%20November%202022.pdf>

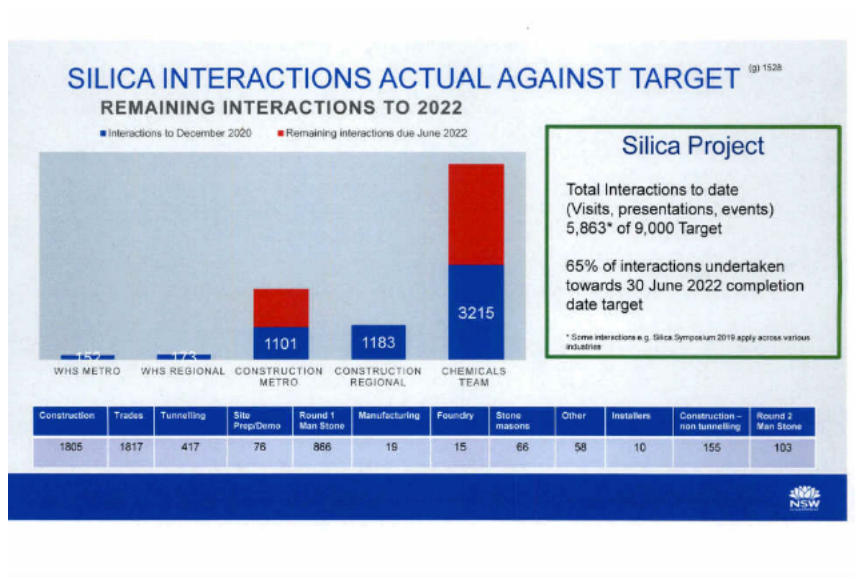
The Hon. PETER PRIMROSE: How much money have you spent on external investigation reports into bullying or workplace culture?

Answer taken on notice: 'Budget is allocated into the central DCS budget People and Culture unit to deal with bullying investigations. Figures are not available at the Safework level.'²⁷

People Matters surveys at the Safework NSW level that were not given to the hearing should be examined by the Safework Inquiry. We also question whether it is the case that Safework inspectors who want to have bullying allegations examined by the Resource Regulator need permission for an investigation to occur from Safework executives first.

4.0 Working to targets rather than inspections.

Information from the Safework silica S052 shown below has revealed that Safework personnel are required to work towards targets for 'interactions' which are defined as visits, presentations or events. We question whether working to targets is a good indication of Safework NSW's effectiveness. It also could place needless pressure on an already stretched workforce to meet targets that do not necessarily make workplaces safer.



5.0 IDMP Process

It is concerning that it has taken the October hearing and investigation by Adele Ferguson here to show the clear issues with the IDMP. The IDMP does not appear to have any workable oversight mechanism for their decision making. We believe there should be external oversight of the IDMP rather than oversight coming from within Safework executive itself. The review into the IDMP should be undertaken by external consultants, rather than internally. The Safework inquiry itself needs to look carefully into the basis for IDMP decisions to ignore inspector recommendations to investigate incidents, for example the

²⁷ Questions on Notice for Safework estimates on 28 October 2022.

<https://www.parliament.nsw.gov.au/lcdocs/other/18051/Answers%20to%20Questions%20on%20notice%20-%20Fair%20Trading%20supplementary%20-%20received%2024%20November%202022.pdf>

Cooma tank explosion incident. It is of great concern that the October hearing resulted in Safework admitting that the IDMP framework has not been followed and believe it is important to know how often this has occurred as highlighted in answers to questions on notice below:

“The IDMP Framework provides a mechanism to overturn decisions made by the IDMP in relation to fatal workplace incidents. Where an Inspector has recommended further investigation with the view of criminal prosecution arising from a fatal workplace incident, and the IDMP does not support the recommendation, the matter is referred to the Deputy Secretary, Better Regulation Division for determination, in consultation with the Executive Director, Compliance and Dispute Resolution and Executive Director, Investigations and Enforcement. **There is at least one recent example where the referral to the Deputy Secretary has not occurred.** This departure from the framework will be examined as part of the review commissioned by the Deputy Secretary into the IDMP”.²⁸

6.0 Conclusion

We believe the Independent Review of Safework NSW is an important step in ensuring NSW workplaces are safe. We are happy to speak further should the review require clarification or further information and can be contacted at info@letstalkaboutsafety.com

²⁸ Page 6

<https://www.parliament.nsw.gov.au/lcdocs/other/18051/Answers%20to%20Questions%20on%20notice%20-%20Fair%20Trading%20supplementary%20-%20received%2024%20November%202022.pdf>

APPENDIX 1.

