Australian
Manufacturing
Workers' Union
NATIONAL OFFICE
AMWU

6 June 2018

Committee Secretary
Senate Education and Employment Committees

Via email: eec.sen@aph.gov.au

Dear Secretary,

Senate Inquiry into the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia

The Australian Manufacturing Workers' Union (AMWU) represents over 70,000 workers who create, make and maintain across Australia. Safety is union business and the AMWU have a long and proud history of fighting for safer workplaces for all Australian workers.

We believe that the first step to improving workplace safety and reducing the number of deaths caused by work, we need to properly understand the scale of the problem. No worker should ever go to work, never to return home. We must also ensure that work related injuries and disease are treated no less seriously than fatal injuries suffered in the workplace.

Industrial Deaths - Understanding the scope of the problem

We do not know how many industrial deaths we have in Australia due to the fragmented nature of our data collection and classification systems. The following article articulates some of the difficulties:

> ***OHS Alert June 1 2018***
>
> *Safe Work Australia's latest notifiable fatalities monthly report shows that 230 work-related fatal injuries were reported to Australian work health and safety authorities last year – well up from the 203 reported the previous year, and 43 more than SWA's "workers killed at work" tally for 2017.*
>
> *The "notifiable fatalities" toll is always higher than the "workers killed at work" figure because, among other things, it includes bystanders who suffered a fatal injury resulting from a work activity, usually on a public road.*
>
> *But as previously reported by OHS Alert the significant discrepancy between the two tolls is problematic because regulators and policy makers frequently mistakenly refer to the lower figure as the country's overall work-related death toll when highlighting the success of safety initiatives.*
>
> *As it is, the higher figure underestimates the overall total of work-related deaths because, as SWA says, not all work-related fatalities involving aircraft,*

trains or traffic incidents on public roads are reported to WHS authorities, and bystander fatalities are excluded where the bystander is considered to be at fault.

The underestimation of fatalities is further compounded by the lack of data collection for non traumatic work related deaths. Aside from the Mesothelioma Registry, no other work related deaths recorded systematically. Mesothelioma is but one of the cancers attributable to asbestos exposures – the Global Burden of Disease estimates that there were 4,048 deaths related to asbestos exposures in Australia in 2016, accounting for 34 % of all lung cancer deaths :

- Cancer 3,971 – laryngeal, lung, ovarian & mesothelioma
- Asbestosis 77[1]

In 2016, 575 mesothelioma patients died, in 90% cases the cause of death was mesothelioma and at least 60% of these people will have had occupationally related asbestos exposures[2].

Non mesothelioma asbestos related deaths are only one example of the under reporting of work related deaths. According to Workplace Safety and Health Institute based in Singapore[3] the estimated *global* work-related mortality by cause in 2015 were

- circulatory diseases (31%)
- malignant neoplasms (26%)
- respiratory diseases (17%)
- occupational injuries (14%).

These sorts of attributions go well beyond the usual discussion in Australia around workplace related deaths.

In 2006, Australian researchers estimated 5,000 cancers annually caused by occupation – around 6.5 percent of the total cancer burden. This equates to 4,415 cancers in men (10.8 percent) and 643 in women (2.2 percent)[4].

The European Union has developed and currently uses its own method of workplace death attribution[5]. There is no reason why this approach would not apply broadly to Australia.

---

[1] GBD, Institute for Health Metrics and Evaluation, University of Washington. Tim Driscoll, ASEA Conference 2017

[2] https://www.mesothelioma-australia.com/media/11836/amr-report-2016-6th.pdf Accessed 01/06/18

[3] https://www.wsh-institute.sg/files/wshi/upload/cms/file/Global%20Estimate%20of%20Occupational%20Injuries%20and%20 Page 13, Accessed 01/06/18

[4] https://www.cancer.org.au/content/pdf/News/MediaReleases/2015/web%20%20Occupational%20report.pdf#_ga=2.61033772.184124779.1527832891-854137992.1511327650 Page 6. Accessed June 1 2018

