



# STATUTORY REVIEW

of the

# WORK HEALTH AND SAFETY ACT 2011 (NSW) SUBMISSION

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## A. Executive Summary

The Shop Distributive and Allied Employees' Association, New South Wales Branch, and the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern New South Wales, ("the SDA") welcome this opportunity to make a submission on the review of the *Work Health and Safety Act 2011 (NSW)* ("the Act").

The SDA represents the interests of more than 70,000 retail, fast food, warehouse, distribution and pharmaceutical manufacturing employees throughout New South Wales.

The SDA supports the submission of Unions NSW and in addition submits that the Act does not adequately protect retail, fast food and warehouse workers from the health and safety risks arising in their workplaces. The Act's focus is on reducing or eliminating significant physical risks. However, it is not well designed to address psychological injuries or commonly occurring risks in the industries we represent, such as workload, hot and cold issues, and customer violence and abuse.

The SDA also submits that the provisions relating to Health and Safety Committees and Health and Safety Representatives require significant improvement to ensure they are effective.

This submission includes case studies and examples from the retail industry, to highlight some of the shortcomings of the Act.

In summary, to ensure the objectives of the system are met we recommend:

1. Section 3(1)(a) should read "*protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant, or work environment, or systems of work, and*";
2. that the legislation clearly state that "*cost is the least important factor when considering whether controls are reasonably practicable*";
3. there should be a separate section in Part 2 Division 3 clearly specifying "*the person conducting a business or undertaking should ensure so far as reasonably practicable that the systems of work and or work environment is without risks to the health, safety and wellbeing of workers, including specifically risks of psychological injury*" ;
4. section 12A (concerning Strict Liability) remains unchanged;
5. that the Act stipulate Health and Safety Committee (HSC) members be trained, and that stated minimums be incorporated into the legislation including stipulating training should be at least 2 days, and also that training cover set topics including duties, risk identification, assessment and control, and the hierarchy of controls;

6. that at least half of the members on a HSC be comprised of non-management employees;
7. that the chair of the HSC be a non-management employee;
8. that section 65 (regarding disqualification of health and safety representatives) remains unchanged;
9. that the Act specify that the presence and activity of a HSC is not a relevant matter for determining the number of workgroups on a site;
10. that a majority of a workgroup should still be able to choose the method of voting for a HSR; however, if reasonable concerns are raised about whether the method of voting is fair, transparent, or free from pressure or bias, then the method of voting will be by a secret paper ballot;
11. that the Act clearly state that employees, (and not the employer) have the right to determine the voting process for a HSR, and that it be clear in the Act itself that it is workgroup, not the PCBU, that determines the voting process for a HSR as per guidance material;
12. that the Act clearly state that discriminatory conduct includes counselling, or disciplinary action in any form due to conduct performing their role as a HSR which is conducted in good faith. This includes collecting information, and speaking to employees;
13. that the Act clearly state that the onus be on the PCBU to show if a HSR is not acting in good faith when conducting a HSR function and there should be a presumption in favor of the HSR acting in good faith in the absence of evidence to the contrary;
14. that the Act clearly state that a person will be taken to have engaged in discriminatory conduct if it can be established that it was a reason leading to that conduct, rather than the dominant reason. The word "dominant" should be deleted from s104(2);
15. that the ability for the Secretary of an Industrial Organisation to bring proceedings for a Category 1 or Category 2 offence be preserved, and extended to lower categories of hazard, including psychological hazards; and
16. that employees be entitled to report incidents directly into workplace incident reporting systems, including online systems, where such systems are utilised by an employer. Further, that employees be provided with a copy of any incidents they report, to ensure the reports are accurately maintained.

## B. Introduction - Context

The Shop Distributive and Allied Employees' Association New South Wales Branch, and the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern, New South Wales represents approximately 70,000 members in New South Wales in the industries of retail, fast food, warehousing and distribution, and modelling.

