

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

SENATE REFERENCE INQUIRY

THE FRAMEWORK SURROUNDING THE PREVENTION, INVESTIGATION AND PROSECUTION OF INDUSTRIAL DEATHS IN AUSTRALIA

SUBMISSION BY FAMILY MEMBER

YOUR DETAILS

Name Robyn Colson Submission Date: 26/05/2018

INFORMATION ABOUT YOUR LOVED ONE

Name David James Colson Date of death: 08/10/2007
Relationship Mother/Son

BACKGROUND

On the 8th of October 2007, my 24 year old son, David, was killed in a workplace accident.

My son was an abalone diver in Tasmania, however on this particular day he was working as a deckhand for another abalone Diver.

A detailed account of the day David died and the reasons why can be found here:

https://www.magistratescourt.tas.gov.au/about_us/coroners/coronialfindings/c/coulson,_david_james_-_2010_tascd_1

TERMS OF REFERENCE

1. The effectiveness and extent of the harmonisation of workplace safety legislation between the states, territories and Commonwealth;

My Comments:

I believe, that Tasmania has its own legislation which contradicts the Australian Constitution and breaches Australian Federal Law. The Australian Constitution says, at Section 109, “*When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.*” Currently, specific workers in Tasmania are excluded from the *Workers Rehabilitation and Compensation Act 1988* (Tas), specifically these workers are listed under Section 4(5)(d) as follows:

5) This Act shall not apply to any person –

(a) whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business; or

(b) who is an outworker; or

(c) who is a domestic servant in a private family, and has not completed 48 hours' employment with the same employer at the time when he suffers injury; or

(d) who is a member of the crew of a fishing boat, and is remunerated wholly or mainly by a share in the profits or gross earnings of that boat; or

(da) who is employed by or on behalf of the Crown in right of the Commonwealth or by a person, or body, that is licensed, or taken to be licensed, under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth; or

(e) notwithstanding section 4D , who is participating in an approved program of work for unemployment payment under the Social Security Act 1991 of the Commonwealth –

and no such person shall be deemed to be a worker within the meaning of this Act.

I believe that an Australian worker should not be treated less fairly due to the State in which they live or work in. The Australian Constitution also provides under Section 117 that “*A subject of the Queen resident in any State shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.*”

The workers who are excluded from the *Workers Rehabilitation and Compensation Act 1988* (Tas) as outlined above, are not excluded from the *Workers Compensation Act 1987* (NSW).

Under the *Workers Rehabilitation and Compensation Act 1988* (Tas), as it currently stands, the Tasmanian Government is denying Death Compensation to workers who are killed at work, who would have otherwise received compensation had they of died in another Australian State. The Tasmanian Government is specifying that those workers outlined in Section 4(5)(d) of the *Workers Rehabilitation and Compensation Act 1988* (Tas) are worthless and disposable.

All Australian workers, in all States, should be treated fairly and equally in death.

2. Jurisdictional issues surrounding workplace investigations which cross state and territory boundaries;

My Comments:

When an Australian worker is killed at work in a different State to that of their next of kin, it should not be the responsibility of the next of kin to cover the cost of body transportation from one State to another. This is thousands of dollars, and at times unaffordable by many families. The cost to transport an Australian worker killed at work home

to their family should be covered by either the Industry in which they were employed, the Industries Insurance company, or the State Government of where the deceased was killed.

It is wrong that the parents of the deceased worker are forced to pay for body transportation, particularly when the Industries are often multi million dollars industries.

3. Issues relating to reporting, monitoring and chains of responsibility between states, territories and the Commonwealth;

My Comments:

N/A

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

My Comments:

N/A

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

My Comments:

Following the death of my son, an Inquest was held. At this inquest, the Employer, admitted that he was not following OH&S Laws, Rules and Regulations, working to Australian Standards, and did not have the correct Policies and Procedures in place. This Employer, was never prosecuted as the findings of the Inquest were not released until after the Limitation Period for criminal prosecution expired.

If an Inquest in being held, the criminal prosecution limitation period, should not begin until the findings of such Inquest are released. The Employer of my son walked away without penalty after making full admissions of his breach of duty of care.