[5] Tukala J, presentation *Cancer at work Work-related Cancer in EU*, ETUI Forum Brussels 16 December, 2016

These estimates, developed on behalf of the International Labour Organisation, show that occupational injuries are the least significant contributor to mortality:

> *In EU28, cardiovascular and circulatory diseases accounts for 28% and cancers at 53% of work related deaths. They were the top illnesses responsible for 4/5 of deaths from work-related diseases. Occupational injuries and infectious diseases together amount accounts for less than 5%.*[6]

One example is Chronic Obstructive Pulmonary disease which was the fifth leading cause of death in Australia in 2015[7], accounting for about 7,000 deaths. Application of the lower attributable fraction[8] of 6% for work related for deaths due to respiratory diseases[9] to the 7,000 deaths equates to an estimate of 420 deaths in 2015.

If we use a conservative application of the European figures, by assuming that work related fatalities account for 5% of workplace related mortality, rather than 1% from the EU data, we get a clearer picture of the size of the challenge. Given that we have about 200 work related fatalities annually in Australia, then we can assume that at least 4,000 Australians die every year as a result of their work.

In summary, the number of work related deaths in Australia is not known, but it is several orders of magnitude greater than that reported by any Australian government body. This work shows that the figures that policy makers tend to rely on are just the tip of the iceberg. A more sophisticated analysis is required if we are to properly reduce the impact of workplace related mortality in Australia.

Why do we need a realistic count of work related mortality?

To focus prevention activities it is necessary to have a reasonable estimation of work related mortality. As outlined in Appendix 1 of the AMWU submission to the 2018 WHS review[10], regulators activities are predominately motivated by workers compensation data. This data underestimates injury and is grossly inadequate for work related disease – for example West Australian Cancer Council of Australia estimates that workers compensation data represents only 8% of occupational cancer.

---

[6] Slide 8 ibid

[7] https://www.aihw.gov.au/reports/asthma-other-chronic-respiratory-conditions/copd-chronic-obstructive-pulmonary-disease/contents/what-is-copd
Accessed June 1st 2018

[8] An attributable fraction can be interpreted as "the fraction of a disease [or injury] which would not have occurred had the exposure factor been non-existent in the population in question".

[9] Collegium Ramazzini 19th Statement containing a comprehensive analysis of *Chronic Obstructive Pulmonary Disease (COPD) in occupational settings in 2016: A New Approach to the Control of COPD*. As a result, AF for COPD were used to estimate the number of deaths due to respiratory diseases. The AF for COPD was 18% for males and 6% for females.

[10] AMWU Submission Work Health and Safety Review April 2018

Improved data

Australia has implemented policies and strategies in our work towards the elimination of asbestos related diseases i.e. importation ban, activities to decrease exposure to legacy asbestos containing materials, workplace health and safety regulations, establishment of the Asbestos Safety Eradication Agency with significant engagement of civil society. The rationale for this work has been the data collected from the Mesothelioma Registry and its predecessors.

In a similar approach, the Australian government and regulators need to action the *Dublin Statement on Occupational Health – New Avenues for Prevention of Occupational Cancer and Other Severe Occupational Health Hazards*.[11] The declaration calls for national programs for the prevention of occupational cancer, monitoring and registration of exposure to cancer causing and intersectoral collaboration to develop and implement planned policies.

Essential for improved data and diagnosis are robust estimates of exposures e.g. CAREX in Canadian. Australian academics have developed a similar tool but these have not been used effectively in the prevention of exposures to severe occupational hazards. In 2015 SafeWork Australia published *Deemed Diseases in Australia*[12]. The deemed diseases list provides justification for the inclusion of 84 workplace related diseases, from skin diseases to cancer, as "deemed diseases" under workers compensation laws. So far the uptake by jurisdictions has been very disappointing – only small jurisdictions have adopted a version.

Governments require that new laws/regulations are assessed through regulatory impact statements where a cost benefit analysis is applied to assess whether the action is "necessary'. Without good data on work related mortality, is very difficult to quantify the social costs of deaths and illness thus ensuring balance of cost vs benefit analysis decides in favour of the push to limit "red tape".

