



## Independent Review of SafeWork NSW

**Submission by:**

Unions NSW

Level 8, 377 Sussex Street

Sydney NSW 2000

T: 02 [REDACTED]

F: 02 9261 3505

Contact: [REDACTED]

Email: [REDACTED]@unionsnsw.org.au

## **Introduction**

Unions NSW welcomes the opportunity to make a submission to the Independent Review of SafeWork by the Hon. Robert McDougall KC.

Unions NSW supports the submissions of our affiliate unions. Many of our affiliate unions will be better placed to provide detailed examples and evidence answering the Terms of Reference of this Inquiry.

Unions NSW is the peak body for NSW Unions. Unions NSW represents approximately 60 affiliated unions comprising over 600 000 members. These unions represent a diverse range of workers from both blue and white- collar industries.

Unions NSW has held concerns for many years about the performance and effectiveness of SafeWork NSW and its ability to protect the workers of NSW from injury, serious harm and sadly death.

Unions NSW has received countless anecdotal complaints from affiliate unions unable to receive support from SafeWork NSW to assist their workers in unsafe situations. Complaints go unanswered, unions attempting to legally access workplaces to inspect suspected safety breaches are regularly denied access to inspect workplaces with no support from the Regulator, complaints from unions and their members receive no response, HSR's receive no support from the Regulator when the Regulator is onsite and when recently asked by a union to provide an employer with educational information relating to a serious hazard the PCBU was ignoring or unaware of the Regulator informed the union it would not do this. Union officials inspecting suspected breaches using their right of entry are regularly limited in their access by PCBUs. In one instance an official was told he could sit in the corner of the staff room and go no further, completely preventing him from inspecting the reported breach. The Regulator was called but did not support the entry permit holder. The complaint was not investigated. The worker who made the

complaint was dismissed and the Regulator told the union to pursue this through the court system.

There exists a view among affiliate unions that the Regulator does not support unions and the vital role unions play in ensuring worker safety. Without powers to prosecute safety breaches unions have relied heavily on SafeWork NSW to both prosecute breaches and police safety, however the general view is that SafeWork NSW has let workers down. SafeWork NSW has been described as an absent regulator by the construction division of the [REDACTED] Union during the 2022 Law and Justice Committee Inquiry.

The emphasis on the education of Persons Conducting a Business or Undertaking (PCBU) has resulted in a noticeable shift away from prosecutions and quick responses to complaints and incidents. Without a visible and active Regulator PCBU's have become complacent about their duty of care and the requirement to eliminate or minimize hazards. Where it is quicker and easier to cut corners and take short cuts members report this is being done.

Unions NSW supports Division 2 Object 3 Object (1) through to (2) of the *Work Health and Safety Act 2011*.

The intention clearly being one of co-operation between the Regulator, Unions and Employers to achieve optimum safety in workplaces to protect workers and other persons against harm to their health, safety and welfare.

- (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimization of risks arising from work or from specified types of substances or plant, and
- (b) providing for fair and effective workplace representation, consultation, co-operation, and issue resolution in relation to

work health and safety. And

- (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment, and

Unions NSW does not believe these objectives are being met.

Unions NSW strongly recommends ongoing oversight of the Regulator and the removal of the Regulator from the Department of Customer service.

A tri-partite body with some oversight and input into the Regulator with an advisory role not dissimilar the Nominal Insurer Advisory Committee (NIAC), consisting of unions, employer organisations and SafeWork NSW could be start. This would not be adequate oversight entirely however it is vital that the Government ensures both unions and employer representatives have a regular seat at the table working with the Regulator to meet the requirement that unions and employer organisations work together to promote safety.

Unions NSW suggests removing SafeWork NSW from the Department of Customer Service. SafeWork NSW should then be a stand-alone entity. With parliamentary oversight. Something not dissimilar to the Standing Committee of Law and Justice which has oversight of the Workers Compensation system. The split that occurred in WorkCover and the merging of SafeWork NSW into the Department of Customer Service, has allowed the Regulator to disappear within this larger department and this has perhaps led to complacency. Unions NSW would suggest that a stand-alone Regulator be re-built and re-staffed with the specialist departments and staff it once had.