(a) and (b):

Date / Place*	Reference number Entities	Issue	Outcome
30/7/2018	[REDACTED] and GN Residential Constructions Pty Ltd	Incident. A concreter was pouring into a column when the concrete hose connection malfunctioned, hitting him in the head.	Inspector attended site on 3 occasions. Notices issued: <ul style="list-style-type: none"> • 1 x Prohibition Notice to cease use of the plant • 4 x Improvement Notices (1 was cancelled) • 2 x Section 171 notices • regarding managing risks of flying objects associated with plant, maintenance of plant and to produce document/ item. All notices were complied with.
24/09/2018	[REDACTED] Ganellen Pty Ltd and [REDACTED]	Incident. Hammerhead crane jib collided with the dropped rope of a luffing crane. Minor damage to cranes. No injuries.	Inspector attended site on 2 occasions. Notices issued: <ul style="list-style-type: none"> • 2 x Improvement Notices issued to revise systems of work and the crane was shut down until full inspections were completed by independent engineers. All notices were complied with.
20/11/2018	[REDACTED] Ganellan Pty Ltd	Incident. Loading platform on building was being extended to relocate. Lost control of one of the props and it fell from L5 to the ground below. No injuries.	Inspector attended site. Section 171 Notice issued to produce documents. Notice was complied with.
22/1/2019	[REDACTED] GN Residential Constructions Pty Ltd	Incident. A bricklayer fell from the scaffold. Identified that the spreader bar had been removed.	Inspector attended site. Notices issued: <ul style="list-style-type: none"> • 1 x Improvement Notice regarding incomplete scaffold • 1 x Section 171 Notice to produce documents. All notices were complied with.

1/4/2019	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> GN Residential Constructions Pty <div style="background-color: black; width: 100px; height: 15px; margin-top: 5px;"></div>	Fatal Incident that was the subject of a prosecution.	Inspectors attended. Notices issued: <ul style="list-style-type: none"> • Prohibition Notice issued • Section 171 notice to produce document/item • Section 178 notice receipt for item. SafeWork NSW immediately commenced investigation through its Investigation and Emergency Response Team.	
<p>11. The SafeWork NSW records do not show _____ attending the site (25-27 Epping Road Macquarie Park) in February 2018. A search of this workplace address does not record any SafeWork NSW visits during February 2018.</p> <p>(a) Refer to the response to Question 11.</p>				

Aussie Shine incident

(Budget Estimates 2022/23 Fair Trading Further Supplementary Questions received before inquiry)

<https://www.parliament.nsw.gov.au/lcdocs/other/17914/Answers%20to%20further%20supplementary%20questions%20and%20attachments%20-%20Fair%20Trading.pdf>