The SDA supports the submission of Unions New South Wales to this review. In addition to that submission, the SDA would like to address some specific matters arising from our experiences of dealing with health and safety matters in different workplaces.

The SDA considers the *Work Health and Safety Act 2011* (NSW) has fallen short of its objects, as it has failed to ensure the safety of employees in some key areas, as explained below.

Other NSW specific provisions, including those relating to the right for an industrial organisation to bring proceedings for certain offences, should be preserved and extended.

### Extensive Annual Safety Surveys of Members

Over the past few years, the SDA has conducted extensive health and safety surveys of our members. The key health and safety issues reported by members are workload stress, hot and cold concerns (thermal comfort), and customer abuse and violence. A summary of the safety survey is contained in Table 1 below.

**Table 1: Key Workplaces Issues in 2015 and 2016 as Reported by Workers in SDA NSW, ACT and Newcastle Branches**

Percentage of Participants who have experienced the following in their workplace

Year	Number of Participants	Workload	Hot and Cold	Customer Violence or Abuse	Cuts and Abrasions	Manual Handling
2016	3806	49.33%	46.18%	45%	36.61%	35.76%
2015	3899	55.81%	51.99%	44.50%	44.43%	43.36%

## C. Preliminary – Part 1 of the Act

### 'Objects'

The SDA submits the objectives of the Act should be improved as they are falling short of their intention. This is in part due to the lack of prescription in the Act around a number of key issues. We submit that the objects of the legislation should be refined to include hazards that might lead to psychological injuries, or injuries where physical tells are not readily apparent, such as fatigue, dizziness, stress and nausea.

#### **Recommendation 1.**

**We recommend:** Section 3(1)(a) should read *“protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant, or work environment, or systems of work, and”*

### ***Cost versus Safety***

The SDA is concerned with how the standard of 'reasonably practicable' is interpreted by employers. The areas of greatest contention often center around hazards where physical injuries are not apparent, but which affect many workers. These include safety matters such as thermal comfort and workload stress.

Although section 18 of the Act states that cost should only be taken into account if it is grossly disproportionate to the risk, this provision is often interpreted by employers to mean that if the risk is lower or minimal (usually meaning not resulting in clear physical injuries), they are not obligated to implement controls. Although the cost of eliminating or minimising risk is relevant in determining what is reasonably practicable, explicit guidance given to cost implications is necessary. An example of this problem is detailed below.

### ***Working in Heat and Cold in “Big Box” or “Warehouse” Retail Stores***

Temperature is a key concern for workers in NSW who work in “big box” or warehouse style retail stores. In 2015, 79.7% of workers in these sites identified heat and cold as an issue affecting their work. In 2016, 68.16% of these workers surveyed by the SDA said that heat and cold were a safety concern at their workplaces.

#### **i. The conditions:**

Large Warehouse style retail stores experience extremes in temperature due to their design and lack of air conditioning. Employees often report limited ventilation and natural airflow or air circulation in their workplaces. This restricted airflow may be due to size and location of fixtures, staggered entrances with large foyers often

composed entirely of glass, coupled with the large distances between different entrances/exits. The design of many sites facilitates a build up of heat during warmer periods.

Air conditioning is usually only available in management offices and lunch rooms. Stores have varying types of mechanical systems in place to help combat warmer and cooler conditions throughout the main areas of the store. For example, in warmer conditions, some stores have evaporative cooling systems, some have extractor type systems, and others have large industrial fans to circulate air. However, many stores have few or limited mechanical systems to help combat hot conditions. Workers often report that such systems, where they are in place, are ineffective in extreme conditions.

In winter, workers also experience cold and wet conditions. Whilst some sites have heaters affixed above stationary areas, other sites expose workers to cold or windy conditions.

Uniforms in this environment tend to be long heavy duty pants or shorts (often in denim), covered leather work boots or leather shoes, a polo shirt and sometimes other articles of clothing, like a full length apron.

