

SAFEWORK SA

The scope of the enquiry needs to cover education, training, mentoring, industry capture, political interference, regulatory role, retention, processes and decision making, agency culture, specialist roles and licensing.

I was employed at Safework SA and its predecessors for 29 years, from 1987 to 2016, as a professional specialist inspector involved with explosives and dangerous substances, the last 16 years were as a professional manager of this work area, finishing at level PO6.

For a decade I was Chair of the national dangerous goods transport Competent Authority Panel (CAP) and for a two year period I attended meetings in Geneva of the United Nations Committee of Experts on the transport of dangerous goods, as advisor to the Australian delegation.

I prepared the first draft of the Australian Standard on the storage and handling of toxic substances, for Standards Australia.

When the ammonium nitrate security provisions were being debated nationally, I represented South Australia in drafting the protocols for adoption by COAG (Council of Australian Governments), I subsequently worked with Parliamentary Counsel in drafting the ammonium nitrate security regulations.

When fireworks were becoming a problem in South Australia I worked with Parliamentary Counsel in drafting the firework regulations.

My comments are made from observations made over this period, no names are documented here.

Education

Safework SA regulates a range of specialist legislation as well as workplace safety in the majority of workplaces within South Australia. There is an ongoing need for a highly trained and educated inspectorate capable of dealing with complex industrial issues and dealing with senior industry management.

For workplace health and safety (WHS), the agency needs to move to hiring university graduates. Specialist areas such as mining, explosives and dangerous substances have always employed graduates. In the 1980's the agency was run by officers with a background in trades, many with marine engineer qualifications. These operational officers were supported by an extensive engineering services branch, to provide a suite of engineering expertise. Also, one of the executive positions was an experienced engineer. At this time the legislation was more prescriptive and these combinations seemed to work quite well. Many of the more senior officers had decades of experience with the agency.

This situation has progressively altered to the point where very few WHS officers have any trade qualifications almost none are university graduates. Nobody in executive has an engineering degree, and often executive officers have no university degree. The engineering services branch has been disbanded and only one mechanical engineer remains. There is now a high turnover of the WHS inspectorate, as industry views an ex-government inspector as a very useful resource.

The agency explanation is that this arrangement provides a source of trained officers to work in industry. However that is not the purpose of the agency and this argument does not overcome the ongoing problem the agency has, in constantly having to train new officers, with very few senior officers available to do this.

A recommendation to employ graduates was made many years ago, after a review of the UK Health and Safety Executive, who set the international benchmark in the workplace safety area. In the UK, graduates are employed and undergo a year of formal WHS training, before working in the WHS or specialist areas.

Training

The agency struggles with establishing worthwhile training for new WHS officers. Traditionally training was done in-house by an experienced officer. This has evolved to having various modules presented by external providers. Some moves were made nationally to establish common training systems. The sort of training the very large NSW and Victorian workcover authorities are able to provide is hard for a small government agency to replicate.

If a good agency or government inspectorate training system can be established, all officers, both WHS and specialist, need to do this training, prior to working in their respective areas.

Mentoring

Junior officers working as inspectors need to be mentored by more senior officers. This process needs to be formally established and regularly evaluated. There also needs to be an equivalent to an intern process, to ensure those employed are suited to the work. Having to routinely confront industry on poor practices and investigate accidents and incidents is stressful and is not something suited to everyone.



Industry Capture

Industry capture is where the officer views the regulatory environment from the industry perspective rather than the regulator perspective. This can occur at any level from junior officer to the most senior executive.

The usual reason this occurs, is because an officer is left to continually deal with the same industry players, over an extended period. This can be overcome by having work allocated to different officers within a workgroup.

Another source of confusion for junior officers, is the mixed political message that officers are subject to. Governments spruik messages about being industry friendly and making the environment attractive to industry etc. But how does the individual officer interpret and implement this? The answer must always be that they cannot individually implement anything. Any changes need to be systemic and made at the level of agency processes or legislative change made.

All government regulatory processes must be documented in-line with the legislation and followed by officers working as regulators. The individual officer discretion must be reduced as much as possible. One way to achieve this is by having collective decision making. Any potentially contentious decision making should be reviewed by a panel made up of their colleagues and the outcomes documented. The operations of the panel also need to be documented. One advantage of this is it binds the individual officers involved to the outcome of the collective decision and it allows decisions of an officer to be reviewed by their peers.

Political Interference

It may be unusual for the political arm of government to seek to directly interfere in an agency's decision making processes. Where it does occur officers need to be empowered to call this out through the Commissioner for Public Employment or ICAC.

Regulatory Role

All officers in a regulatory agency, from junior administrative to senior executive, need formal training in the regulatory roles of the agency. It is too easy for word of mouth training to induct new officers in processes that are no good or are at odds with the legislation. This training needs to be based on each piece of legislation the agency has been given responsibility for administering. Specialist legislation is quite different to WHS legislation and the differences need to be recognised.

The agency is tasked with keeping all its legislation current, in this respect it has been a total failure. In spite of the 1936 explosives legislation being twice reviewed and many hours of very detailed work done by myself with parliamentary counsel, up to settled regulation stage, executive have failed to progress this and failed to extend the agreed national provisions to all explosives. The argument is always made that we are waiting for national legislation, yet explosives legislation is state based and likely always will be. The onus is on the agency to keep their legislation current.

Within the agency there is very little intellectual understanding of regulatory schemes, regulatory process and how best to ensure compliance. The agency seems unable to establish a coherent policy group and more recently explicitly bypasses the experienced, specialist professional expertise that exists.

