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15 June 2018

The Honourable Bruce Lander QC
Independent Commissioner Against Corruption
GPO Box 11066
Adelaide SA 5001
Emailed: evaluation@icac.sa.gov.au

Dear Mr Lander

SafeWork SA Evaluation

I refer to your call for written submissions relating to an evaluation into the practices, policies and procedures of SafeWork SA. On behalf of the Local Government Association of South Australia Secretariat (LGA Secretariat), I provide the following submission.

Context

The LGA undertook a significant amount of research and consultation in 2017 to develop a reform proposal to strengthen the Code of Conduct for Council Members and the associated processes for enforcing acceptable standards of behavior and conduct within the local government sector.

This work identified a raft of opportunities for legislative and practice reform, including providing better safeguards to both elected members and council employees from any bullying and harassment that may be experienced during the course of their duties. This submission focusses specifically on the safeguards provided to council employees as this matter is most relevant to the scope of this evaluation.

Our work found the current framework to be deficient in how allegations of bullying and harassment against a council employee can be dealt with and that there may be a greater role for SafeWork SA.

Jurisdiction

During the LGA's research and consultation on the Code of Conduct for Council Members, the Secretariat was advised of circumstances in which SafeWork SA has advised a local government employee that it did not have legal jurisdiction to consider allegations of bullying and inappropriate workplace behavior

The LGA Secretariat has not seen the legal advice obtained by SafeWork SA advising of its jurisdiction, but believes it is because on this occasion the alleged offending behavior was by an elected member. For many council employees, there is an indivisible need to interact with elected members in the course of employment. The inability of SafeWork SA to investigate bullying and harassment of workers where the offending conduct is by an elected member may expose workers to unsafe workplaces.

The LGA has publicly called for reforms to strengthen the enforcement mechanisms available to address the uncommon instances of inappropriate behavior and serious misconduct by elected members. These reforms need to respond to the insufficient means by which a council employee can seek relief and assistance where their health and welfare is affected by the actions of an elected member.

In the absence of SafeWork SA jurisdiction a council employee's available course of action is to lodge a complaint under the Code of Conduct for Council Members — or, where it a serious matter, seeking the eventual involvement of South Australian Police and the Courts. The Code of Conduct for Council Members provides insufficient sanctions to address bullying and harassment; it is also not designed to contemplate the health and welfare rights of the complainant.

While the behavior of elected members in local government is – by and large – exemplary, there are occasional instances of serious behavioral issues that need to be appropriately addressed. The LGA is looking forward to continued discussions with the State Government on reform to the current Code of Conduct for Council Members that will provide appropriate sanctions and enforcement options to address inappropriate behavior when it arises.

In addition, the LGA believes there is merit in further consideration of whether a body, such as SafeWork SA, should be empowered to investigate the bullying and harassment of local government employees by an elected member to ensure a safe workplace for these workers.

Yours sincerely



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