

## **Public Service Association of SA**

Submission regarding proposed recommendations.

### **Independent Commissioner Against Corruption (ICAC) Evaluation of the Practices, Policies and Procedures of the Regulatory arm of SafeWork SA**

#### **Purpose**

The purpose of this submission is:

1. To address the recommendations proposed by Ms Holly Stanley, Counsel Assisting the Commissioner, at the public hearing on 31 August 2018.
2. To propose for consideration other recommendations that the PSA believes would help prevent or minimise the risk of corruption, misconduct and maladministration.

#### **Part 1: Response to Recommendations Proposed by Council Assisting**

##### **Preamble**

Council Assisting's submission makes reference to report produced by the Victorian Independent Broad-Based Anti-Corruption Commission (IBAC). We assume the report referred to is that titled '*Corruption risks associated with public regulatory authorities*', July 2018.

The Public Service Association of SA (PSA) encourage anyone with an interest in this evaluation or a more general interest in corruption prevention to read this highly relevant report (available on the IBAC website).

The PSA has also found the report on the Evaluation into the Public Trustees useful in terms of the issues uncovered in that evaluation and subsequent recommendations.

##### **Recommendations Proposed by Council Assisting the ICAC's Evaluation**

###### **1: That a Strategic Plan be developed for SafeWork SA**

The PSA supports this recommendation, and further recommends that a Strategic Plan be developed for SafeWork SA (SWSA) as a matter of priority and in consultation with SWSA staff and their PSA representatives.

###### **2: That SWSA revise its position regarding communication between the Educator and Regulator**

The PSA supports this recommendation and further recommends that this revision be undertaken in consultation with staff and their PSA representatives.

Inspectors and Workplace Advisory Services (WAS) workers have requested on multiple occasions (as far back as June 2016) that the parameters around communication between the Regulator and Educator be defined.

We understand there is currently a draft procedure on this topic being reviewed by Executive.

We recommend that:

- the provisions of section 271 on *Confidentiality of Information* of the *Work Health and Safety Act, 2012* (SA) (the WHS Act) will need to be carefully considered during the development of any policies and protocols around information sharing between the Regulator and Educator division.
- the SafeWork SA policy in relation to confidentiality needs to be reviewed in total and made more practical and instructive as part of this exercise.

Where any SafeWork SA employee observes an activity or situation that represents an immediate or imminent risk of serious or fatal injury to workers or the public, that risk must be addressed.

SWSA Inspectors, for example, would not leave the site without using their powers to either get the issue fixed then and there or, if this was not possible, issue a Prohibition Notice to ensure the potentially life-threatening activity stops.

It must be noted, however, that Industry and Workplace Advisors from the Educator arm of SWSA do not have the powers of inspectors. They can only try to convince the employer to take appropriate action, but they cannot issue a Prohibition Notice.

The Advisors can of course put their concerns in writing so there is a record of their warning, but this would be of little comfort to a person that has lost a loved one or sustained a life changing injury because the dangerous activity was allowed to continue.

The experience of our members is that businesses who have invited SWSA Advisors onsite do so because they are genuinely committed to protecting the safety of their workers and any visitors, and want advice on how to do so.

As such, it would seem highly unlikely that these conscientious employers would not take immediate action to make any potentially life-threatening situation safe.

However, if such a business owner refused to take action, SafeWork SA's first duty is to protect the workers and the public of South Australia. Faced with no other choice, an Advisor would have to report the matter to the Regulatory arm of SafeWork SA.

It should not be forgotten that, by establishing good standards of safety in South Australian workplaces, SafeWork SA is not only protecting the lives of our citizens but helping to establish a more even playing field for employers. In doing so SafeWork SA protects those businesses that are prepared to invest in safety from being under-cut by less law-abiding and scrupulous competitors.

The PSA cannot imagine any reasonable business owner or person from either side of the political fence would expect an employee of SafeWork SA to not report a potentially life-threatening activity to the Regulator if a business owner refused to order that it cease.