## **ii. The legislation and role of regulator**

The SDA notes persons conducting a business or undertaking (PCBUs) must make sure, so far as is 'reasonably practicable', that workers carrying out work in extreme heat or cold are able to do so without risk to their health and safety. PCBUs are to consider personal and environmental factors when assessing the risk to workers from working in a very hot or cold environment.

Safe Work NSW also states: "The ideal temperature for sedentary work is between 20 and 26 degrees Celsius, depending on the time of year and clothing worn. Air temperatures that are too high or too low can contribute to fatigue, heat or cold related illnesses."

Unfortunately, despite this legislative wording and commentary from Safe Work NSW, there are often disagreements between the SDA and employers as to what is 'reasonably practicable'.

The SDA has made various requests to employers to better manage heat and cold to improve conditions in these worksites and improve the health and safety of workers with limited success.

### iii. Policy on paper, inconsistent application

Employers in these sites often have a heat policy which outlines various measures stores can implement to manage heat issues. However, the policy is implemented inconsistently. Some stores implement heat management measures well, but others don't.

For example, we have approached local management at various sites requesting the provision of cool drinking water in ice boxes or cool bottled water. Some stores implement these control measures, but we have had refusals in other stores, **due to cost**. The size of stores and distance to travel by foot to lunchroom facilities often means that workers have limited access to cool drinking water. Measures such as these seem to be up to each manager's discretion. There is no clear direction around what is expected at each site.

### iv. Worksafe NSW's Role

SafeWork NSW has been contacted about heat and cold issues in some retail sites, but the response has been minimal.

In conversations with various SafeWork NSW officials, it has been relayed when thermal comfort issues are raised via a complaints line, a letter is written to the Company. There is little follow-up on such letters and the complainant needs to follow this up to ensure this occurs. If the complainant raises the matter further, an inspector will be appointed who will have further conversations with the company and complainant about the issue. Often this process does not involve visiting the site and confirming what is actually happening, but is more about confirming policies and procedures and those conversations. However a policy on paper is not sufficient if there is inconsistent application of the policy or a failure to implement the policy.

We understand SafeWork NSW's focus is on 'fatalities and serious injuries' due to funding constraints. However, unsafe working environments caused by systemic heat and cold issues that are ongoing due to cost issues also need to be properly addressed. These conditions are also a large contributor to fatigue, impaired decision making and delayed reactions, leading in turn to greater physical injuries.

### v. A heavy focus on 'cost'

The SDA understands air conditioning is not possible at all work sites and that some employers may introduce measures, such as evaporative cooling and refrigerated cooling systems and fans gradually. It is our understanding with one employer that it is not 'reasonably practicable' to implement measures across all stores due to cost versus the small risk of compensable injury. Cost is then the major factor for deciding whether measures that would help workers cope with extreme heat conditions is reasonably practicable.

In our experience, cost is not just a factor, but is the most important factor in the view of the PCBU in ascertaining whether a measure is deemed “reasonably practicable.” The SDA has suggested measures of little or no cost to some businesses, such as moving manual work to cooler times of the day, improved uniforms, additional breaks, providing bottled water or cool water, yet they are not generally implemented.

#### **Recommendation 2.**

##### **We recommend:**

*The legislation clearly state duties upon the PCBU and other duty holders are not qualified by “reasonably practicable”. Alternatively, the legislation should be amended to provide that “cost is the least important factor when considering whether controls are reasonably practicable.”*

#### **vi. Psychological injuries & workplace stress**

Employers have a legal duty under the Act to provide a healthy and safe workplace and safe systems of work.

However, employers’ operational decisions based on cost savings can often undermine the requirement to provide a healthy and safe workplace. An example of this is understaffing. Where decisions are made to ensure a healthy and safe workplace, focus is more often on combatting physical injuries rather than psychological injuries, presumably as physical injuries are seen as more ‘real’ or tangible and as they translate more often into lost time injuries. Claims for non physical injuries are also mitigated in our sector by the large presence of self insurers.