Ceasing the reliance on workers compensation data by health and safety regulators is an essential reform that is consistently talked about but little action is taken. Insurance data will never be a reliable indicator due to the strict and ever changing eligibility rules for making a claim. The 2016 Independent Panel Review of Health and Safety laws in Victoria were informed that other data is used by Worksafe to assist in targeted interventions; however, the Panel authors didn't have access to the sources used [13]. We must rely on broader mechanisms for understanding the impact of work related illness and injury.

[11] International Commission on Occupational Health, Royal College of Physicians of Ireland and Faculty of Occupational Medicine, Ireland, Dublin May 2018
[12] Deemed Diseases in Australia, Safework Australia, 2015
[13] Independent Review of Occupational Health and Safety Compliance and Enforcement in Victoria, Victorian Government, November 2016 page 84

Prosecution of industrial deaths in Australia

> *Penalties for breaches of the health and safety laws need to be increased, most companies can afford pretty much any fine, but nobody can afford to go to prison*[14]

Although breaching work health and safety laws is a criminal offence the penalties applied by the courts are generally much lower than the available maximum. The push for industrial manslaughter legislation has its origins in the failure of the courts and regulators to use the legal system as a deterrent. John Braithwaite and others refer to a "tall pyramid" of enforcement and compliance actions by regulators. This is not the case anywhere in Australia.

Traumatic fatalities are uncommon in manufacturing sites. But the spate of fatalities in the last 6 months highlights the need for constant vigilance. It is not appropriate to detail recent events, as the investigations and legal processes are still ongoing but it is clear that most cases of traumatic fatality are preventable. Often it is a series of events that precipitate a catastrophic failure in risk control mechanisms. The causes are rarely unknown and generally risks for which control measures are technically achievable, suitable and effective.

Below is an edited list of recommendations which could be applied to many circumstances – it is adapted from a real example.

Investigation of a traumatic fatality

- Engineering expertise be engaged to redesign the access point
- Engineering specialists be engaged to consider lock-out mechanisms on all plant with effect of tripping the de-energisation of the plant.
- Engage independent specialist(s) to consider if the cleaning of plant can be done without a exposing the workers to significant health and safety hazards
- Develop Contractor Management Policy/Procedures
- Develop Policy/Procedure for internal and external audits of WHS (including contractor) management systems
- Review Induction Policy/Procedure
- Review Training Policy/procedures
- Develop and implement consultation processes as per the H&S law
- Access to union approved H&S Rep training.

Many of our work sites complain about the performance of the health and safety inspectorate. To quote an AMWU member:

> *We need to focus on shifting the regulator from the hug and pat approach to actual real workplace audits and inspectors having the gumption to take action*[15]

[14] AMWU HSR in response to level of fines under WHS laws, May 2018
[15] AMWU WHS Law Review Submission, April 2018, page 38

Responses to our 2018 HSR survey indicate that such cynicism is not inevitable. There was a distinct difference in the assessment of inspectorate assistance between Victoria and Work Health and Safety Act jurisdictions. One in four HSRs covered by the WHS Act were unhappy with the assistance offered compared to one in ten in Victoria.[16]

There is clear research evidence that active inspectorates decrease injury rates and they are most effective when enforcement action is taken[17]. It is very disappointing that regulators are regularly captured by the "reduction in red tape "argument and the push by lobby groups that education and guidance are the tools necessary to change workplace behaviours. Such deregulatory approaches are scarce in the remainder of society.

Safety implications relating to the increased use of temporary and labour hire workers

> *"Unfortunately, Australia is a global pacesetter when it comes to reliance on non-standard working arrangements"*[18].
>
> *"'Insecure employment' covers a lot of sins – fear of losing your ostensibly 'permanent' job, inability to find permanent work, scratching a living from multiple jobs or working on short hours or zero-hour contracts, at the whim of someone who claims not to be your employer. They all have one thing in common – they are far more likely to damage your health than secure, permanent work." [19]*

The health and safety outcomes for insecure workers are documented in Chapter 5 of the 2012 AMWU submission to the *Independent Inquiry into Insecure Work in Australia.* The situation has not changed.

