

TRANSCRIPT OF PROCEEDINGS



Phone: 1300 502 819

Email: clientservices@sparkandcannon.com.au

Web: www.sparkandcannon.com.au

Adelaide | Brisbane | Canberra | Darwin | Hobart | Melbourne | Perth | Sydney

COPYRIGHT RESERVED

(NB) Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General, proceedings for infringement will be taken.

INDEPENDENT COMMISSION AGAINST CORRUPTION

COMMISSIONER LANDER

PUBLIC HEARING - EVALUATION OF SAFEWORK SA

ADELAIDE

1.59 PM, FRIDAY 1 JUNE 2018

MS H. STANLEY appeared as counsel assisting

COMMISSIONER: On the 10 May, I made a public statement in which I said that I intended to conduct an evaluation of the practices, polices and procedures, insofar as those practices, policies and procedures relate to the regulatory arm of Safework SA. On the 22 May, I made a further public statement, in which I identified the scope of the evaluation, which is the legislative and regulatory functions and responsibilities discharged by public officers within the regulatory arm of Safework SA. The discretionary powers given to inspectors and investigators employed within Safework SA and the practices, policies and procedures that are in place to safeguard against abuse of those discretionary powers. The practices, policies and procedures in respect of the availability and use of - and resources by public officers employed within the regulatory arm of Safework SA and whether those practices, policies and procedures provide a sufficient safeguard to minimise the misuse of those resources. And, the practices, policies and procedures in respect of the deployment of human resources within the regulatory arm of Safework SA and whether those practices, policies and procedures provide adequate measure to maintain those human resources so as to ensure the proper and efficient discharge of their core functions.

The evaluation formally commenced on the 17 May 2018 with a request for a range of documents from Safework SA. The statutory power to conduct an evaluation is provided for in section 7(1)(d) of the Independent Commissioner Against Corruption Act, which allows for the Commissioner to evaluate the practices, polices and procedures of an inquiry agency or public authority and thereafter provide a report of that evaluation and provide a copy to the President of the Legislative Council and the Speaker of the House of Assembly. Section 7(1)(d) of the ICAC Act provides that the evaluation must be carried out with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration. I decided to embark upon the evaluation as a consequence of a number of complaints and reports that have been made to the Office for Public Integrity about Safework SA, since the inception of my office. Each of the complaints and reports have of course been dealt with on their merits but the totality of the complaints and reports led me to think that it has become necessary to consider the wider context in which Safework SA conducts its business, and in particular how it guards against the risks of corruption, misconduct and maladministration.

I stress that this is not an investigation in to corruption, nor is it an investigation in to misconduct or maladministration. It is what I said it is, and that is an evaluation of the practices, policies and procedures of Safework SA. If during the course of the evaluation process, I unearth evidence that raises a

suspicion of corruption, misconduct or maladministration, then those matters will be dealt with separately and in accordance with the ICAC Act. This evaluation will be considered in public. Section 7(5) of the ICAC Act specifically empowers the Commissioner, when conducting an evaluation of this kind, to conduct a public inquiry and to regulate the conduct of the inquiry as a Commissioner thinks fit. In determining whether a matter should be considered in public, the ICAC Act presently requires me to have regard to one of the primary objects of the Act which is to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation.

I am mindful that this is not an investigation into individual conduct but rather an evaluation of practices, police and procedures. In those circumstances, I think the risk of undue prejudice to an individual's reputation is low but I will consider that balancing exercise continuously throughout the evaluation. Conducting the evaluation in public will allow members of the public, together with public officers employed throughout the state and local government to not only observe the way in which the evaluation is conducted but in so far as they have relevant information, to participate in the evaluation process. I will speak more about how others can become involved a bit later. I have appointed Ms Holly Stanley to act as counsel assisting in this evaluation and I will now ask her to make an opening statement. Ms Stanley.

MS STANLEY: Thank you, Commissioner. Every worker is entitled to expect that they can attend a workplace and not be at serious risk of harm or death. Safework SA is part of a national scheme. Its principle function is the regulation of the workplace in order to protect workers and others against harm to their health, safety and welfare. Safework SA is of critical importance to the safety of every person who works or attends workplaces in South Australia. It follows that if Safework SA does not carry out its functions and exercise its powers effectively, then the scheme designed to ensure the safety of workers is compromised. A core function of Safework SA is to advise on and inspect the extent to which businesses have in place adequate policies and procedures to safeguard the safety of workers. It follows that Safework SA itself must have in place strong policies and processes to carry out that work. For Safework SA to be effective, it has to be accountable for the risks presented within its own organisation and those risks must be properly managed to ensure its functions are carried out to the highest standards of diligence. The public expects nothing less.

