

### ‘Don’t Risk Second Rate Safety’

#### Unions and OH&S

Occupational Health and Safety is a key priority for workers and core business for unions.

Workplace injury and disease destroys quality of life, social and family activities, affects job prospects and career advancement. There are almost 690,000 work-related incidents – including diseases, injuries and fatalities – each year.

In 2007-08 there were 150 notified work-related fatalities (131 worker-notified fatalities and 19 bystander notified fatalities).

But according to unions, researchers and government agencies, these official figures underestimate the true scale of the problem.

The Australian Safety and Compensation Council also stated in its March 2009 report on the *Cost of Work related death, disease and injury* that, “Disease fatality estimates are considered to be a conservative estimate, with studies estimating that as many as 7000 fatalities may occur each year as a result of work-related disease” This is four times the annual national road toll.

#### Harmonisation of OH&S laws

The Council of Australian Governments resolved in 2006 to create a harmonised set of Occupational Health and Safety laws to apply in the federal, state and territory jurisdictions.

The Rudd Government has also replaced the Australian Safety and Compensation Council with a new body, the Safe Work Australia Council.

Unions support the move to harmonise OHS laws around Australia, so long as it does not mean a compromise of the highest standards and rights for workers. However, the recommendations for model OHS Laws put forward by the National Review will undermine existing laws and safety standards and put workers at risk. There are key areas identified by the ACTU that need to be urgently addressed to protect Australian workers and their families.

Key issues for workers and their families include:

- Ensuring that workers and their representatives are consulted by employers about any issue that may affect their health and safety.
- Ensuring no reduction in rights; powers and protections of health and safety representatives.
- The highest standard of employer duty of care to ensure workers health and safety is protected.
- Improving OHS standards by protecting the right of an injured party or their representative union to prosecute.
- Employers having the burden of proof in OHS prosecutions to establish they did all they could to make work healthy and safe.
- The right to effective workplace representation on OHS.

### **SOME KEY PRINCIPLES**

#### **Consultation and Health and Safety Representative rights**

Under current laws in most states, employers must consult workers about health and safety issues in the workplace.

The proposed laws state that employers would only have to consult if it was “reasonably necessary”, and only then with workers who were “directly affected”.

Unions are concerned that this is loose language that could be abused. Health and safety issues affecting one group of employees may well impact on others.

Unions also want to ensure that there is no reduction to the rights, powers and protections of health and safety representatives.

#### **The right to prosecute**

Trade unions have been able to prosecute breaches of workplace health and safety law in NSW since the 1940s. The right to prosecute should become a national standard.

Union prosecutions have been used sparingly, but have clearly improved workplace health and safety. If the proposed laws are introduced, unions will lose that power. It is critical that the entitlement to prosecute goes beyond just regulatory authorities.

The Finance Sector Union began prosecuting banks in 2002 for failing to provide appropriate security in the event of an armed hold up. Those prosecutions prompted banks to spend more than \$100 million on full height anti-jump barriers, ATM bunkers and digital CCTV with live back to base monitoring.

#### **Onus of proof**

The proposed new laws would also make it harder to prove an employer has failed to provide a safe workplace.

The onus of proof should be on the defendant (the employer), not the prosecutor. That means government agencies or a trade union would have to prove an employer did not take reasonable steps to keep a workplace safe.

Laws in some states require an employer to show they have taken reasonable steps to provide a safe workplace. This is a common sense approach that should be maintained.

#### **Right of entry**

The proposed laws require union officials to provide 24 hour notice to inspect documents when investigating a breach of workplace safety laws.

Union officials often travel long distances to a workplace when there's been a suspected breach of occupational health and safety law. This 24 hour notice requirement should be removed and the new laws should ensure that union representatives have full rights of access and inquiry in cases of suspected breaches of OHS laws.