

Independent Commissioner Against Corruption (ICAC) Evaluation into the Practices, Policies and Procedures of SafeWork SA

Public Service Association of SA

Submission

Preamble

The Public Service Association of South Australia (PSA) is the largest public sector union in South Australia and represents employees from South Australian government departments, statutory authorities, universities and some outsourced enterprises providing services on behalf of the State Government.

Portfolio areas covered include:

- Health and Communities
- Justice
- Education
- Tourism and the Arts
- Transport
- Environment

PSA members are also employed by SafeWork SA, the state's WHS regulator, and as such they have a unique and first hand perspective on the practices, policies and procedures of SafeWork SA. This submission is based on the direct input from members in SafeWork SA.

The PSA on behalf of members is committed to measures that genuinely enable SafeWork SA to more effectively discharge its functions as the state's Work Health and Safety regulator. This is especially so in relation to protection against work related injury and death.

This submission is in addition to a number of submissions by SafeWork SA members that address particular concerns, the broad thrust of which is fully supported by the PSA.

Given that this submission is made on behalf of members, and not one individual in particular, the PSA considers that it will not be necessary to speak to our submission during a public hearing, however we will respect the ICAC Commissioner's request should he deem it appropriate to do so.

Introduction

SafeWork SA performs a critical role in ensuring the health and safety of workers and people who attend workplaces in South Australia. In order to perform this function, SafeWork SA Inspectors carry out duties including inspecting workplaces, educating workers and managers, issuing notices to persons conducting a business or undertaking who are responsible for workplaces that have been found not to meet expected health and safety standards and conduct criminal investigations into serious workplace incidents.

Until recently, Inspectors within an investigation team investigated workplace incidents. This role has been separated and a new specific Investigator role has been established. While the powers still exist within the legislation for Inspectors to have investigative responsibilities, under adopted procedures Inspectors' investigative responsibilities are generally more limited to the initial gathering of evidence from witnesses and the securing of an incident site. Throughout this submission, the term Inspector will apply to both roles (Inspector and Investigator) unless otherwise stated.

Inspectors are a group of people who take their jobs very seriously. They understand how their roles impact on the health and safety of workers and the public if they perform their roles thoroughly and competently. They choose to be Inspectors because of that responsibility and the impact it has on workers and their safety. This is reflected in the low turnover rate of Inspectors compared to the rest of the Public Service, despite pay levels being significantly lower when compared to similar roles interstate and in private industry.

In order to perform their roles, Inspectors need adequate resources, tools, policies and procedures and relevant training. Inspectors have performed brilliantly considering the inadequacy of the above requirements. While a number of high profile prosecutions have dealt a blow to the confidence of the public, Inspectors have nothing to be afraid of from a spotlight being turned on the organisation as it will become apparent that with the resources, procedures and tools available, Inspectors performed as required and to the best of their abilities in the circumstances. Decisions out of their control, and frequently against their better judgement, have led to outcomes that have impacted public confidence.

The PSA welcomes the ICAC Evaluation as an opportunity for members to demonstrate their competency under extremely difficult circumstances and their dedication to improving the health and safety of workers and people who attend South Australian workplaces. Our members in SafeWork SA are part of a system that has been harmonised nationally to give employers clarity around responsibilities and consequences as well as giving workers the opportunity to be involved in decisions that affect their health, safety and wellbeing.

Staffing and Workloads

The PSA has been raising the lack of staffing resources regularly for the last 2 years¹. The organisation previously has provided figures on vacant or acting positions showing consistently that staffing has been less than budgeted levels of full time equivalent (FTE) funding. The current staffing level remains well below the budgeted allocation.

It is the understanding of PSA members that there are currently 90 "Inspector" positions (either Inspector or Investigator) funded but that only 50 Inspectors are in the field and many are on fixed term contracts. A significant number of those contracts expire imminently.

Lack of leadership positions

Most Team Leader positions have been filled temporarily by acting appointments for several years. The Chief Inspector position has had an acting incumbent for 18 of the last 24 months. Four of six Managers were acting for extended periods of time

The Manufacturing, Wholesale, Retail, Transport and Utility Team, for example, are funded for two team leaders. They have had one team leader for most of the last year and this is still the case. At times, due to leave and acting up, the team has had no team leaders.