The purpose of this evaluation, as you have set out, Commissioner, is to evaluate the regulatory arm of Safework SA in order to identify risks of corruption, maladministration and misconduct, to highlight good practice and

to recommend opportunities to improve. It is important to highlight, at the outset that this evaluation is not an investigation in to any individual conduct arising out of any individual event or incident. Throughout the course of the evaluation, it may be that individual conduct is identified which raises a potential issue of corruption, misconduct or maladministration. Should that occur, where necessary, such matters will be referred to the Office of Public Integrity. Since its create, the Office of Public Integrity has received a number of complaints and reports about - regarding Safework SA. These reports have raised concerns about the way in which resources are used, how staff performance is managed, the adequacy and appropriateness of inspections and the use of compliance powers. The complaints and reports, together with recent events occurring around a withdrawn prosecution, makes your evaluation both timely and appropriate.

Safework SA is governed by the Work Health and Safety Act which was adopted in consultation with the Council of Australian Governments, in an effort to create a nationally harmonised approach to work, health and safety. South Australia is home to a large variety of workplaces and industry, including the largest mine in Australia at Olympic Dam, a number of large scale manufacturing businesses and a busy construction industry, all of which present particular risks to health and safety. Under the Work Health and Safety Act, any person conducting a business or undertaking has a primary duty of care to ensure that so far as is reasonably practicable, neither workers nor any other person's safety and health are put at risk by the manner in which that business or undertaking is conducted. Safework SA is tasked with protecting workers and others through the elimination or minimisation of risks arising from work, as well as securing compliance with the duties set out in the Act through effective and appropriate compliance measures.

The Act requires that workers and others be given the highest level of protection against harm. To achieve these objects, the Act appoints the Executive Director of Safework SA as the regulator. The regulator has a number of important functions, including powers of compulsion in order to monitor or enforce compliance with the Act, prosecuting those who fail to comply with the Act and appointing inspectors to investigate and secure compliance. Inspectors have a dual function. They are tasked with both assisting workplaces to ensure they comply with the Act, as well as managing potential or actual contraventions of the Act. Inspectors have a very broad power of entry. They can enter any workplace without notice, in order to exercise compliance powers. Once on site, an inspector has near unfettered power to ensure compliance, including inspecting and examining any aspect of the workplace, conducting tests, making recordings, or requesting interviews with those at the workplace who must comply with such a request.

Should an inspector feel it necessary, they can seize evidence at a workplace, they can even seize the workplace itself. An inspector can manage contraventions or suspected contraventions of the Act in a number of ways.

5 Individual inspectors, along with the regulator, can investigate contraventions of the Act and prosecute persons conducting a business or undertaking for breaches of the Act. Breaches of primary health and safety duties under the Act, can result in fines for corporations of up to three million dollars and terms of imprisonment of up to five years where reckless conduct risks death, serious

10 injury or illness of a worker or other person. Aside from prosecution, an inspector can also issue a variety of notices to enforce compliance with the Act. These notices can direct a person to improve or prohibit processes and practices, or prevent the disuse of site or plant. The regulator may, in lieu of prosecuting a person for a contravention of this Act, accept a work

15 health and safety undertaking. Such an undertaking is enforceable in a number of ways, including the granting of injunctions, if a person fails to comply with the undertaking.

An inspector or the regulatory may also initiate proceedings for breach of work, health and safety penalty provisions. These are, broadly speaking, financial sanctions which may be imposed on union officers with right of entry permits for improperly exercising those rights. An inspector may, in the course of their duties, investigate contraventions of the Act by right of entry permit holders, whilst at the same time working with unions as a stakeholder in the

20 overall desire to protect workers health and safety. In practice, this means that the highly discretionary powers vested in an individual inspector are often being utilised in circumstances where there are competing pressures and invested interests at play. It is generally accepted, where such significant regulatory decision-making powers are vested in individuals, and where the

25 consequences of a regulatory decision can be significant for both businesses and workers, those individuals are at significant risk of corruption, including bribery and coercion.

