

3 March 2023

SafeWork NSW Review  
c/- Level 5  
60 Martin Place,  
SYDNEY NSW 2000

Attn: [REDACTED]

**By email (enquiries@safeworknswreview.com.au)**

Dear Sir/Madam,

**2023 Independent Review of SafeWork NSW**

1. The Shop, Distributive and Allied Employee's Association New South Wales Branch (SDA NSW) is one the largest trade unions in NSW with approximately 60,000 members. The majority of these members are young people and women and there are also large proportions who live and work in regional NSW.
2. The SDA NSW has coverage of industries including retail, fast food, warehousing, distribution, drug and cosmetic manufacturing and pharmacies.
3. The SDA NSW wishes to provide feedback on the *2023 Independent Review of SafeWork*. We welcome the NSW Government's review as we believe SafeWork NSW has a critical and irreplaceable function in safeguarding workers' health, safety and wellbeing. We believe unless these functions are exercised more fully and consistently the health and safety of workers in the industries we cover will diminish which means their families and our whole community suffers. We thus recommend the following in relation to the following areas as per the terms of reference:


Branch Secretary  
[REDACTED]


Shop, Distributive and Allied Employees' Association NSW Branch

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

4. We submit SafeWork NSW's compliance and enforcement functions are not performing as well as they could and are in need of major reform and additional resourcing. We submit this stems in at least in part from SafeWork's fundamental approach to health and safety, which includes having a disproportionate emphasis on the "customer experience" of persons conducting a business or undertaking (PCBUS). We believe this skewed approach leads to SafeWork having reduced effectiveness to ensure better compliance outcomes to ensure the health and safety of NSW workers.
5. For example, SafeWork NSW should proactively consult with workers directly about key risks and provide opportunities for training, especially Health and Safety Representatives, Health and Safety Committee Members, or other workers involved with safety consultation through other agreed arrangements. There should be proactive consultation with unions about key risks in the industry as part of this to ensure proper compliance. Not including workers and their unions leaves out an important voice in understanding key risks in industries but also the voice which would help ensure compliance and enforce health and safety laws in NSW workplaces directly.
6. For instance, in the key areas of concern in retail, workload and customer abuse and violence, there is limited proactive consultation. These key areas would greatly benefit from such an approach. We believe forums, such as the previous Industry Reference Groups, would be extremely instrumental in ensuring compliance with safety standards, as well as ensuring that SafeWork is aware of new trends of safety risk in an industry early on. We believe the gaps in deep industry understanding mean SafeWork inspectors may not be conscious during visits to many "invisible" hazards, particularly psychosocial hazards like workload. These sometimes unseen risks then interact with known risks and multiply them. These psychosocial hazards may not be readily evident from Company Safe Work Practices or Procedures, risk assessments, or even during short visits. We find many workers may not fully articulate these concerns even when asked about the risks or the processes behind changes whilst on the job, so being asked explicitly through structured consultation including their Unions would provide greater insight and understanding of risks that need to be eliminated or mitigated.
7. To our knowledge, there are also no industry forums or even across industry forums for workers or Health and Safety Representatives to attend to develop worker's understanding of how to manage health and

safety risks properly and also to educate them on key developments that affect them such as the development of a Code of Practice on Psychosocial Risks.

## **Complaints**

8. We believe SafeWork's performance is hindered by the difficulties for workers to report incidents both online and on the phone. Workers should be able to easily make complaints directly to SafeWork NSW and to receive proper information and assistance from a properly trained person when required, including by an inspector if necessary.
9. Currently the SafeWork NSW website is geared towards reporting online only via the "Speak Up Save Lives App" or the website online. It does not clearly provide avenues to speak to a person for assistance. This is caused by the messaging which starts with clearly encouraging workers to "speak up" if they have a safety concern but then only provides the option of reporting via the app or online. The phone number can only be found on the initial landing page and is buried as a generic contact number at the bottom of the page.
10. We find many workers in our industry would prefer to speak to a person directly about their concerns because many of the workers in our industry are young or migrant workers who often want to talk things out with a person to check their questions about the process and options or a risk is actually a safety issue in the first place before raising it at work. For our industry the key hazards are complex psychosocial issues, like workload and customer abuse and violence. We find these issues, require often multifaceted approaches to be successfully controlled and are heavily fraught issues with employers because controls can overlap with questions about operational requirements and staffing. Thus providing workers with clear avenues where experienced staff on health and safety with complex issues is necessary to enable the complaints to be clearly articulated.
11. We find the SafeWork website is difficult for workers to navigate through the complaints process as the website does not explain what might constitute a health and safety risk or even a notifiable incident (which is mentioned on the hotline directory). The link on the homepage for "workers" directs a person to information about worker duties and obligations, not advice about how to deal with issues in their workplace, which would be the most common reason for seeking information from the site.