6. The effectiveness of penalties in situations where an employer has been convicted of an offence relating to a serious accident or death; and

My Comments:

As outlined above, the following needs to be introduced in Tasmania:

- If an Inquest in to the death of a worker is being held, the criminal prosecution limitation period, should not begin until the findings of such Inquest are released;
 - Industrial Manslaughter Laws, similar to those recently introduced in Queensland on 23 October 2017, under the *Work Health and Safety Act 2011* (WHS Act), *Electrical Safety Act 2002* (ES Act), and *Safety in Recreational Water Activities Act 2011* (SRWA Act) need to be introduced into Tasmania, and any other States who do not have them. As the law in Tasmania currently stands, some employers are not being held responsible for the death of their workers.
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7. Any other related matters

My Comments:

It has been 10 years since the workplace death of my son in Tasmania and he has still not received any justice. He has been denied death compensation, and although his employer admitted to a breach of a duty of care he was not prosecuted. This should not be happening in a developed Country such as Australia.

NAVIGATING THE PROCESS & LIASING WITH GOVERNMENT DEPARTMENTS

My Comments:

It has been an absolute nightmare dealing with Government Departments who have lied, given me the run-around, banned me from their facebook accounts and hung up on me over the phone, for trying to raise issues and save the lives of workers. The behaviour of political staff and the politicians themselves, has been horrendous. Currently, Premier, Mr Will Hodgman, is refusing to meet me, ignoring my correspondence and also ignoring a Petition that I have sent to him with over 1300 signatures demanding Legislative changes that would help save workers lives. The petition can be viewed at this link:

<https://www.change.org/p/will-hodgman-premier-of-tasmania-help-save-the-lives-of-australian-workers>

SUPPORT FROM THE TASMANIAN STATE & GOVERNMENT DEPARTMENTS

My Comments:

The behaviour of the Tasmanian Government has been absolutely appalling for the past 10 years. It appears that they are uninterested in preventing the loss of life of Tasmanian workers. Our issues remain unresolved, and our concerns remain unaddressed. We received no support from the Tasmanian Government or relevant Industry.

INVESTIGATION PROCESS

My Comments:

As briefly outlined above, the Coroners findings did not come down for 2 years and 3 months following the death of my son. This meant that the employer could not be prosecuted because the time to prosecute him had run out. This needs to be amended to ensure employers who breach their duty of care are held accountable.

Many years after the death of my son and after the Inquest, the Tasmanian Government finally agreed to a review of my son's workplace death. After the review, I asked if the person conducting the review had read or listened to the Inquest transcripts because it did not appear to me that they had. I am still waiting for an answer to this question! It is unacceptable that the questions of the parents of the deceased are cruelly ignored by the Government and their staff.

PROSECUTION

My Comments:

As outlined above, due to the extensive delay of the Inquest, the limitation period to prosecute the Employer who admitted a breach of duty of care expired. Therefore, justice was not served.

Following the Inquest, my son's employer, who admitted a breach of duty of care was given a Premier's award, by current Premier Will Hodgman!

CORONIAL INQUEST:

My Comments:

The Coronial Inquest itself was beneficial as it brought to light the deficiencies in the "standard" practice of the Industry. However, unless the law is changed to allow prosecutions outside the limitation period following a Coronial Inquest, then there is no point having a Coronial Inquest as those that are found to have contributed to the death of a worker cannot be held liable.

COMPENSATION:

My Comments:

I have dealt with this in detail in my response to Reference 1 however, further to that we were definitely not adequately considered with regard to compensation. We did not receive one cent in compensation. We had to incur all costs ourselves including funeral, body transportation and a Barrister for the Inquest at thousands of dollars a day. My local MP told me we would be entitled to an ex-gratia payment, but the Tasmanian Government has decided that my 24 year old son's life is worth nothing. Zero. Not one cent!

OTHER THOUGHTS:

My Comments:

Most Australian's would be unaware of how badly broken the system is and how Australian workers are being treated like garbage when they are killed at work. The worst part is that politicians continue to ignore the issues. Will Hodgman the Premier of Tasmania (not a representative) should be brought in to explain to the Inquiry why my son has received no justice at all. Will Hodgman also needs to explain why we have been denied death compensation for over a decade. He needs to explain to the Inquiry why he is refusing to meet with us, and why he is ignoring a Petition that would help prevent the loss of lives of Tasmanian workers.

Thankyou,

Robyn Colson