

## Public Administration Committee

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**Subject:**

Standing Committee on Public  
Administration - Inquiry into WorkSafe

**From:** Glenn McLaren

**Sent:** Tuesday, 3 April 2018 9:28 AM

**To:** Public Administration Committee <lcpac@parliament.wa.gov.au>

**Subject:** RE: Standing Committee on Public Administration - Inquiry into WorkSafe

Attn: Hon Adele Farina MLC

Chair, Standing Committee on Public Administration

### **Inquiry into Worksafe**

Your ref: A676880

Via email; [lcpac@parliament.wa.gov.au](mailto:lcpac@parliament.wa.gov.au)

Thank you for your letter dated 20 March 2018.

I refer to your invitation to expand the following comment I made during the public hearing on 30 October 2017:

*If a worker does raise a health and safety issue, they have some protections under the Fair Work Act to protect them under general protections. Under the state system, we do not have that.*

I was not referring to the unfair dismissal provisions of the Fair Work Act (ss 385-389); rather, the general protections provisions in ss 340-345 of the Fair Work Act. Section 340 of the Fair Work Act prohibits adverse action against another person for exercising a workplace right. Under s 341(1) a person has a workplace right if that person:

- Is entitled to the benefit of, or has a role or responsibility under, a workplace law, workplace instrument or order made by an industrial body; or
- Is able to initiate, or participate in, a process or proceedings under a workplace law or workplace instrument; or
- Is able to make a complaint or inquiry.

As you have identified, s 35A of the OSH Act prohibits employers or prospective employers from causing disadvantage to a person for either being a safety and health representative or performing any function as a safety or health representative. However this protection is limited to OSH reps. The Fair Work general protections provisions are not limited to OSH reps. It has a more extended protection through two ways:

- A "workplace law" is any law that regulates the relationship between employer and employee, and expressly includes laws that deal with occupational health and safety matters (section 12, Fair Work Act). This means that any employee exercising any right, claim or benefit under the OSH Act who is then disadvantaged by the employer can access the general protections provisions.
- A complaint or inquiry is not limited to OSH complaints that are made in accordance with a relevant OSH law. As seen in cases such as *Burke v Serco* [2012] FMCA 1134, it is sufficient for an employee to make a complaint about the safety of their workplace to trigger the general protections provisions.

I hope that this clarifies my comment and should you have any questions or wish for me to expand further, please do not hesitate to contact me.

Glenn McLaren  
Assistant State Secretary  
Australian Manufacturing Workers Union  
West Australian Branch

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