### **3: SWSA create, implement and maintain a complete Governance and Policy Framework**

The PSA supports this recommendation and believes that there needs to be significant additional resources dedicated to this task.

A Governance and Business Systems Team was in place until 2016, when it was disbanded as the result of a restructure to achieve the required budget cuts. Positions

were lost, and we believe that the loss of these positions and the expertise of the staff who had previously occupied them has seriously impacted on SafeWork SA's ability to:

- Develop, implement and maintain a robust Governance framework.
- Undertake environmental monitoring to identify emerging WHS issues and trends.
- Strategically identify the industries and employers that should be a priority in terms of advice and enforcement.

The PSA is concerned that further cuts in SafeWork SA's budget will result in more cuts in the resources available to do this important work.

#### **4: All Existing Regulator-related policy documents be reviewed**

The PSA supports this recommendation.

The PSA further recommends that:

- significant additional resources need to be dedicated to this task;
- a Project Plan for this work be developed that specifies priorities, methodology and timeframes for completion; and
- that the methodology include a more inclusive review process to ensure the management and workers affected by the policy/procedure (and/or their representatives) can work in a positive partnership at all stages in the review process.

Documents need to be concise and to the point if they are to be useful. Everyday reference documents need to be one to two pages of key information (operational guideline style) as it is not realistic to expect busy inspectors to wade through 20 pages on a regular basis (though longer documents may have a role as a reference and/or for training).

#### **5: That a Policy Management Framework be developed**

The PSA supports this recommendation.

Easy access to documents is key. Our members have indicated that the 'e-Manual' was a great resource developed for Inspectors that was easy to search and that they would benefit from the establishment of something similar again.

#### **6: Triage Procedures should be reviewed to enhance clarity and transparency for staff and customers**

The PSA supports this recommendation.

Our members believe that work also needs to be undertaken to educate industry and the public about which types of incidents and situations need to be reported to SWSA and which do not. Particular attention must be paid to the distinction between those incidents/complaints which are:

- clearly notifiable and fall under the agency's jurisdiction; and
- those that are either:
  - not notifiable incidents; or
  - not complaints that are not actionable by SafeWork SA.

One example of the type of incidents reported to SafeWork SA is a fight between children in a schoolyard that results in a child breaking their arm.

There are particular issues regarding incorrect or unnecessary reporting from several areas including the Education Department; workplaces that fall under more than one jurisdiction (e.g. those on Commonwealth land which are sometimes covered by both SafeWork SA and Comcare); local government; and Aged Care.

The PSA believes that there is a need to ensure that the public also has a clearer understanding and expectation of what the agency can and cannot do.

The Health and Safety Executive in the UK publishes an Incident Selection Criteria that clearly explains what they will and will not investigate. This document provides a useful example of what could be produced.

(See: <http://www.hse.gov.uk/enforce/incidselcrits.pdf>)

#### **7: Improve transparency and reporting of both performance and decision making**

The PSA strongly supports this recommendation and urges the ICAC to ensure that the final recommendations make it clear that increased transparency and reporting of both performance and decision making needs to occur at all levels in the agency.

Currently, Team Leaders, Managers, Directors and the Executive Director do not record decisions on InfoNET, in approved field note books, or anywhere accessible to Inspectors.

There is no transparency between Executive, Management and the Inspectors as to why certain Investigations go to prosecution and others do not.

Inspectors do not initiate prosecution proceedings; the decision to prosecute is always made based on Crown advice at the Executive level.

Any decisions made by an Inspector are generally very well recorded within field notes, InfoNET, and within notices. Perhaps a survey should be completed around communication/transparency between Management and staff (similar to that undertaken during the Public Trustee evaluation).

The results of better transparency cannot and should not result in a greater administrative burden on inspectors to complete additional spreadsheets and reports and attend additional file review meetings as this can seriously impact the time available to complete core activities.

#### **8: SWSA establish and make available its own Gifts and Benefits Policy Procedures and Register**

The PSA supports this recommendation.

