15th April 2018,

Dear Ms. Marie Boland,

By way of introduction I am a duly elected Health and Safety representative(HSR) representing workers in health sector in Victoria for 18 years. My submission is based on my personal experience in this role. I thank you for providing people, including myself with the opportunity to participate in this review. Please see my points of discussion below. Also note that I keen on meeting with you /your team in person should the need arise.

1. Get rid of the words *"reasonably practicable*" from OHS legislation. In my opinion these 2 words gives the employer a reason to do the minimum if not do nothing to mitigate health and safety risks. The OHS regulator allows this to be used as an escape clause on the part of the employer. These 2 words encourage a reactive rather than proactive response

2. On the subject of enforcement activity with regards to the regulator (OHS) in the State of Victoria, there has been a number of reports (for example the Maxwell Report {2004}, Stenholt report {2007}, VARGO report {2013}, Ombudsman report {D. Glass in 2016} and the recent review into Work safe Victoria enforcement activity{2016}) highlighting just how ineffective the regulator is(OHS) in administering the OHS law as well as Workers compensation laws. This perhaps raises an important the question What do the regulator (OHS)do?

3. It has been my experience as a HSR that the OHS regulator has introduced a new concept to OHS, that perhaps it is an offence to raise an OHS issue and expect the employer to address it. The evidence lies in the numerous hit and miss approaches for example when making enquires Inspectors will only speak to management representatives and base their decision /outcome only on evidence presented by management. HSRs need to go via FOI (and incur a cost) to access documents /reports on account of the regulator pushing the agenda of privacy (yep protecting the privacy of the employer).In some instances Inspectors write off cancel PINs based on their opinion that the substantive matter is an industrial matter and does not fall under the jurisdiction of OHS (one particular case study I refer to is a matter of anxiety, depression that resulted in an accepted work cover claim). I urge you to read the comments on regulators own Facebook page as this supports my claim that workers in Victoria have no trust in the regulator and that the regulator in absence of being effective in applying the laws has lost its credibility.

4. Forget any assistance form the regulator if you are employed in a government department. It has been my experience and observation that perhaps the regulator(OHS) is of the understanding that out health and safety does not matter. Government employees ought to just suck it up.

5. This leads me to my next point perhaps the training provided to Inspectors ought to be reviewed. We need to make sure that people providing health and safety advise have the appropriate skill set and expertise. Perhaps Inspectors ought to be trained by an independent company.

6. The OHS legislation gives OHS powers however as the day and year progresses HSR are being dis empowered. What is lacking is the principal application and enforcement of section 76 of OHSA on the part of the OHS regulator. It is universally accepted that you dis empower a HSR, you are dis-empowering a workforce. There is a very serious power imbalance, we need to give the power back to the workers and HSRs.

7. Consultation or the lack of it is a huge stumbling block. But who can blame the employer after all if our regulator does not understand the importance of this concept then how can one expect them to provide advice on how to comply with section 35 and 36 of OHSA(2004). For example all the employer has to say to the Inspector that they (employer) have discussed the risk control/ communicated the risk control and the Inspector accepts this as evidence there was consultation. When HSRs issue PINS the Inspectors insist that we provide evidence that consultation with the employer occurred prior to issuing the PIN yet relies on the word of the employer to determine compliance has occurred.

8. I have assisted many workers with work cover claims matter. It disturbs me to think that a country like Australia that promises immigrants like me freedom, goodwill and opportunity can at the same can rob injured workers of their freedom and opportunities as well as show no good will or compassion towards them.

Solution:

The solution that I propose is a health and safety Ombudsman in each state. The Ombudsman should be a separate self-contained body clearly recognized as an authorities body responsible for holding to account the appointed OHS regulator in each state. The Ombudsman should have autonomy in its day to day operation and given all the powers of the regulator to make decision with regards to the application of the OHS laws including Workers compensation Act.

The Ombudsman must be an independent umpire that provided assistance and service to all workers and for this reason is also given an appointed position on the board of management for each regulator and decision making role in the health and safety advisory committees. This allows for a greater degree of real participate in the process of decision making at all levels and for all workers not just union members..

Please feel free to contact me on my mobile number [redacted]. I will be more than happy to speak to you in person (with all cost incurred paid by me). We need to maintain an equilibrium and status quo. The only way forward is to establish a Health and Safety Ombudsman. This a win win outcome for both employees and the employer.

Thank you,

[redacted]

[redacted]

[redacted]

[redacted]