APPENDIX 2

Date received	Subject of Notifiable Incident	How did SafeWork respond?
30/07/2018	A concreter was pouring into a column when the concrete hose connection malfunctioned hitting him [REDACTED]	Inspector response with 3 site visits. Notices issued: <ul style="list-style-type: none"> • 1 Prohibition Notice • 4 Improvement Notices • 2 Section 171 notices issued to produce documents. All notices were complied with.
22/09/2018	Hammerhead crane jib collided with the dropped rope of luffing crane. Minor damage to cranes. No injuries.	Inspector response with 2 site visits. Notices issued: <ul style="list-style-type: none"> • 2 Improvement Notices issued. Both Notices were complied with.
26/09/2018	2 scaffolders identified that a scaffold on site was bowing. Work was ceased and the area was sealed off. Scaffolding engineer found a component wasn't braced properly.	Inspector response with site visit. No notices served as the PCBU had conducted a review and had implemented control measures by the time of the inspection.
20/11/2018	Loading platform on building was being extended to relocate. One component of the platform (prop) fell from Level 5 to the exclusion zone below during the lifting process. No injuries.	Inspector response with site visit. Notices issued: <ul style="list-style-type: none"> • Section 171 Notice issued to produce documents. Notice was complied with.
13/12/2018	While workers were stripping timber on level 13, a piece of timber fell between the scaffolding and the building and hit the ground on level 10 then a bricklayer causing a [REDACTED] Work was ceased.	Inspector response with site visit. Notices issued: <ul style="list-style-type: none"> • Section 155 Notice issued to produce documents. Notice was complied with.

20/12/2018	A concrete pour was occurring on site. The concrete line exploded and whipped around injuring workers. Workers were assessed at a [REDACTED] with advice that minor injuries were sustained.	Inspector response with site visit. Notices issued: <ul style="list-style-type: none"> • 3 Improvement Notices issued. All notices were complied with.
21/01/2019*	Bricklayer fell 3 metres from the scaffold. It was identified that the spreader bar had been removed.	Inspector response with site visit. Notices issued: <ul style="list-style-type: none"> • Improvement Notice • Section 171 Notice issued to produce documents. Both notices were complied with.

*This date was previously advised to the Committee as 22ul January 2019. On further review of the file, the date should read 21 January 2019.

Answers received after hearing:

<https://www.parliament.nsw.gov.au/lcdocs/other/17973/Compiled%20supplementary%20questions%20-%20PC%204%20-%20Fair%20Trading%20-%20Supplementary%20Hearings%20-%20Budget%20Estimates%202022-2023.pdf>

APPENDIX 3

The screenshot shows the SafeWork NSW website. The header includes the SafeWork logo and navigation links: About, News, Contact, Roadmap. Below the header is a menu with categories: Safety starts here, Your industry, Advice & resources, Legal obligations, Notify SafeWork, Compliance & prosecutions, and Licences & registrations. A search icon is also present.

The main content area features a press release titled "Park" with the following text:

SafeWork NSW wishes to clarify reported information in an article published in the Sydney Morning Herald on 26/05/2019 titled "A fatality may occur letter reveals concerns over building site where teenager died".

SafeWork NSW would like to assure the community that safety issues raised by ██████████ in 2017 have no relationship at all to the tragic events that occurred at the Macquarie Park construction site recently. SafeWork's investigation into that incident is going.

The article referred to correspondence from ██████████ to SafeWork in 2017 regarding safety concerns at the Macquarie Tower site excavation. It noted, "Despite raising those concerns, a SafeWork NSW inspector responded a week later to decline an offer to discuss the problems "in the interest of impartiality".

The correspondence from SafeWork referred to in the article said in full: "Thanks for the offer to meet on site, however in the interests of impartiality I think it is best I complete this matter without external influence (actual or perceived). I will ensure compliance with identified issues is met as per normal operating protocols".

SafeWork said in a statement to media: "Notices were issued to the former Greenland contractor and were complied with."

Rather than simply declining to discuss the problems, the inspector "ensured compliance" would occur, issued Improvement Notices to the contractor, and noted they were complied with.

As a matter of protocol, people raising issues with SafeWork NSW are not included in compliance visits.

During its investigation of the Macquarie Park scaffolding collapse, SafeWork NSW is working closely with other authorities as it prepares a report for the NSW Coroner.

On the right side of the page, there is a yellow sidebar with contact options:

- Phone: 13 10 50
- National Relay Service: If you have a hearing or speech impairment, you can contact us through one of the options below.
- Voice calls: [down arrow]
- Speak and listen: [down arrow]
- SMS: [down arrow]

“SafeWork NSW would like to assure the community that safety issues raised by ██████████ in 2017 have no relationship at all to the tragic events that occurred at the Macquarie Park construction site recently”. On Safework website after 26 May 2019