The SDA submits that the current legislative framework is ineffective at protecting workers from psychological issues and fails in terms of its object to provide a healthy and safe workplace.

In our 2016 survey into workplace health and safety in the retail and fast food industries of about 4000 workers, 55.7% of workers reported that high workload and resulting workplace stress were an issue in their workplace. Workers continually report excessive demands from management are not met with adequate support or resources.

The survey also found other factors giving rise to stress in the workplace included customer abuse and bullying.

The SDA has found, in its experience, that secondary psychological injuries are common in injured workers. For example, workers that lodge a workers’ compensation claim can suffer from the stigma of being a workers compensation ‘claimant’. This can have negative effects on their mental health. Workers report feeling that they are made to feel that they are not wanted by their employer and their insurers. Feelings of worthlessness and isolation are rife amongst injured workers. Yet this does not get attention from employers.



## Case Examples:

**Worker A** *"Sending my response to this personally so I can't be dismissed for inappropriate behaviour on social media, but here it goes. Try telling that to my CSM [Customer Service Manager] who refuses to put on enough staff because "the projection doesn't think we need it" and yet I cop abuse most nights that I work for the queues and the fact there's only two staff on front end after 9pm. Sometimes even earlier than that. Because of this we cannot change registers to face the alternate way and are therefore scanning the same way for 4 hours non-stop, possibly causing back injuries. We often have to go without our breaks or take them very soon after starting a shift all at once. And to top it off, we are a midnight trade store and most nights left alone for that last hour one person, usually a woman, without a security guard and expected to do all of the EOD tasks (clean, empty bins, count registers, fill drink fridges, loose stock, etc etc all hard to do when your also often left with just a minor who can't sell cigarettes too)...."*

**Worker B** *who suffered bullying regarding workload and over-monitoring at the hands of his manager and suffered a psychological injury as a result. The worker was not greeted upon his return to work and received no communication from his employer prior to his return. The worker simply went back to work as if nothing had happened and was no longer working under his line manager who was the cause of his psychological injury. Moreover the worker felt he "had a number on his back" as the problematic line manager has now been promoted to Assistant Store Manager. This worker is still awaiting receipt of a workers compensation settlement ordered by the Commission.*

**Worker C** *suffers from depression and is on medication due to her injury and her employer's attempts to terminate her. Worker C has 25 years of service with her employer and considers her employment her 'whole life'. For her employer to terminate her for being injured leads the worker to feeling worthless and unwanted. The worker has been attending redeployment appointments for almost one year but has the feeling that 'no one wants her' as she is injured.*

### Recommendation 3.

**We recommend:** *There should be a separate section in Part 2 Division 3 clearly specifying "the person conducting a business of undertaking should ensure so far as reasonably practicable that the systems of work and or work environment is without risks to the health, safety and wellbeing of workers, including risks of psychological injury."*

## Section 12A - Strict liability

We believe that strict liability in relation to an offence under the Act needs to be retained. For this reason, section 12A should remain unchanged.

Health and safety standards should not be reduced to the standard of what a PCBU knows or their intent or negligence. Proving intent and subjective knowledge of a PCBU can be difficult. If the standard is reduced and the qualifier of 'reasonably practicable' for a PCBU remains in place, the standard of care required would be greatly diminished.

### **Recommendation 4.**

**We recommend:** *that section 12A remains the same.*

## **D. Consultation, representation and participation – Part 5 of the Act**

Although Health and Safety Representatives ('HSRs') have been prescribed by NSW legislation for a number of years, in our experience, HSCs are still the primary method of consultation for many employers. Consequently, the minimum requirements for HSC's should be strengthened.

The SDA submits that Health and Safety Committee (HSC) members should have a requirement for training and stipulate a minimum training period. This will improve their effectiveness.

The legislation should also clearly state that at least half of the members of the HSC should not be from management. This will ensure there is more effective consultation with workers from these committees.

