

MEDIA RELEASE

APPEALS TO IRC ABOUT FAIRNESS, NOT EXONNERATION

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Recent appeals against the findings of the Industrial Relations Commission in relation to workplace deaths, seek to address important principles of justice and legal fairness, not to exonerate employers from responsibility, a peak mining group said today.

The NSW Minerals Council understands and shares community concern about workplace fatalities. It supports the full force of the law being applied against rogue employers who recklessly and negligently endanger the lives of their employees.

NSWMC Chief Executive, Dr Nicole Williams, said the current appeals challenge the applicability, not the intent, of criminal penalties for directors and managers found responsible for workplace deaths under the Occupational Health and Safety Act.

“Safety is the number one priority of this industry and no workplace accident is considered acceptable,” Dr Williams said. “However, the current application of these penalties doesn’t make workplaces safer, but does risk degeneration into inappropriate retribution for a human tragedy.”

“No human loss can ever be compensated and it is critical that justice is not only done but is seen to be done. Clearly, this applies as much to the accused as it does to the families of the victims,” Dr Williams said.

“But simply by their occupation, more than 300,000 managers and directors across the state of NSW currently face different and more draconian judicial standards than anyone else in our society. This is not only unjust, it is fundamentally unfair.

“Managers of any business in NSW where a workplace death occurs can be prosecuted and jailed for up to two years by the Industrial Relations Commission. The prosecution process is, however, fundamentally flawed. It does not provide those charged with some of the basic rights afforded all others in the justice system. People accused of a breach of the OHS Act are presumed guilty rather than innocent if the court finds the company they worked for is guilty. Furthermore, defendants are required to prove their innocence rather than the prosecution having to prove their guilt, they do not have a right to trial by jury or clear and unfettered rights of appeal and, even if acquitted of a crime, defendants in the IRC can be retried for the same offence.

“These aspects of the Act contradict many of our society’s basic legal principles and undermine the vital intent of the Act to deliver safer workplaces.”

Dr Williams said the primary objective of the law must be to make workplaces safer.

“It is important that safety laws focus on making workplaces safer and continue to reduce the risk of injury and death to workers.”

“The current OHS Act focuses on the use of sanctions in the event of an accident. The current Act completely fails to focus on accident prevention,” Dr Williams said, “Consequently, it is a poor regulatory tool.”

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