12. Since the merger with Fair Trading, navigating the phone directory is confusing. For example, the line is announced from the start as “Customer Experience,” not “SafeWork NSW.” And though directing the query “if it’s about health and safety” is the very first option, it then goes on to mention “notifiable incidents” which is a technical term which we submit is not understood by most workers. We recommend something akin to the Queensland or Victorian websites which incorporates a clear explanation of this term next to the phone number within the clearly spelt out options and steps in the reporting process for complaints.
13. We have also had some concerns about the advice provided by SafeWork NSW information line, including to Health and Safety Representatives about their powers and also about COVID restrictions and obligations of employers currently with the easing of restrictions.

### **Inspections, investigations, and prosecutions**

14. We have strong concerns with SafeWork’s capabilities for enforcement and compliance due to the lack of resources and funding to SafeWork for these functions. This is highlighted by the lack of onsite inspections following notifications to SafeWork and the lack of fully trained inspectors to meet this demand. From transcripts from Parliament from October 2022, it was purported that in order to meet ILO standards 370 SafeWork Inspectorate Roles are required to be filled for NSW.<sup>1</sup> Even if this was the appropriate number, which we believe may need to be higher in order to deal with the difficult and complex hazards present in modern industries, a significant number were not filled at the time this assertion was made; having only 336 inspectors. This is a significant shortfall which if filled would make a difference in SafeWork’s NSW capabilities to educate workers and employers as well as perform enforcement activities like proactive visits and respond to requests for service and investigate notifiable incidents.
15. The number of prosecutions and investigations disclosed appears very low in proportion to the number of complaints. We believe as mentioned below that SafeWork NSW needs to equally invest in it’s compliance arm to ensure best outcomes for safety compliance in NSW.

### **B. The performance and effectiveness of SafeWork NSW’s educational functions.**

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<sup>1</sup> <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>

16. As mentioned above, we believe SafeWork NSW currently has a strong unequal emphasis on the education of employers. We believe SafeWork NSW fails to educate and engage with workers directly, in a systematic manner or their unions. We believe SafeWork's engagement and education of employers could be significantly improved by engaging with employers by industry and also around key hazards.
17. We find that many employers still fail to understand their obligations to manage key risks for our industry, especially psychosocial hazards like customer abuse and violence and workload. Due to high increased competition in the retail industry, there is an unprecedented drive to reduced staffing with roster changes and cuts occurring at a rapid rate. These rapid changes often are in the name of "customer" service, demand and productivity. However these "operational" changes often have significant impacts on the health and safety of workers, not only because of the impact of roster changes on work life balance and outside of work caring responsibilities (which are often very high among our members), but also because they introduce new demands and hazards which often multiply existing risks. For example, the interaction of workload and manual handling magnifies these risks over time. Pressures from working in multiple departments, not being able to complete tasks, having constant physical and psychological demands take their toll on workers. Many of the "studies" these operational changes are based on are time in motion studies which seem to be based on best case scenarios or we would say "better than average" situations, which do not appear to take into account factors like fatigue, pre-existing injuries, differences in ability or characteristics (e.g. height, age), inexperience, peaks in trade, and the full extent of unpredictable factors like interruptions by customers, working to "averages." "Rostering" apps or electronic tools we find often fail to account for basic health and safety needs such as scheduled meal and tea breaks.
18. SafeWork needs to educate employers that these systems and processes must be considered with a safety lens before they are implemented to ensure they do not create health and safety risks for workers. SafeWork NSW must educate employers and workers as this is a requirement for due diligence. SafeWork NSW must also followup this "education" by scrutinising these matters closely when calls for service or notifiable incidents are made.
19. These matters are undoubtedly complex and often little insight into these programs is provided and often it may make little sense even if presented. However by working together with workers and their unions in a more systematic way, we believe SafeWork NSW would be in a better position to understand these issues in our industry and others, and thus be in a

better position to educate employers in this area, and also better able to ensure compliance.