**1. The performance and effectiveness of SafeWork NSW's compliance and enforcement functions. This part of the Review will include consider complaints, inspections, investigations, and prosecutions, and will include consideration of SafeWork's Triaging and Investigation Decision Making Panel processes.**

SafeWork NSW is a hidden entity within a large Department sitting alongside irrelevant Departments. It is difficult to find. Its website is complex and almost impossible to navigate at times. The 13 10 50 contact number does not provide clear triaging for those not familiar with it. A worker without experience wishing to make a complaint about a safety issue may struggle to figure out which number to push after listening to the prompts. The first thing a worker will hear when calling this number is 'welcome to customer experience'. The bureaucratic language should be simplified. A worker should know when they dial 13 10 50 that they are contacting SafeWork NSW. However given the 're-alignment' of this department they are not calling SafeWork. NSW They are calling an arm of Customer Service. This makes for a very confusing experience particularly for workers from culturally and linguistically diverse backgrounds. (CALD). In comparison Worksafe Victoria is clear, simple and concise. Every effort is made to ensure workers know how to contact the Regulator and how to make a complaint. The same cannot be said for SafeWork NSW. The process is very unclear.

Unions NSW uses the 13 10 50 number mostly in its role as a training provider. Unions NSW does not have the experience with the triaging system or the decision-making panel processes that our affiliate unions have. Affiliates frequently raise their frustrations with the triaging system claiming the staff are not adequately trained or experienced to effectively triage issues. Complaints raised by affiliates are sometimes ignored. Affiliates who can work effectively with SafeWork to resolve safety breaches have usually compiled

detailed evidence and persist in pursuing SafeWork to resolve the matter. These affiliates report having to do the work for SafeWork to get them to do anything about an issue. Affiliates frequently raise examples of investigations overturned by more senior staff with no clear reasoning as to why. Usually, the overturning of decisions will result in a more favorable outcome for the PCBU, not the worker. The hazard will remain and the workers will continue working in a hazardous workplace.

Unions NSW affiliate unions report that compliance and enforcement is weak, with SafeWork NSW preferring to distribute information on safety hazards rather than addressing hazards on site. These affiliate unions will be able to provide detailed information regarding their experiences with compliance and enforcement and Requests for Service (RFS) in their individual submissions.

Unions NSW is aware of a dispute currently underway with the [REDACTED] [REDACTED] in relation to a RFS. This will be addressed in the FBEU submission.

## **2. The performance and effectiveness of SafeWork NSW's educational functions.**

SafeWork NSW has produced some very worthwhile educational material. Some of its reference groups seem well-intentioned and worthwhile. For example, the work done by the Musculoskeletal Diseases Committee, the High-Risk Worker Committee and the Committee formed to write the Code of Practice: Managing psychosocial hazards at work were and continue to be worthwhile. Unions NSW does not support the emphasis that has been placed on education as this seems to be to the detriment of compliance and enforcement. Most affiliates report that the Regulator appears to see its role as primarily that of an educator. Employer representatives have praised the Regulator for taking this approach, most likely because PCBU's are not being forced to comply with the

basic s 19 Primary duty of care requirement of the *Work Health and Safety Act* (2011).

Unions NSW suggests that the focus of any safety regulator should be one of enforcing safety. The Roben's safety model we follow in Australia supports a preventative approach to workplace safety. In many instances providing a PCBU with a brochure explaining hazards will not be enough to deter the PCBU from eliminating or minimizing hazards. Particularly where serious hazards are identified, the penalty measures in the Act should be used. These can only be implemented by the Regulator or where a Health and Safety representative (HSR) takes preventative action and issues a Provisional Improvement Notice (PIN) or directs a cease work, the HSR must have the support of the Regulator. HSR's are trained to do this in NSW and in our experience take this responsibility very seriously.