The Investigation team, until recently, has had Acting Team Leaders and Managers for over two years. Again, due to leave and acting up, there have been no people in these positions.

Workloads

Excessive workloads have resulted in workers carrying excessive Flexitime (flexi) and Time Off In Lieu (TOIL). Accruals of 80 hours TOIL and 50 hours flexi have not been uncommon. This impacts the productivity of Inspectors and their ability to perform their tasks thoroughly.

The PSA has raised workloads on multiple occasions² and we intend to initiate a Local Workload Consultative Forum (a new arrangement negotiated in the 2017 Enterprise Agreement) if current vacancies are not filled. SafeWork SA Management agreed to review workloads in February 2018³.

The PSA sought a commitment to staffing the Inspectorate at funded levels in 2017⁴.

Retention Issues

In 2015 two ex-South Australian Police Officers were employed by SafeWork SA. One was employed as the Investigations Team Manager and the other as the Compliance and Enforcement Director. Following this, all except two Inspectors within the Investigations team left or were removed from the team.

New "Specialist Investigators" were subsequently employed to replace the Inspectors who had left the team. A significant number of the newly appointed Investigators then left the department within 12-18 months of being employed.

By approximately July 2016 there were five Investigators left in the Investigation team. This number subsequently dropped to 4 and has fluctuated between four and six authorised Investigators for 18-24 months. For approximately 12 to 18 months those Investigators carried Investigation case file loads of 20+ investigations. The PSA has been advised that the funded FTE for Investigators within the department is 10, plus two Team Leaders and one Manager.

Inspectors from the Compliance teams were subsequently sought to relieve in the Investigations team. It is not clear if there was any advertising at the time to recruit replacement Investigators.

Calls for Inspectors from Compliance teams to assist or relieve the Investigations team were declined due to the lack of resources, significant workloads and issues and concerns raised by the Investigators which were not being adequately responded to nor resolved over an extended period of time.

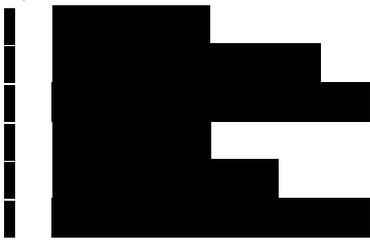
Numerous investigations that Investigators were undertaking were inherited from Investigators that had left the team or agency. These investigations required extensive follow up work which exacerbated workload issues. These staffing and workload issues were raised regularly in team meetings but remained unresolved. These minutes should be available to the Evaluation.

Leadership Issues

Between Feb 2016 and June 2018 the Executive Director of SafeWork SA changed three times:

- Marie Boland
- Dini Souilo (Acting)
- Martyn Campbell

Between Feb 2016 and June 2018 the Director of Investigations (formally known as Director of Compliance and Enforcement / Chief Inspector) changed five times.



The Director of Investigations role was only a temporary (12 months) role. This role no longer exists and the Investigation team now reports to the Director of Compliance and Enforcement.

Between Feb 2016 and June 2018 the Manager of the Investigation Team changed four times



A summary of Investigation team numbers is below.

The following is a table showing the number of authorised Investigators, unauthorised Investigators, Team Leaders and Managers from May 2016 until May 2018.

The required number of Investigators in the organisational structure is: 10 FTE
 The required number of Team Leaders in the organisational structure is: 2 FTE
 The required number of Managers in the organisational structure is: 1 FTE

2016

Month	Authorised Investigators	Unauthorised Investigators	Team Leaders	Manager
May	8		1	1
June	9		1	1
July	5	2	1	1
August	5	2	1	1
September				
October	4	2	1	1
November	4	2	1	1
December				

2017

Month	Authorised Investigators	Unauthorised Investigators	Team Leaders	Manager
January	4	2	1	1
February	5	2	1	1
March	6	3	2	1
April	6	3	2	1
May	5	3	2	1
June	5	3	2	1
July	5	3	2	1
August	5	3	2	1
September	4	3	2	1
October	4	3	2	1
November	4	3	2	1
December	4	3	2	1