The SDA also submits that the legislation should require the Chair be a non-management employee. This was the requirement under the previous legislation. The submission is made on account of extensive feedback from different workplaces where HSC's are ineffective because a majority of its members are management employees and the Chair is a salaried manager.

### **Recommendations 5, 6, 7.**

#### **We recommend:**

- 5) *HSC members be trained, and that stated minimums be incorporated into the legislation including stipulating it should be at least 2 days, and also that training cover set topics including duties, risk assessment and the hierarchy of controls;*
- 6) *At least half of the members on the HSC be non-management employees*
- 7) *The chair of the HSC be a non-management employee.*

We agree the Industrial Relations Commission is the appropriate forum to receive and support applications to disqualify a HSR. This forum is a more cost effective, simpler and faster option than a Court. This is especially true for many of the respondents who would be single employees defending such claims. The Commission also has the necessary expertise to deal with these applications, which commonly include related industrial matters.

**Recommendation 8.**

**We recommend:** *Section 65 remain the same.*

## **E. Discriminatory, Coercive and Misleading Conduct – Part 6 of the Act**

### **Health and Safety Representatives ('HSRs')**

The SDA has promoted Health and Safety Representatives as an effective consultative method. We have had generally positive feedback from workers and employers about the role HSRs play and the difference made to workplace safety. Long term issues have generally been solved and workplaces become safer. Workers also feel empowered and are more confident to raise health and safety concerns. We believe this is because there is mandatory training for HSRs. (In comparison, and as described above, there are no such minimums for HSC members).

However, improvements are still needed to assist Health and Safety Representatives to perform their role in the workplace. This includes clarifying the process for electing HSRs and negotiating workgroups.

#### **a. Factors for determining workgroups and understanding the role of HSRs**

Work Health and Safety Regulation 17 outlines the matters that are to be taken into account in the negotiations for workgroups. Often, an employer will point to their current safety committees and systems as a reason why they need only a single HSR. In our experience, these arguments are commonly raised in workplaces where there are more than one hundred employees working a large span of hours, including nights and weekends and where there are multiple hazards such as large industrial ovens, machinery and forklifts. We have encountered this response with many retail employers where requests for a HSR have been made. The legislation needs to clearly state that the presence of a safety committee and the number of members in the committee is not a relevant factor for considering workgroups.

This interpretation of the legislation may stem from the view that committee members hold a representative function similar to that of a HSR. However, they are different roles. A HSR is a representative who raises the concerns and views of their group. Committees' functions are more administrative and procedural; their focus is centered on communication around company policies and processes. There is cross over between the roles, but they are different roles.

**Recommendation 9.**

**We recommend:**

*It is specified that the presence of a HSC and its activity is not a matter that is relevant for determining the number of workgroups on a site.*

**b. HSR elections**

The SDA believes the legislation needs greater safeguards to ensure minimum standards of transparency, fairness and freedom from bias during elections of HSRs.

We have had experience of a contested HSR election involving two groups of workers on a site: a very vocal majority group, and a minority group who felt bullied and excluded.

In the election, the vocal majority voted for a show of hands to determine the vote. The minority however wished for the retention of a paper ballot, to ensure confidentiality. The minority group felt some workers, not only in the minority group but also in the majority group who were less outspoken, would feel pressured or bullied to vote for certain candidates and not vote for who they really thought would do the best for the job. This was conveyed to the employer, but the employer felt obliged to follow guidance material which stated that employees had a right to choose the voting process. Safe Work NSW also supported the employer in its decision.

## Recommendations 10 & 11.

### We recommend:

10) *A majority of a workgroup should still be able to choose the method of voting for a HSR. But if there are concerns raised which question if the process will be fair and transparent and free from pressure and bias, reversion to a minimum standard should occur.*

*A minimum standard should be stipulated and it should be clear how the vote is to be conducted and how the integrity of the vote will be preserved – for example it might specify the use of a paper ballot. This will ensure workers can vote freely for whom they wish, free from victimisation or repercussions.*

11) *We also believe the legislation should clearly state that the workers determine the voting process, not the employer, and that it is not a negotiated process.*

*Currently this is buried in guidance material and we believe it would be clearer if it was in the legislation.*

### c. Treatment of HSRs

Under section 66 of the Work Health and Safety Act, HSRs are afforded immunity for personal liability for actions or inaction conducted in good faith when fulfilling the role of HSR.