The PSA recommends that this Policy and Procedure aims to ensure the process for reporting gifts or benefits that are offered but not accepted is simple and easy. It should also provide clear direction on the action to be taken to report and respond to a bribe aimed at influencing the actions of an Inspector or other staff and decision-makers (such as Managers and Executive).

#### **9: Staff be trained in how to identify and declare Conflict of Interest**

The PSA fully supports this recommendation.

**10: A statutory declaration be signed by new staff re any Conflict of Interest**

The PSA fully supports this recommendation and further recommends that all staff sign a statutory declaration regarding potential conflicts of interest.

However, the need for a new statutory declaration every year seems onerous. Instead, it is recommended that a new declaration should be produced and signed if there is a substantial change in circumstances (e.g. if the husband, wife or partner of an inspector in the Manufacturing Team gets a job with a local manufacturer).

Additionally, it is suggested that statutory declarations should be subject to an annual review with a new declaration being signed only if necessary.

It is also recommended that systems be put in place to ensure that when cases are being allocated to Inspectors and Investigators it is easy for the relevant Team Leader or Manager who is allocating the work to see if there are any potential conflicts of interest prior to allocation.

**11: To minimise the risk of corruption Inspectors work in pairs and/or wear Body Cameras**

The PSA supports this recommendation in principle

The PSA agrees that two Inspectors should be required to attend all worksite visits (resourcing must be addressed here) to reduce the risk of both bribery, threats and coercion.

The PSA believes that body-worn cameras could be a very useful tool during the initial scene examination of a major incident. However the use of body worn cameras at all times is unreasonable.

A very detailed examination of the use of body worn cameras needs to be undertaken and information around what other jurisdictions and enforcement agencies do in relation to this is gathered to determine what their experiences have been.

Communication and surveying of SafeWork SA staff needs to be conducted to gather intelligence from Inspectors around the use of body worn cameras and when they could be useful and when they could be detrimental. Inspectors do have concerns about the introduction of body cameras as this may make interactions with clients more formal/stilted or even confrontational as it has the potential to make both the inspector and the client feel less relaxed/more stressed. Psychological risk associated with the introduction of cameras should not be underestimated.

**12: Inspection Reports be produced and issued electronically**

The PSA supports this recommendation.

However the template needs to be less cumbersome than what was in place electronically previously. There must also be clear guidelines for when an inspection report needs to be issued and what needs to be included.

There needs to be real value for stakeholders and the agency in producing an inspection report – not just another piece of paperwork for inspectors to produce and another piece of red-tape.

**13: GPS Navigation be installed in all SWSA cars**

The PSA acknowledges this recommendation.

Consideration needs to be given to on-call Inspectors and the fact that their residential address will be available to anyone who reviews the GPS data.

**14: Software that enables more robust auditing be secured and utilised**

The PSA supports this recommendation.

**15: Team leader accompanying inspectors on site**

The PSA supports this recommendation.

This already occurs in certain teams at times and is considered extremely important in bridging the gap between the practical work completed by Inspectors and the perception of the work completed by Inspectors in the field. It is also important for team leaders to accompany inspectors periodically to support/assist/provide feedback/mentor.

**16: Team Leaders conduct desktop audits every quarter**

The PSA supports this recommendation in principle and notes that it appears in some teams this process already occurs.

Inspectors are of the view that reports and notices should be reviewed for every file at file closure and that a separate monthly audit is unnecessary.

Team Leaders are already overburdened and will likely not have time to do this on top of everything else that is required of them.

**17: A person be appointed to audit all of the work of one randomly selected inspector over a month period - to assist performance management.**

The PSA's view is that this recommendation falls outside of the scope of ICAC's remit as it seems to be about performance management, not prevention of corruption, misconduct and maladministration.

It would seem more logical for this resource to be used to assure the quality of any Team Leader audits and review files that have not been covered by the quarterly desktop audits.

There are also concerns that the Inspector will not be made aware of the audit until after it has been completed.

Transparency has been one of the recommendations and not informing the Inspectors of the auditing is not being transparent.