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

20. For a number of years SafeWork NSW's culture has been changing more and more from a compliance focus on employers to an educative and "customer experience" focus on employers. Though this approach potentially does encourage PCBUs to freely go to SafeWork for information and advice to help proactively deal with issues, we believe this approach potentially diminishes the priority employers place on safety in the eyes of their workers. We submit it is necessary to have an active enforcement culture where breaches, especially serious breaches like deaths, notifiable injuries and sustained or flagrant breaches of safety affecting multiple workers, such as failing to provide breaks, are thoroughly investigated and prosecuted in a timely manner. SafeWork NSW has an essential irreplaceable and unique identity for compliance with NSW's Health and Safety laws and SafeWork NSW must be seen to be setting clear expectations for compliance and due diligence.
21. Behavioral compliance can be driven by monetary incentive as evidenced by the prosecution of [REDACTED] for a worker who was badly burnt with hot oil during a blackout in [REDACTED] 2016. The worker was only 20 at the time and was cleaning oven canopies whilst fryer vats were open due to time demands for cooking. This matter concluded with a guilty plea being entered on March 2019. We very strongly believe this Company and related brands, [REDACTED] [REDACTED] if SafeWork had not proceeded with a prosecution. After sentencing the Union conducted further investigations to check controls were in place consistently across the business, including other franchisees in the same brand, and found there were [REDACTED] [REDACTED]. With the weight of the seriousness of the prosecution on the business, the company agreed after further discussions and trials of products and to invest in changing when the task that led to the injury was done to instead be undertaken outside normal operational hours. This is a decision which has flowed across the whole brand. Thus having a dominant culture in SafeWork geared towards prioritizing "customer" satisfaction and experience and away from compliance, we believe does not result in the safety change required in some cases at least.
22. For many company health and safety professionals who are trying to implement effective safety control measures when hazards arise, having such enforcement cases helps bring the "business case" for the control to

be approved. Penalties, fines and potential of prosecutions ensure the business case can be made more easily and tangibly for business. Strong penalties and actions do send a message to an industry and can effectively drive change.

This may be necessary in areas like psychosocial hazards if businesses fail to proactively address these concerns.

**D. 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.**


As mentioned above, we submit that workers and their representatives including Health and Safety Representatives and their Unions, do not have a genuine voice to raise complaints easily. We believe SafeWork NSW's online and contact phone number processes need improvements to make them easier for workers to understand and engage in the process. We also believe SafeWork NSW's does not provide adequate opportunities to consult workers and their unions systematically about risks that affect their industry. We would recommend SafeWork runs specific forums for workers and health and safety representatives and industry specific forums that Unions should be invited to attend. Unions should also be engaged in all forums involving employers as well for a given industry.

We believe SafeWork NSW should ensure Health and Safety Representatives are consulted whenever a safety issue is raised for a site and when an inspection is necessary. SafeWork NSW should ensure they consult and take into account feedback from a union if that union has raised the call for service for a particular site or in relation to a particular risk or hazard. If a worker or a union raises a safety concern, SafeWork should be transparent with the Union and/or HSR about outcomes, including where notices are written, the full contents of these notices. They should consult fully with Unions and workers throughout investigations and in the process of determining if a prosecution will be taken. When a decision is made not to prosecute, and any enforceable undertakings or other actions are taken, these should be transparently shared with the worker and/or Union who has raised the issue if they have not reported anonymously.

We are aware of a recent matter in another industry where a large enforceable undertaking was agreed to but without consulting with the Union that raised the issue first. The terms of this enforceable undertaking were also not shared with that Union. Another example is from the serious burns matter raised by the SDA mentioned above. The SDA was not consulted about the controls that were said to have been implemented by the employer, to ensure the accuracy of the reports and to clarify whether we thought they were appropriate or truly in place. Only after letters were written by the SDA to follow up on this was the decision to prosecute finalised.

We believe finally for SafeWork to be most effective, separating SafeWork from other NSW Government's service sectors and funding it appropriately to undertake both education and compliance functions is critical. SafeWork NSW has a unique function which should not be confused and conflated with other government functions. The issues facing industries, including ours, are very complex and changing rapidly. SafeWork NSW needs dedicated and sufficient resourcing including highly trained inspectors engaged with industry to meet this requirement.

We thank you for the opportunity to make this submission into SafeWork NSW and thank you in advance for your consideration of our concerns. The SDA is committed to working with SafeWork to raising the workforce health and safety standards for workers in NSW.

Should you have any queries in relation to this matter, please contact SDA Industrial Officer, 

Yours faithfully,