Under section 104, a person must not engage in discriminatory conduct for a prohibited reason. Subsection (2) provides that a person commits an offence under the section only if the reason (which is defined under section 106) was the dominant reason for the discriminatory conduct.

Section 105 defines discriminatory conduct specifically as conduct a person engages in if:

"a) *a person*

- i) dismisses a worker; or*
- ii) terminates a contract for services with a worker; or*
- iii) puts a worker to his or her detriment in the engagement of the worker; or*
- iv) alters the position of a worker to the workers detriment; or*

b) *the person:*

- i) refuses or fails to offer to engage a prospective worker; or*
- ii) treats a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement; or*

- c) *the person terminates a commercial arrangement with another person; or*
- d) *the person refuses or fails to enter into a commercial arrangements with another person."*

What is a prohibited reason is stipulated under section 106 and includes preemptive actions and exercising a power or performing a function as a health and safety representative.

Section 108 also prohibits a person from using force, threats or persuasion to have another person use or not use a power under the Act. This also includes protection to stop a person from undertaking a role under the Act as well.

We believe that these provisions about discriminatory conduct need to go further to safeguard the function of HSRs.

The provisions should make it clear a person will be taken to have engaged in discriminatory conduct if it can be established that it was a reason leading to that conduct, rather than the dominant reason.

It should be specifically stipulated that discriminatory conduct towards a HSR includes counselling, or disciplinary action in any form, for conduct engaged in whilst performing their role as a HSR. This includes when a HSR is collecting information about health and safety issues.

The legislation should clearly state HSRs are to be given wide latitude for their actions, and that unless contrary evidence is provided, reasonable actions performed by them to fulfil their role are done in good faith.

By way of example, we outline the following matter, which Safe Work is aware of.

An employer counselled and warned a HSR for conducting a petition to demonstrate that workers agreed there was a health and safety issue.

The employer also took disciplinary action against the employee, a HSR, for disclosing to "third parties" private medical information of co-employees that had authorized the disclosure. The third party was in fact the Union, which had already engaged the employer about the matter. The HSR disclosed the information to the Union, in the presence of the Company, during a meeting with all three parties in which the health and safety issue were being discussed.

The warning was finally removed after a lengthy intervention by SafeWork NSW. However, the time to resolve the matter prolonged the distress to the employee who subsequently left the company and is firmly of the view that the reasonable conduct of an HSRs is not protected by the legislation.

## Recommendations 12, 13, 14.

### We recommend:

- 12) *It should be specifically stipulated that discriminatory conduct includes counselling, remedial action, forced transfer, or disciplinary action in any form due to conduct performing their role as a HSR which is conducted in good faith. This role conducted in good faith includes collecting information, and speaking to employees.*
- 13) *The onus should be clearly stated to be on the PCBU to show if a HSR is not acting in good faith when conducting a HSR function and there should be a presumption in favor of the HSR acting in good faith in the absence of evidence to the contrary;*
- 14) *The provisions in the Act should make it clear that a person will be taken to have engaged in discriminatory conduct if it can be established that it was **a reason leading to that conduct, rather than the dominant reason**. Delete the word "dominant" from s104(2).*

*It should be clear that HSRs are given wide latitude under the Act for their actions. There should be specified that there is an overwhelming presumption that HSRs are acting in good faith and to genuinely fix and raise genuine health and safety issues raised with them by a worker/s.*

### d. Overall approach to HSRs

Although the Act states that workers are entitled to request HSRs, our experience is that employers continue to be reticent, and even obstructive, to such requests. There have been many examples of employers stalling the process. Whilst matters can be referred to the regulator, greater guidance may assist the implementation of requests by workers for HSRs.