* April - August 2017 one authorised Investigator brought into the team was unable to drive due to loss of licence

2018

Month	Authorised Investigators	Unauthorised Investigators	Team Leaders	Manager
January	4	3	2	1
February	1	3	2	1
March	1	3	2	1
April	1	3	2	1
May	1	3	2	1

Change Management

SafeWork SA has had numerous reviews over the last 5 years resulting in almost constant change. These reviews have led to policies and procedures becoming out of date, staff not being adequately trained or resourced and communication being severely affected. Many policies are out of date or do not exist at all.

Consultation with staff about change is improving but has regularly been non-existent or insufficient and, as a result, the subject of multiple disputes. Recently the organisation has improved its consultation processes by providing more opportunity for feedback on proposed change. However, consideration of that feedback and provision of responses to members' input remains an issue. This causes disengagement among many staff and therefore exacerbates the communication and training problems where the imposition of change requires changes to the inspection or investigation practices of Inspectors.

For example, recently tablets were issued replacing laptops for Inspectors. The tablets cannot perform basic requirements including uploading photographs and burning evidence discs. Consultation with staff would have ensured that this functionality was part of the procurement process.

Inadequate and insecure funding has caused planning to be abandoned or implementation of projects to be rushed to beat funding cuts. An audit report conducted by the Attorney General's Department in August 2017 raised numerous issues including the safety of inspectors when in the field.

Training and Communication

Training and communication has been identified as a problem area by many reviews⁵ and we expect it will feature as a result of this current evaluation. The PSA has raised training issues for members when transitioning between teams after a significant number of Inspectors sought and were approved to transfer over the last two years⁶.

The separation of the Educator and Regulator function has not been accompanied with proper planning or implementation to ensure communication, training and responsibilities are clear. Investigation team meeting minutes show that SafeWork SA has been unwilling to take a position on procedures for crucial uses of powers including:

- Structure of briefs of evidence.
- Utilisation of section 155.2(c).
- Issuing section 171 notices.
- Witnesses vs Defendants.
- "Two-up attendance" at sites (despite this being a recommendation of the Attorney General's Internal Audit Report and the PEACE model training currently being rolled out which requires that two Inspectors attend a site).
- Audio recording witness statements and transcribing the statements vs typing witness statements as they are taken. Audio recording of statements is fundamental to the proper implementation of the PEACE model training.

SafeWork SA management are still to communicate a position to Inspectors on all of the above despite the issues being raised by Inspectors. In the absence of Executive decisions, teams are being given conflicting directions from management.

Further to the above, the Price Waterhouse Coopers Audit Report of 2017 identified numerous areas where teams had developed procedures or functioned in the absence of clear guidelines and policies to ensure the agency was able to fulfil its functions. It remains unclear what recommendations of the Price Waterhouse Coopers Audit Report of 2017 have been implemented:

- Proactive inspection procedures
- Complete and accurate reporting
- Follow up compliance
- Timeliness
- Communication between functions within the agency
- Licensing
- Staff safety
- Ensuring completion of compliance obligations by the subjects of inspections
- Security of Evidence

The PSA has recently been advised that it is a frequent occurrence that those that sit on interview panels are not trained in interview processes. The PSA has not had an opportunity to confirm this but this may be something the Evaluation can investigate further.

Resourcing

A number of Executive decisions have had major impact on the SafeWork SA budget which flows on to resourcing. Two executive members have been dismissed and been paid out of contracts in the last two years, exacerbating budget difficulties. Decisions to fund new tablets have cost significant amounts but have been implemented poorly leading to additional costs for the agency.

The introduction of InfoNET has also led to issues for members. These issues were raised in the SafeWork SA / PSA Consultative Committee on multiple occasions⁷.

Issues were identified when SafeWork SA became part of the Attorney General's Department two years ago and now SafeWork SA will move to the Department of Treasury and Finance on July 1 2018.

████████████████████ the State Government will cut the budget of SafeWork SA ██████████ ██████████ in the coming financial year. This is an immense cut given the State Government provided \$9.7 million in the current financial year.

