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10th October, 2019

Mr Tony Sievers MLA
Chair Scrutiny Committee
Parliament House
Darwin NT 0800

Dear Mr Sievers,

The CFMEU provides the following further submission regarding the Industrial Manslaughter Legislation recently introduced into Parliament and more broadly the Lyons Review and its recommendations.

THE DRAFT LEGISLATION:

We support the submission provided to you by NT Unions, limiting the use of this legislation to PCBU's and Senior/Executive Officers. There is also a need to describe who is a Senior/Executive Officer and PCBU.

We agree that the "intentional" element in the draft legislation be removed as Murder is the only offence that requires the DPP to prove intent where a death has occurred. Offences in the Workplace Health and Safety area should never be treated as intentional only be assessed by weight of liability.

We also support the third part of NT Unions submission around the process for prosecutions particularly being in line with Queensland's laws.

The CFMEU believes that the "right to request an IM prosecution" be extended to families and unions. This would be beneficial to those who have industrial illnesses that lead to death either after they have retired or moved on from the offending employment or where these parties believe the Regulator has failed.

LYONS REVIEW AND RECOMMENDATIONS:

Whilst acknowledging that the Legislation is overdue and necessary due to the significantly higher fatality and injury rates in the NT, we contend that this measure alone is not a silver bullet.

Importantly, with the sweeping reforms surrounding NT Worksafe, the intent of all these measures should be about providing safe places at work and adequate deterrents.

One of the gaps identified in the Lyons Review was that the Codes of Practice (COP) be restored to the status it held under the Work Health Act 1995 (NT). By having the Codes of Practice (COP) in the regulations, it provides a number of positive outcomes for all stakeholders.

By strictly adhering to the COP it would significantly reduce the risk of using the proposed IM Laws by having safety "front of mind" during all tasks. This should be the priority of these reforms.

Throughout the consultation process of which we were part, employers raised time and again that there was a need for clarity and guidance to particular forms of work. By having the COP enshrined in the regulatory framework, ambiguity would be minimal. The various COP's should be reviewed every three (3) to five (5) years to ensure Territory workers have the most contemporary laws.

It should be noted that employers agreed to regular reviews and the Best Practice Principles contained in COP's but hold the hypocritical stance "so long as none of its enforceable". In other words, we fully support Principles behind the Code so long as it's never applied.

Also, in the Lyons Report the short comings of experience and knowledge of Inspectors was identified. Having the COP's to fall back on would give the department more confidence to be proactive rather than reactive, another area identified as needing addressing in the Report.

Put simply, by giving the COP's legal status, it provides clarity to employers, workers and unions as well as providing the Regulator with the enforcement tools required to drive the behavioural change that is critical in achieving safe workplaces in the NT.

Having seen the implementation of this process in other jurisdiction's we can attest that the cost is minimal and the direct benefits in site safety are clear.

There are IT systems available that contain the COP's for audit purposes used on IPads for very little outlay and training. We envisage that this would be in the early stages of implementation.

Should the Scrutiny Committee require clarification on any of the above, the CFMEU would avail themselves to the inquiry itself or forward responses expediently. I am contactable on 0419 741 708.

Yours sincerely,



Kane Lowth
Local/State Co-Ordinator and
NT Organiser