## F. Review of Decisions - Part 12 of the Act

The right of a Secretary of an Industrial Organisation to bring proceedings for a Category 1 or Category 2 offence should be preserved and extended.

In the past two years, the SDA has conducted extensive health and safety surveys of workers. Almost 4000 workers have participated each year.

About one in two workers report experiencing workload stresses in their workplaces in these surveys. But often employers report to the SDA these issues (or psychological issues) feature minimally in their injury data or reported incidents. We feel this is because these types of issues may not necessarily result directly in an injury or be reported by workers. We feel if they are reported other related injuries may be reported, such as repetitive strains.

Customer abuse is another key issue which has been reported consistently by about 45% of workers in 2015 and 2016. This is an issue which is often unreported to employers.

Workload stress impacts greatly on a person's physical, emotional and psychological wellbeing, and can have dramatic impacts. We have been involved with cases where workers may be suicidal due to workload stress or have had reports where it causes flow-on affects such as drug use or effects a person's family life. This does not necessarily show up in reported injuries data, but these are concerns needing to be addressed in the interest of the public and our community.

The extension of the ability to bring proceedings would enable the Union to pursue a range of lower level hazards such as the psychological impact of workload stress and customer abuse, hazards which have a significant impact on the health and safety of workers in our industries.

### **Recommendation 15.**

#### **We recommend:**

*The ability for the Secretary of an Industrial Organisation to bring proceedings for a Category 1 or Category 2 offence should be preserved, and extended to lower categories of hazard, including psychological hazards.*

## G. Incident Reporting

We submit incident reporting requirements need to be clearer and more stringent under the legislation.

The legislation does not specify that workers should have direct access to reporting systems. In our experience, many companies have online reporting processes which



can only be accessed by management. This leads to errors at times in reporting and also failures to properly report by managers, especially if an incident does not result in a serious injury.

We also find that sometimes, due to the nature of the industry, many managers who have access to such online systems are not present at the time of injury. This leads to failures to lodge a report, or errors about the content of the report due to a lack of communication.

For example, we have found extensive under-reporting of customer abuse as verbal reports to management are often not entered in online systems.

In a recent example, a night worker sustained an injury. It was reported to a health and safety committee member on duty as the store manager and assistant store manager were not working at the time. In addition the employee reported the injury to her team leader the following day. None of the persons she reported the injury to were able to enter the injury in the system or reported it further. It was not until 4 days post-injury when the worker was unable to attend work (due to what we now know to be excruciating pain from a snapped disc in her lower spine), that it became apparent that store management wasn't aware of the injury and that nothing had been reported. The injury report was not made until 4 days after the injury was incurred and had the injury not persisted nothing would have ever been recorded. Delaying the report has had a detrimental impact on the workers' recovery.

Finally, there can also be difficulties around the reporting of exposures to incidents involving violence and bullying, and incidents involving the exposure to bodily fluids and zoonotic disease. Systems of reporting and dealing with violent incidents in the workplace also need to be addressed in the Act. This includes in design, consultation, work systems and protections. Where incidents of violence and bullying are not properly reported, this can lead to further difficulties for a worker who wants to make a claim for a psychological injury that manifests from such incident.

#### **Recommendation 16.**

##### **We recommend:**

*Workers should be allowed to report incidents directly into incident reporting systems, including online systems.*

*We also recommend that workers and their HSRs be provided with a copy of incidents they report to ensure these are accurate.*

*We recommend the requirement to report exposure to violence, bodily fluids or zoonotic diseases is reinstated.*

## **H. Conclusion**

The SDA represents the interests of more than 70,000 retail, fast food, warehouse, distribution and pharmaceutical manufacturing employees throughout New South Wales.

The SDA submits that the Act in its current form does not adequately protect retail, fast food and warehouse workers from the health and safety risks arising in their workplaces.

The SDA urges the Minister to address the inadequacies of the Act by implementing the recommendations explored in this submission.