Whilst insecure workers are regarded as "ancillary" to workplaces their health and safety will continue to be jeopardised. The effects on their health will also be unknown as workers without access to entitlements are less likely to claim for workers compensation and their exposures are undocumented due to their mobility. The "hard work" or the "dangerous work" is often contracted out thereby trying to shift the responsibility for health and safety and workers compensation from the principal or large employer onto small businesses or so called 'independent contractors".

The AMWU submission[20] makes a number of recommendations to address some of the problems for these workers, particularly for representation and access to support and independent advice.

---

[16] Ibid, Page 38

[17] Tompa E, et al, A systemic review of the effectiveness of occupational health and safety regulatory enforcement" , American journal of industrial medicine, vo;l 59, no 11, pp 919-33

[18] ACTU submission to Senate Select Committee The future of work and Workers Inquiry, February 2018, page 11 and The Conversation ***Precarious employment is rising rapidly among men: new research,*** **April 13 2018**

[19] Hazards Magazine, *Make or break: Time to turn and fight for decent, secure, healthy work*, July 2017, http://www.hazards.org/insecure/makeorbreak.htm#workfear accessed June 2018

[20] Attached to this submission

But, insecure work is a health and safety risk in itself – increased risk of injury, more severe injuries and workers experience greater difficulties in returning to work post injury – so the most effective control measure is to limit the exposure to insecure work and to strengthen the social safety net that supports those in precarious work. Some solutions are offered in the ACTU report "Australia's insecure work crisis: fixing it for the future"[21].

The role of employers and unions in creating a safe-work culture

Factors which exert positive influence on health and safety performance include[22]

- Managerial commitment
- Active inspectorate
- Trained workers
- Participation of workers
- Trained worker representatives with the support of their industrial organisations.

Employers clearly have a duty of care and responsibility, they after all are the ones that design and provide the work. With the fragmentation of the labour market, many small employers/ contractors have little input into the design or provision of work. Despite clarification in the Model WHS laws that PCBUs have a "chain of responsibility" regulators and larger enterprises fail to enforce or comply along the labour market supply chain. For high profile examples refer to the arrangements dictated by major retailers which have very negative outcomes for transport and agricultural workers. There has been a pervasive "transfer of duties to workers" and the AMWU has made previous submissions about the causes of this transfer[23].

The AMWU is active in prompting active involvement of our members, Health and Safety Representatives and delegates. Consultation and involvement of workers and their representatives is a critical feature of any good health and safety management system. The AMWU submissions have a few examples of the attitudes and achievements illustrate the positive impact active HSR have on improving outcomes[24].

The advice provided by experienced to less experienced HSR always includes the importance of "standing your ground" and "being clear when talking with management". These are skills that are not technical health and safety but those of good communicators who have the ability to be a good representative of fellow workers working in a respectful manner. If a workplace/site has a cooperative and respectful manner of working together many challenges, including health and safety can be overcome. Unfortunately, the increase in insecure work, hostile industrial relations laws and decreased unionisation are forces which enhance the exercise of managerial prerogative to the detriment of workers health and safety.

---

[21] Australia's insecure work crisis: fixing it for the future, ACTU, 2018.

[22] *The role of worker representation and Consultation in managing health and safety in The construction industry*, David Walters Cardiff Work Environment Research Centre Cardiff University, ILO 2010 GB.298/STM/1/1

[23] AMWU WHS Law Submission April/May 2018, page 20

[24] WHS Law Review Submission April 2018 and supplementary submission May 2018.

The right to participate and have a different perspective on health and safety has been reaffirmed as a fundamental workplace right. [25]

If you would like any further information, or if we can assist the committee in any way, please contact Warren Tegg (warren.tegg@amwu.org.au) in the first instance.

Kind Regards,

Paul Bastian
AMWU NATIONAL SECRETARY

[25] AMWU vs Visy Pty Ltd (3) {[2013] FCA 526, para 168