

USU BAN ENDS UP IN COURT THE RIGHT TO CEASE UNSAFE WORK UPHELD

The new **Work, Health and Safety Act** and Regulations came into effect in NSW on 1 January 2012. An important part of the legislation is the right of a worker to cease unsafe work. This is found in Section 84 of the Act.

Section 84 Right of worker to cease unsafe work

A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

This 'right to cease work', was one of several aspects discussed by Michael Barnes of White Barnes Solicitors at a USU Safety forum held on Thursday 27 October 2011. Mr Barnes made it clear that the legislation requires a duty to care for the safety of others as well as a duty to take care of your own safety. Note that there has to be "reasonable concern" about exposure to serious risk. Mr Barnes noted that a worker's assessment of risks in a particular situation need not be a formal written process. For example, a sole council ranger sent out to investigate a complaint about a dog, on approach becomes aware that the dog is guarding a venue where a group of people are organising illegal drug activity. The danger to their safety is considered too high, so they withdraw and contact the Police.



USU General Secretary Graeme Kelly

Workers have a legal right to cease work if they believe there is serious risk to their health or safety. Recent action by the USU and members delivered a swift response by the Industrial Relations Commission to stop rangers from possible risk on Australia Day.

Some members have asked the Union about conflicting obligations arising out of increased law enforcement duties and the duty to take care of their own safety. In this regard, it should be noted that there have been cases where the Union has placed a ban on particular activities in response to safety concerns. A recent example of this is discussed below.

Union ban ends up in court

In the Union's Northern Region, a coastal Council directed rangers to enforce Alcohol Free Zones on the Australia Day public holiday on 26 January 2012. This could involve taking alcohol away from people drinking in these areas. The Rangers were concerned that if they followed the direction from council, they would find themselves in personal danger. The dispute was taken to the Industrial Relations Commission on 25 January.

His Honour DP Harrison took the matter into private conference resulting in a recommendation that on Australia Day, Rangers primarily "observe" and "report" and undertake "soft compliance" and

refer all other matters to the NSW Police Services.

His Honour made the following recommendations:

I recommend that any ban on compliance with alcohol free zones be removed and that the rangers carry out their duties on the following basis:

- ▶ First and foremost, self preservation and protection in that they do not put themselves in any situation of risk or that could expose themselves to risk
- ▶ The judgement of the individual officers on each occasion will be accepted in that regard
- ▶ The primary task is observe and report and they should report any incidents that they consider should be so reported to the Police for their assistance and
- ▶ Soft compliance; soft compliance does not go beyond making an inquiry of parties as to whether they are aware and that they are in an alcohol free zone, and perhaps subject to the officer's assessment, a request to put the alcohol away

IT PAYS TO BE UNITED!

- ▶ Where the officer assesses that such approach would be exposing themselves to risk having regard to the nature of the group or individuals concerned, they should not make that approach, they should simply observe and report.

Invitation to hear more

This is an important case. USU members are welcome to come along and hear a report about the action of the USU members and discuss the outcome of the case.

An Information Session is being planned for 11.00 am on Wednesday 21st March.

USU Organiser, Luke Hutchinson, will be the speaker on this issue.

RSVP – if you plan to attend, please RSVP by email lfraser@usu.org.au or phone Lyn Fraser 02 92658211 for more information.

State Government Responsibility Shifting

In recent years NSW State Governments have passed legislation which has increased the role of local government in areas of law enforcement – many workers consider that this has increased their exposure to safety risks. An example of this is legislation which enabled councils to apply to the Commissioner of Police to have particular council workers become authorised enforcement officers to empower them to enforce Alcohol Free Zones (AFZ) and Alcohol Free Areas (AFA) – including the confiscation of alcohol where people are found to be consuming alcohol.

Confiscation of Alcohol

The Union has lobbied the State Government on this particular issue over several years, undertaken a number of surveys and raising concerns within the local government industry.

Different councils appear to have differing approaches to the issue. A survey of council management in October 2009 revealed that 76% of the 79 responding councils considered the confiscation of alcohol to be too risky and better left to the Police. Several councils indicated that they chose not to apply to the Commissioner of Police for the authorisation.

A number of councils continue to engage in enforcement of AFZ and AFA but the role is limited (by Memorandum of Understanding with the Police) to providing logistical support only – the confiscation of alcohol remains the responsibility of the Police.

In December 2010, the President of the Police Association had this to say about the confiscation of alcohol:

“The job of confiscating and tipping out alcohol should only be done by trained Police Officers and not local government workers. It is inappropriate and dangerous for council workers, such as rangers, to be put in a position where they have to respond to groups of people drinking alcohol in public places.... These situations can easily become aggressive and violent.”

Nevertheless some councils persist in sending out council workers to confiscate alcohol, despite the risks; often without putting in place adequate occupational health and safety policies and strategies.

For more information:

For more information about the Work, Health and Safety Act and Regulations, as well as translated information in various community languages - go to the NSW Workcover website at www.workcover.nsw.gov.au

Get involved – Other things you can do:

- ▶ **Find out more about the USU Rangers & Parking Patrol Officer Reference Group and obtain copies of reports and surveys.**
 - ◆ **Check out the website: www.usu.org.au/local-government/rangers.html**
- ▶ **Have an opportunity to give opinions on current topics relating to local government rangers to assist us lobby for improvement across local government.**
 - ◆ **Check out the current hot topics – go to www.usu.org.au/localgovernment/hottopics.html**
- ▶ **Find out more about the NSW Local Government Rangers & Parking Patrol Officers Taskforce on Safety**
 - ◆ **Take a look at the website: www.localgovernmentsafetytaskforce.com**
 - ◆ **Let us know if you want to be on the waiting list to sit in on a Taskforce meeting. Email lfraser@usu.org.au and ask to be put on the waiting list**
 - ◆ **Have a close look at the 10 Steps Toward Safety document on this website – this gets updated from time to time.**

All employees are encouraged to join their union. Application forms to join the USU can be obtained from the website www.usu.org.au or by ringing the USU Support Team on 1300 136 604.