An arm of SafeWork NSW is the Work health and Safety Research Centre. Until recently I sat on the Board of this organization. I am concerned that the research undertaken, some of which has been very worthwhile, is not reaching the Inspectorate arm of SafeWork NSW. The two arms do not speak to each other, and new technologies developed by the Centre are not used by the Inspectorate. Research does not overlap with the Inspectorate. The two arms should be working together to implement and trial new technologies and theories within workplaces across NSW through the Inspectorate.

WorkCover NSW ran a program called WorkCover Assist. This was a program aimed at both employer bodies and unions. Under the program unions and employer associations could apply for grants to deliver training programs or undertake any health and safety work deemed beneficial to their members. WorkCover NSW would issue grants based on the strength of the applications it received and monitor the success of the outcome of grants through member feedback. The program ran successfully for many years but was

abolished when the Liberal and National Party came into power in 2011. Unions NSW would support the reintroduction of this type of program as it allows unions and employer associations to tailor training to the needs of their members.

### **3. The governance and culture of SafeWork NSW, including complaints as to alleged unlawful or undesirable conduct in the workplace.**

Unions NSW is aware of a systemic toxic work culture within SafeWork NSW. This has unfortunately been the case for many years. In 2014 an Inquiry into Allegations of bullying in WorkCover NSW made 3 recommendations mostly relating to external oversight involving the Public Service Association (PSA) and the Department of Trade and Investment, Regional Infrastructure and Services. Since this inquiry some SafeWork NSW union members have come forward with serious allegations. Some have contacted Unions NSW and their union the PSA to discuss workplace issues. Most workers have not wished to proceed with their complaints for fear of retaliation or loss of employment. In one instance one worker had been dismissed. When asked if the 2014 Inquiry had changed the culture in any way, he suggested the senior management of SafeWork NSW had become better at 'hiding things and not leaving evidence'. Unions NSW has been extremely concerned about reports from workers within SafeWork NSW about difficulties in accessing Employee Assistance Programs.

### **4. Appropriate measures to ensure that workers and their representatives (including Health & Safety representatives), and the families of injured and deceased workers, have a genuine voice in the complaints, investigation, and enforcement processes.**

Since the introduction of the *Work Health and Safety Act (2011)* SafeWork NSW has done very little to inform or educate PCBU's about the role of Health and Safety representatives (HSR). Despite a requirement to involve HSR's in inspections when on sight s68 (2) (b).



SafeWork NSW must genuinely engage with HSR's as required by the Act and not just PCBU's.

Informing PCBU's of their obligation to allow for the fair election of HSR's should be prioritized by SafeWork NSW. Workplaces in NSW still have very few HSR's and most of these would be concentrated in blue collar industries. Many workers are still unaware of their right to elect a HSR and in my personal experience in a previous role as a union organizer I have seen PCBU's trying to influence the outcome of an election. I have personally seen workers bullied and harassed into voting for a particular HSR candidate, usually someone management has picked to run for HSR. In one case workers were so fearful of the PCBU they voted for an HSR persuaded to run by the PCBU. SafeWork NSW appears to do very little to promote the benefits of HSR's in a workplace and did very little to assist my members when the PCBU was interfering in the process. SafeWork NSW could actively promote the fair election of HSR's through their educational role. Unions NSW would support an education program promoting the benefits of having HSR's. Currently our experience is PCBU see HSR's as an expense and a threat to their autonomy.

In relation to the families of injured and deceased workers SafeWork NSW must do all it can to prevent injuries and fatalities. This must be its primary focus. We know injuries and fatalities are preventable and this is why we have adopted the Roben's model of prevention. Laws however good will fail to be effective if not policed. The Government commits resources to ensuring road safety, one of these being the constant presence of police on our roads. Workplaces are no different.

Where injuries and fatalities do occur SafeWork NSW must allow families access to information and ensure absolute transparency throughout the investigation process. Our affiliate unions are better placed to provide more detailed responses to this question as they support these families throughout the investigation process.

