Submission letter of Linda Moussa – to the Mary Boland Report

My name is Linda Maria Moussa and I am Iremar Da Silva's wife. I would like to tell my story in three parts; first, I would like to describe in the impact this tragedy had on my son and I. Second, the nature of the accident, that is, what happened and why it happened. Finally, I would like to relate the arduous journey we have experienced with the lengthy Safework investigation and the controversial legal proceeding which are still ongoing.

First: The impact of Iremar's death

I start by saying that my husband Iremar da Silva died at work on a construction site in Ryde on the 25th of October, 2016 as a result of work safety negligence.

Iremar went to work in good faith that day, the 25th of 2016, to do a normal day's work, but his sentence was death.

Iremar will not be at his son's 21st birthday this year, nor will he be at his son's graduation or wedding. Iremar will never be a grandfather.

Iremar will never be with his wife again, go out to dinner as a couple, and of course, that 20th wedding anniversary trip to Rome never happened.

Iremar will never cook his famous Brazilian BBQ and drink beer with friends and he will never ride his motorbike again.

Iremar will never finish all the home renovations to our new home and will never help his friends with their home renovations because he is gone, he is gone for good.

Iremar will never go back to his homeland to see his aging parents. His mother lost her oldest son, she will never hug him again. His siblings, nieces and nephews will not enjoy his sense of humour anymore nor benefit from his wisdom.

Iremar and everything he meant to family and friends was torn away from us due to a senseless act of negligence.

Second: The accident

Iremar was working as a form worker on a site at Ryde, Sydney NSW. His company, Clamster PTY LTD was contracted to Sapform PTY PTD who in turn was contracted to Truslan PTY LTD. Truslan was building a block of residential apartments at 11 Porter Street Ryde.

Iremar was working on the first-floor deck laying some plywoods onto beams, when he fell from a distance of three metres onto the ground. He was tragically impaled by exposed reo bars and did not survive his injuries. Iremar fell through a gap in the handrail protection.

Representatives from the CFMEU had visited the 11 Porter Street Ryde site one week prior to the accident and had listed a number of safety concerns including the gap in the handrail protection. The CFMEU representatives left very specific

instructions with the site's project manager but none of these instructions were followed. If the CFMEU's report on the site had been taken seriously by both the project manager and the company's director, Iremar would be alive today. This highlights the importance of allowing access the representatives of the CFMEU to site, and I wish they had a stronger and more authoritative presence when it comes to the follow up on safety instructions and recommendations.

Third – The Safework investigations and legal proceedings.

The accident investigations carried out by Safework took eighteen months to be completed. During this time, communications between Safework and my son and I were limited to brief phone calls or phone messages stating that the investigation was still in progress. Families play a very insignificant role both in the investigation process and in the legal proceedings. This has also been a very traumatic experience as the information provided to us was sporadic and confusing. My experience of these proceedings is that SafeWork is a government department dealing with their clients, that is, the companies investigated for negligence. During this process, the victim's family is given only enough information to keep them at bay. There is really no one representing the victim or his family; the process is geared towards negotiating the most expedient outcome for the government and the companies in question.

I was deeply disappointed with the fact that Sapform Pty Ltd was able to apply for an Enforceable Undertaking; hence, delaying their plea of guilty or not guilty. Enforceable Undertakings should not be available to companies who are being charged with negligence resulting in death. It now appears that Sapform was being pursued by the ATO at the same time as they applied for an EU. So they were in no position to follow through with the expenses related to an EU. However, they were allowed to apply for an EU and Safework took considerable time to consider their application. Once the EU was rejected, Sapform was still able to delay their plea for another four months and now the ATO is in the process of "winding them up" as Safework has expressed it. The outcome of all of this is that Safework cannot guarantee that this company will ever be charged. A great deal of time and resources have been wasted on a process that is inefficient and projects the image that it is easy for companies to, literally, get away with murder.

As to Truslan Pty Ltd, they were able to strike a deal with Safework where, the director, Mr Zhang, had the charges against him dropped. Charges against Truslan Pty Ltd still went head and they were sentenced a couple of weeks ago. During the sentencing of Truslan, the director was not able to defend their actions prior to the 25th of October 2016, he was also not able to confirm that his site was safer in April 2019 than it was back in October 2016. So, almost three years have passed and this company has learnt nothing when it comes to the safety of their employees. Someone else could have been injured or died under their care during this time. Safework investigations and legal proceedings have served the purpose following a set process but have not made any of the two companies a safer place to work.

There is no doubt that tougher penalties should apply to companies who are charged with work safety negligence resulting in death. In the current status quo, companies can negotiate their terms in many ways and walk away with minimum fines which are covered by their insurance companies anyway. And they always know how to start again! However, there was no second chance for my husband and there is no second chance for my son and I; my husband lost his life and we will carry on with psychological scars for the rest of our lives. Overall, as individuals, if the system does not adequately represent us, we are all victims.

Call to action:

I strongly recommend the introduction of industrial manslaughter laws. I recommend that insurance companies do not cover penalties resulting from work safety negligence. I recommend that Enforceable Undertakings are not offered to companies who have been charged with negligence resulting in death. I recommend that the CFMEU continues to have access to sites and that their power of enforcing safety recommendations is strengthened.

Regards,

Linda Moussa