It is therefore important that those risks are acknowledged and properly

35 managed. The scope of the evaluation I am assisting you to conduct is to focus on these decision-making powers, as well as to consider how the regulatory arm of Safework SA manages its staff and its resources in the exercise of its powers and in meeting the objects of the Act. Given the breadth and importance of the powers granted to both the regulator and to inspectors, to

40 date, there has been significant investment in resources to assist in the exercise of those powers. Safework SA currently employs around 220 staff. It is projected to run at a cost of 37 million dollars over the 2017-2018 year, bringing in some 27.7 million dollars in income, therefore requiring a budget allocation of approximately 9.3 million dollars. It is important that

Safework SA's resources are managed effectively and appropriately.

- 5 It is proposed that the evaluation proceed in the following way, the evaluation should be conducted over five stages, with the first of those the establishment of the project already complete. A team has been established and the scope of the evaluation has been determined. The second stage of the evaluation is now underway. Staff from Safework SA have been invited to make submissions to your office and a range of documents have been sought from Safework SA, many of which are now being reviewed. As part of the second stage of the
- 10 evaluation, you will shortly invite members of the public and interested stakeholders to make submissions and your team will invite Safework SA staff to participate in face to face interviews. The assistance of interested parties and employees in this process, is vital to the ultimate goal of identifying good practices and making useful and transformative recommendations where the
- 15 processes might be deficient. Once submissions have been received and considered, you will invite certain representative parties to make a submission at a public hearing. Those public hearings will be scheduled to take place over the first two weeks of July.
- 20 After careful consideration and evaluation of the information collated during stage two, I will prepare closing submissions for your consideration which I will deliver publicly at a hearing on 31 August 2018, marking stage three of the process. Stage four will see an invitation issued to interested parties to make written submissions in reply to my closing, as well as an opportunity to
- 25 supplement those written submissions with oral submissions to be heard in public in the week commencing 2 October 2018. Finally, having considered those closing submissions and those made in reply, with the assistance of your team, you will prepare a report for parliament. The report will identify recommendations with a view to advancing comprehensive and effective
- 30 systems for preventing or minimising corruption, misconduct and maladministration. The projected aim is for the report to be delivered to the President of the Legislative Council and the Speak of the House of Assembly by the end of October 2018.
- 35 This evaluation provides an opportunity to identify both good practices and opportunities to improve. The ultimate aim is to minimise risks of corruption, misconduct and maladministration within Safework SA, best ensuring that it continues to fulfil its vital duty to ensure the health and safety of those working in South Australia, efficiently and effectively. May it please the
- 40 Commissioner, those are my opening remarks.

COMMISSIONER: Thank you, Ms Stanley. Thank you for that helpful opening statement. The time that you have proposed over which the evaluation will run is a tight time but we must do our best to see that we can comply with

the schedule that you've suggested. The evaluation will proceed in the manner that you've suggested. As I said earlier, it is important that an evaluation process, such as this is, as transparent as possible. For that reason, I intend to make available on the ICAC website documents that are relevant to this
5 evaluation, unless those documents would adversely affect Safework SA's ability to carry out its business, or unless there is some good reason to maintain the privacy of those documents. I will also make available the submissions that are made in due course by stakeholders, members of the public and Safework SA employees, unless again, there is good reason to keep those
10 submissions private. I need information as to how Safework SA performs its regulatory role under the Work Health and Safety Act and the more information of that kind that I have, the better the evaluation process will be. I've already received cooperation from the Chief Executive, Attorney General's Department and the Safework SA Executive, for which I
15 am grateful.

It is important for the evaluation process to obtain the cooperation of Safework SA's employees, to obtain information from them in relation to the practices, policies and procedures of Safework SA and the manner in which
20 those practices, policies and procedures are adhered to in practice. It is important for Safework SA's stakeholders to provide me with any information that is relevant to the scope of this evaluation. I would also be helped by receiving information relevant to the scope from members of the public. I would encourage Safework SA's employees, its stakeholders such as industry
25 groups and unions and members of the public to come forward and provide my office with any information that is relevant to this evaluation and to make any submissions they consider are also relevant to its scope. The ICAC website shows how staff, stakeholders and members of the public can make submissions in writing or by email. I will receive submissions from
30 stakeholders and members of the public until 15 June 2018.

The second public hearing will be as you suggest, in the first two weeks of July. Thank you very much.

35 MS STANLEY: Thank you, Commissioner.

ADJOURNED

[2.21 pm]