If Inspectors are to be audited then Team Leaders and Managers should also be randomly audited to ensure that they are working at the level/capacity required of a person with Management responsibilities.

There appears to be a high degree of checks and balances when it comes to the Inspectors, however it seems there is little in place to monitor the decisions and actions of Team Leaders and Managers. All staff need to be held accountable for their role within the decision-making process. If this is to happen, the person conducting the

audit must be highly skilled in the knowledge of the work of all inspectors and auditing as well.

There will need to be a set criteria on what an inspector is to be audited against, together with an appropriate rating for the work done. There will also have to be agreement with the inspectors on what the auditing criteria is, as well as opportunities for discussion and agreement on criteria to be used.

**18: Establishment of independent person or body to oversee the exercise of statutory powers by staff**

The overarching management of an Inspector is already a Team Leader, Manager, Chief Advisor, Director and Executive Director. Five levels of Management should be able to oversee the exercise of statutory powers by Inspectors within their own business.

The PSA would support this proposal on the basis that this person or body be focused on the exercise of power and decisions at a higher level i.e. of Manager, Executive and Regulator. Examples of the types of decisions that should be reviewed include those decisions made to investigate or not investigate; prosecute or not; and decisions to agree to an Enforceable Undertaking in lieu of prosecution.

It is recommended that, before a final decision is made on who the appropriate body should be, consideration should be given to:

- How the activities and decisions of agencies such as SafeWork SA are monitored in other jurisdictions.
- Establishing a tripartite body or Ministerial Advisory Committee with a suitably qualified and experienced secretariat for the purpose of such oversight.

**19: SafeWork SA to prepare own annual report**

The PSA supports this recommendation.

**20: As part of the induction process new Inspectors rotate through Industry Teams**

The PSA supports this recommendation and further recommends that:

- The inspectors rotating through the teams should be buddied up with experienced Inspectors to ensure that they are given high level training and information.
- The new inspector's time in the Team be planned for structure, meaning and full support.

**21: All inspectors and investigators receive training in the risk of capture and grooming**

The PSA supports this recommendation.

**22: Training to assist inspectors and investigators to manage competing and direct pressures**

The PSA supports this recommendation in principle.

However, it needs to be acknowledged that no amount of training is going to help Inspectors manage their competing tasks and pressures due to the Department's ongoing under-staffing, the fact that Inspectors have far too many jobs to deal with, and that there is a very large administrative burden for those jobs.

The amount of work that is undertaken and completed by inspectors should be acknowledged and applauded in most cases. The inspectors do well at managing their overextended workloads and competing tasks/priorities. The fix for this issue is not to simply provide training; it is having acceptable staffing levels and reasonable workloads.

The PSA recommends SafeWork SA Executive work constructively with the PSA and our members to develop and implement a multifaceted approach to the reduction of the competing and direct pressures faced by inspectors, rather than a singular focus on training.

**23: Team Leaders to provide feedback on all inspection reports and notice prepared by new inspectors within 48 hours**

The PSA supports this recommendation in principle, however members have concerns that it may not be reasonable or achievable.

The Team Leaders who provide feedback on notices must have a very thorough and detailed understanding of notice writing, and the information, guidance and feedback must be consistent across teams and constructive.

See our prior comments made under recommendation 11.

**24: Ongoing training for inspectors and investigators to maintain knowledge and skills related to their roles, to embed any changes in work practice and to learn from debrief and mistakes**

The PSA strongly supports this recommendation.

This is very important. There has been little if any communication between Management and staff around things that can be learned from and how we can ensure that mistakes that have been made in the past are not made again.

Unfortunately, SafeWork SA continues to wait for external initiatives such as Coroner's Inquests, which force the Department to address issues and areas of concern and to provide useful information to assist inspectors in understanding things that went wrong, and where improvements can be made.

Members report it often feels like a very taboo topic from Management, however Inspectors desperately want to understand where there have been issues so that they can use the knowledge and learnings to be better equipped to perform their role.

**25: Provide timely training and debriefs about learnings from prosecutions, experiences in court, internal reviews and other feedback**

The PSA strongly supports this recommendation.