Injuries and fatalities will also fall within the workers compensation

system. There are still many problems with the workers compensation system in NSW and Unions NSW will continue to support injured workers campaigning for change in this area.

To better prevent injuries Unions NSW would like to see the return of specialized Inspectorates and Inspectors. Examples would be specialized groups of people trained to research, monitor, inspect and educate PCBU's in specialist areas such as the use of pesticides and the safe handling, use and disposal of chemicals. Industrial hygienists and people with specialist medical knowledge, specialist knowledge of construction etc. should be returned to the Inspectorate.

According to the 2021/22 Customer Service Annual Report there were 240 authorised inspectors in SafeWork NSW. The 2022-2023 Budget Estimates Supplementary Questions sought clarity on this figure however the answers received do not provide clarity but create further confusion. This figure according to the government was based on data relating to inspectors authorized under the NSW Public Health Orders and now there are no inspectors authorized under NSW Public Health Orders.

Inspectors have reported approximately 320 Inspector roles. These have not always been filled. An active Inspectorate would require many more inspectors. Unions NSW understands there will always financial constraints, but we would support any increase in the number of inspector roles. This would also allow for more manageable workloads for those inspectors remaining when inspectors leave.

Enforcement is a concern for Unions NSW. Affiliates report a lack of willingness on the part of the Regulator to enforce safety in workplaces. During the Covid lockdowns Unions NSW tried to assist the [REDACTED] in gaining access to inspect a suspected breach in a NSW abattoir. The PCBU would not allow the Work Health and Safety Entry Permit Holder access to inspect the suspected breach. SafeWork was asked to

provide assistance in dealing with this dispute as per s 141. SafeWork argued it could not force the PCBU to allow the WHS permit holder entry. When a worker was dismissed for raising the health and safety concerns SafeWork NSW advised the union to take the matter to court. This would appear to be a contradiction to Division 7 Prohibitions ss 144 and 145 of the Work Health and Safety Act 2011. SafeWork NSW suggested they would inspect all NSW abattoirs for safety breaches. The ██████ suggested this was unnecessary as the union was able to gain access to all other abattoirs and had no reason to believe there were safety breaches occurring in the other abattoirs. SafeWork NSW insisted it would inspect all abattoirs. This was an unnecessary waste of time and resources.

According to 2022/2023 Budget Estimates SafeWork NSW received 12 594 requests for service during 2020/2021. In 2021/2022 it received 12 407. Of these requests 5336 received an inspection in 2020/2021 and 3940 received an inspection 2021/2022. This figure is concerning as it shows many requests for service are not receiving any visits from inspectors.

From 1 January 2007 to 15 September 2022 SafeWork issued 5887 penalty notices. Given the number of injuries and fatalities still occurring this figure seems quite low. The average number of workplace fatalities each year in NSW is 54 according to SafeWork Australia data. Given this many workers are still dying at work each year surely no request for service should go without an inspector visit.

## **Conclusion and Recommendations**

SafeWork NSW has disappeared within a large government department known as the Department of Customer Service sitting alongside a confusing mix of other minor departments. It has lost a great deal of its identity in doing this.

- 1. Unions NSW recommends removing SafeWork NSW from the Department of Customer Service. SafeWork NSW should be a**

**stand -alone authority with independent oversight.**

Due to continued worker dissatisfaction and the continuation of a toxic work culture within the Regulator itself many staff have left. Much expertise has been lost. Many experienced inspectors have left.

- 2. SafeWork NSW should work towards recruiting and maintaining well qualified staff within its inspectorate to ensure a high level of safety knowledge exists within the Regulator.**

SafeWork NSW move towards an educational regulator focused on educating PCBU's has failed to improve worker safety and well-being. PCBU's have become complacent. Workers are still dying at work.

- 3. The Regulator must focus on inspections and enforcement. No call for help should go without an inspector visit.**