Decision Making

The PSA has seen the Price Waterhouse Coopers Audit Report of 2017 which identified a series of procedural and policy improvements necessary. The insecurity of fixed term appointments and ongoing vacancies in leadership positions has already been highlighted.

Clarity of roles across SafeWork SA has been an ongoing issue. Job and Person Specifications (J&Ps) have been unclear or non-existent⁴ for Inspectors and are currently the subject of consultation⁹.

The PWC Audit Report identified consistency issues across teams in the Inspectorate with regard to the approach to files, including content, timing of closure and completeness. Members have noted that files have been opened in the lead up to the ICAC Evaluation to ensure the content is as required. Members have suggested that InfoNET can be checked to show when files have been reopened and potentially what actions were taken, if any, to remedy incompleteness.

The former government sought a legal review of Prosecutions through mid-2017. The review was subject to legal professional privilege and the PSA has not seen the report nor been notified of any issues identified or recommendations. The outcomes seen at the workplace level however have been changes to Inspectors' arrangements, the required expertise and various other impacts.

Decisions to prosecute or not are made at the Executive or Ministerial level. Advice is given by the Crown Solicitor's Office and can be, and has at times, be dismissed. The Evaluation is encouraged to investigate the advice from different managers on how to approach s.155.2(c) after advice was sought by the agency.

The PSA notes the wording in the opening statements of counsel that Inspectors have "near unfettered" powers. S.162 of the Work Health and Safety Act specifies that an Inspector's

compliance powers are subject to the regulator's directions. This section, it should be noted, is almost identical to sections in the applicable acts of other states. PSA members encourage the Evaluation to interrogate data on the use of powers, particularly significant fines and imprisonment. Inspectors have on rare occasions sought to issue significant penalties and have been overruled, suggesting decision makers "fetter" their powers.

There are many matters recommended for further investigation by Compliance teams which are returned from the Investigations team to the Compliance teams. It is the view of PSA members that the lack of resources and workloads in the Investigation team is a significant cause of this rather than the matters failing to meet the criteria for further investigation.

Legislation

Inspectors are involved in monitoring or enforcing legislation that have tenuous links to the object of the Work Health and Safety Act, including shop trading hours and the provision of long service leave. Training to perform these additional roles is inconsistent. It is unclear whether some teams have had any formal training at all for aspects of the relevant acts and their powers.

The responsibility for SafeWork SA to license Registered Training Organisations was reviewed in 2016¹⁰ and the PSA was advised that the organisation had been found to not be adhering to its requirements.

Summary

There is a widespread recognition among PSA members at SafeWork SA that changes are required to make the organisation more effective. The only qualifications are that change should be undertaken in a consultative manner and that proper consideration is given to adequately resource SafeWork SA and the staff within SafeWork SA to undertake the important regulatory functions they are required to under the Act.

Reference List

1. SafeWork SA / PSA Consultative Committee minutes 15.2.17; 18.10.17; 27.2.18; 18.4.18. Letter to Acting Executive Director [REDACTED] 3.3.17.
2. SafeWork SA / PSA Consultative Committee minutes 15.2.17; 27.2.18. Letter to Acting Executive Director [REDACTED] 3.3.17.
3. SafeWork SA / PSA Consultative Committee minutes 27.2.18
4. Letter to Acting Executive Director [REDACTED] 3.3.17.
5. Price Waterhouse Coopers SA Attorney General's Department Internal Audit Report: 15.2 SafeWork SA Compliance and Enforcement; and Lokan Consulting – HIRMS Report into Primary Industries, Resources, Country Compliance and Engineering Team.
6. SafeWork SA / PSA Consultative Committee minutes 15.2.17
SafeWork SA / PSA Consultative Committee minutes 16.11.16; 18.4.18
7. SafeWork SA / PSA Consultative Committee minutes 16.11.16
8. [REDACTED]

9. SafeWork SA Correspondence RE: WHS Inspector Job and Person Specification Review 3.5.18; Public Service Association Correspondence 31.5.18.
10. SafeWork SA / PSA Consultative Committee minutes 22.7.16