SafeWork SA previously held a meeting called 'Functional Group Meeting'. This was a useful forum for Inspectors/staff to discuss learnings and talk about interesting jobs that they have attended and to share how they dealt with certain situations.

Unfortunately there was a period of time where the forum lost its value due to the kind of information being discussed (i.e. Team Leaders would only talk about stats).

The focus of the Functional Group Meetings changed in 2015 to focus more on:

- The sharing of experiences and learnings from investigations and prosecutions.
- The provision of information on emerging issues.
- Breaking down of silos between the Educator and Regulator divisions, industry teams, and metropolitan and country staff.
- Creating a regular opportunity for direct communication between Executive and WHS staff.

Despite the vastly overwhelming positive feedback from attendees, the Functional Group Meetings were abolished by the current Executive in January 2018 in favour of a much shorter inspectors-only forum.

In early 2018 a group of inspectors volunteered to put together the new forum for Inspectors. The idea of the forum was to offer inspectors the opportunity to discuss 'hot topics' and learnings from investigations and compliance inspections, receive refresher training, raise issues and concerns, build camaraderie, and to break down the silos that exist due to the separation of teams

An initial agenda was put to Executive however it was deemed to not be 'specific enough' and therefore the forum did not go ahead. This is still something that inspectors agree would be extremely beneficial, provided that the forum is run by inspectors for inspectors and that the information and topics discussed are relevant and useful to them in their day-to-day work.

## **Part 2: Additional Recommendations proposed by the PSA**

### **A. Addressing organisational fatigue, dysfunction and divide**

The PSA welcomes Council Assisting the Commissioner's comments acknowledging that SafeWork SA staff take their roles very seriously and are genuinely passionate about the safety of workers.

The PSA acknowledges the Council Assisting's findings that:

- SafeWork SA's workforce is divided – predominantly between management and staff.
- The culture of the Regulator arm of the agency is 'dysfunctional'.
- This 'dysfunctional' culture has eroded employee engagement and morale.
- Staff are suffering from the 'change fatigue'.
- Communication in SafeWork SA needs to improve, and not just between the Regulator and Educator divisions; it needs to improve across all levels.

We also agree that all of the above factors and the manner in which the Executive of SafeWork SA implements change is likely to impact the risk of corruption, misconduct and maladministration.

We recognise and appreciate the enormous amount of work that Council Assisting and the ICAC staff have done in undertaking this evaluation.

It is however unfortunate that the time frames set for this evaluation appear to have left the Evaluation Team with little opportunity to undertake an even more in-depth assessment of the opinions of staff such as the one that was possible during the evaluation of the Public Trustee. The methodology adopted during that evaluation included:

- Interviews with a third of the workforce.
- Observing daily activities.
- Surveying staff to determine the level of support they feel they receive from their colleagues, Team Leaders, Managers and Executive.

It is our belief that if the ICAC had been granted the time and resources to adopt this approach it would have found similar problems to that experienced at Public Trustee, namely:

- A hierarchical system for communication.
- Limited opportunity for direct communication between Executive and staff.

- A lack of understanding by decision makers of the work performed by staff and the time taken by them in undertaking this work.
- A perceived lack of support from Executive for staff.

It is the PSA's firm belief that these types of issues also exist at SafeWork SA and until such time as they are acknowledged and addressed these problems will:

- continue to foster a dysfunctional culture at SafeWork SA,
- reinforce the divide between management and staff, and
- compound the low morale and disengagement of staff.

In the PSA's opinion, the undercurrent of mistrust and disharmony is unnecessary, and increases the risk of corruption, misconduct and maladministration at all levels in the agency.

We respectfully request that Council Assisting and the Commissioner give serious consideration as to what actions could be taken to mend the divide between management and staff and make recommendations accordingly.

The adoption of recommendations similar to those made with respect to the Public Trustee would be welcomed, namely that the Executive provide greater support for staff by:

- being more visible and accessible;
- increasing their understanding of the work performed by staff and the time it takes to complete certain tasks;
- listening to staff and engaging in genuine consultation;
- understanding and evaluating the impact of decisions upon staff workloads;
- communicating the reasons for decisions; and
- positively acknowledging and recognising staff for their work.

Source: Evaluation of the Practices, policies and Procedures of the Public Trustee, Sept 2011, pg 34

We believe the inclusion of recommendations in the final ICAC Report aimed at addressing the cultural issues and divide at SafeWork SA would enhance the balance of the report and set a firmer foundation for positive cultural change, genuine engagement between management and employees (and their representatives), and a reduction in the risk of corruption, misconduct and maladministration.

The PSA and our members believe that the task trusted to SafeWork SA of protecting the South Australian community from work-related injury, illness and disease is too important and difficult enough without the agency being hampered by ongoing divisions, distrust and dysfunction.

## **B. Reducing the Risk of Corruption through Coercion**

The PSA notes Council Assisting's comments in her opening address to the ICAC on 1 June 2018

*It is generally accepted, where such significant regulatory decision-making powers are vested in individuals, and where the 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.*

We agree that the risk of corruption arises not only through bribery but coercion.

While the bulk of the recommendations proposed by the Council Assisting focus on the prevention and detection of corruption through bribery, the advice from our members is that stakeholders are more likely to attempt to influence their actions through abuse, intimidation and threats rather than bribes. We know of only one incident when an attempt was made to bribe a SafeWork SA inspector and this was reported to management at the time.

We, therefore, are not saying that attempts to bribe inspectors do not occur, but rather that they are in our members' experience relatively rare compared to the use of coercive tactics to prevent an inspector from doing their job.

We are, for example, aware of cases where inspectors have been:

- Threatened with legal action.
- Subjected to malicious and unfounded complaints.
- Physically intimidated and/or verbally abused.
- Subjected to road rage.
- Targeted by direct or indirect threats against both themselves and their family.

There have also been several occasions over recent years when security guards have had to be positioned at SafeWork SA due to the risks to staff from disgruntled clients.

There has been at least one relatively recent prosecution in South Australia under the section of the WHS Act that covers hindering, obstructing, assaulting, threatening or intimidating an inspector.

In 2016 an EPA Inspector was murdered in New South Wales, and an RSPCA Inspector was murdered in Victoria in 1989. The risk to the safety of people who work as SafeWork Inspectors is real, substantial and current.

This risk is not reduced by generalised and unsubstantiated comments by any parties that suggest or encourage a perception that the inspectors have a sense of self-entitlement, are corrupt, and must be closely monitored because they cannot be trusted.

The PSA recognises that the recommendation of the ICAC relating to inspectors working in pairs will assist in reducing (but not eliminate) the risk of:

- coercion-related corruption; and
- of violence-related injuries to the inspectorate.

We acknowledge that SafeWork SA has long had a procedure in place regarding Employee Security and Remote or Isolated work. However, to reduce the risk further, the PSA proposes the following recommendations for consideration by Council Assisting and the ICAC Team.

1. That, in consultation with its staff and the PSA, SafeWork SA should:
  - provide greater clarity in the actions that need to be taken by inspectors, managers and Executive if a stakeholder attempts to corrupt a member of staff through the offer of bribes or through coercion;
  - Identify factors that can be used to assess when there may be a high risk of coercion or bribery; and
  - what changes can be made to the systems of work to reduce the risk of corruption and/or injury to staff.
  
2. That SafeWork SA produce a brochure similar to that used in other jurisdictions that covers topics such as:
  - What stakeholders can expect when an inspector visits their workplace.
  - The powers of inspectors.
  - SafeWork SA's expectations in terms of how their staff will be treated when onsite including the penalties that apply if any attempt is made to corrupt an inspector through bribery or coercion.
  - SafeWork SA and its staff's commitment to ensure that the exercise of inspector powers is done in a fair, correct and consistent manner.
  - Who to contact if there are any concerns with the actions or decisions of the inspector while on-site.

Such a publication should be printed and provided to inspectors to handout while onsite.