Despite having a history of extensive technical policy development and legislative drafting work, as documented above and experience second to nobody in the agency, when the latest proposal for nationally uniform explosive legislation was being promulgated, I was excluded from direct involvement [REDACTED]

Retention

The agency struggles to retain officers working in the WHS inspectorate, yet officers working in specialist areas (mining, explosives, dangerous substances) often remain for decades. The specialist inspectorate are essentially graduates and the WHS inspectorate are not. By employing graduates as WHS inspectors and providing systematic, professional mentoring by experienced officers, within a professional work environment, the retention rate may well improve.

With the change from prescribed to more performance based legislation, a university educated inspectorate may be more able to cope with the challenges this legislative style brings.

Processes and decision making

The legislation establishes the decision makers, and the delegation process documents who actually makes the decisions (who is given delegated authority). The next step is to document the processes that lead to the decisions being made.

It is important that these processes are documented and kept up to date, this is a very large task. Each individual inspector must then follow the documented processes as relevant to their delegated authority.

Who is the regulator (the decision maker) for each regulated activity needs to be established and understood. The agency processes then need to support that person in fulfilling their role. It was particularly galling for me to be personally criticised by a magistrate, as a senior agency manager, for not seeking fresh Crown Solicitor Office advice on a particular matter. In fact I had realised fresh CSO advice was needed and sought this, however the agency processes denied me this [REDACTED]

Agency Culture

There has been a long standing cultural problem within the agency, where different groups see themselves as superior to others, or their work is more important than others, or they are more important than others. This juvenile culture is often lead by the management level officers. It extends to quite serious examples of agency dysfunction, from competition for resources (officers, vehicles etc), to deliberately not assisting other groups when that assistance could be easily provided.

Workgroup managers need the maturity and confidence to progress their own areas, without disparaging other areas. Workgroups are tasked with different things of equal value and managers need to promote a common understanding of their part in the larger agency role.

There is also a lack of understanding of who the regulator is for any given topic and the importance of following the documented processes mentioned above. This can lead to executive officers bypassing specific decisions related to regulatory process when approached by industry to do so. The documented systems and processes must also apply to executive officers.

There is also a very strong incentive to do nothing. That is, it is always easier to issue a warning than to take evidence for a prosecution. At every step of the prosecution process, it is always easier to find a reason to do nothing; the evidence is no good, we have never prosecuted this before etc etc.

[REDACTED] The CSO is reluctant to take on something they might lose, this makes it difficult to test important principles. This prosecution process only works well when the CSO solicitor takes an activist role, [REDACTED]
[REDACTED]

Increasingly executive have taken a separatist role from the rest of the agency, both physical separation and lack of engagement. At one time executive officers daily walked around speaking to everyone. This executive separation has lead to an agency culture where gossip and rumour flourish.

There is no culture of open debate as professionals. Professional officers tend to more readily speak their mind than others, instead of this input being welcomed it is more often seen as unwelcome and antithetical to the corporate line.

Specialist Roles

Within the wider agency there is a lack of understanding or even interest in the specialist regulatory roles, there has also been a culture of the specialist work and officers being denigrated, including by multiple executive officers. The agency focuses on WHS and implements schemes suited to that environment, that may be totally unsuited to other specialist legislation, often the specialist areas are not not considered or even consulted.

The attitude of denigration of specialist roles has extended to antipathy. For example, on occupying the new premises, it would have been a simple matter to address specialist needs for space and security. The suggestion that some specialist areas might have higher security needs than executive and have different space requirements, were just dismissed out of hand, with all workgroups largely provided the same fitout.

Similarly, the agency has never adopted the recommended security protocols to be compliant with the government security manual.

Historically professional officers transferred to the agency have fared poorly. The entire Workplace health division transferred from the Health Department, was disbanded and the positions dispensed with, only one hygiene position remains. Similarly the Mines Safety Branch transferred from the Department of Mines was disbanded and now only two positions remain.

The agency executive seem unable to distinguish between trite administrative managerialism and detailed technical and professional work. Whenever a decision is to be made on how to progress something complex, the trite argument is the easiest as no thinking is involved, so it wins the day. The cumulative result of these processes is a continual loss of expertise and and a progressive dumbing down of the agency.

The specialist regulatory roles need to be recognised, valued and supported.

Licensing



Licensing is the most rigorous scheme the parliament can provide a regulator with, short of banning an activity or thing. The licensing scheme should be the base tool for the regulator to ensure the licence holder achieves compliance. Licences can be issued with conditions that allow them to be specifically targeted to the licence holders activities.

These regulatory fundamentals are well understood in the specialist area but are more often not understood at all within WHS environment, including by managers and executive involved in the process. The licensing function is continually being pushed toward a routine administrative process dealt with by base grade administrative officers.

If the licences were for revenue raising such as those jurisdictions that licence television receivers, this would be understandable. However the bulk of the agency's licence applications are for safety or security related matters and need to be subject to rigorous evaluation by an experienced officer with detailed knowledge of the activity. The licence and its conditions need to be linked to any regulatory compliance program, this is to ensure that the currency of a licence and the conditions it is subject to, are not divorced from satisfactory regulatory compliance and the compliance programs.


CONCLUSION

The processes to replace professional specialists with generalist administrators continues.



As outlined above, jurisdictions administering specialist legislation need senior officers with professional and technical expertise in the subject matter area, that are comfortable operating at the national and international level.

It is essential for jurisdictions tasked with regulating specialist hazards to have experienced, senior, subject matter experts available. To deny the importance of the specialist roles and the technical and professional work they do, and to continually move the agency towards inexperienced administrative managers, is not a recipe for long term success. It simply demonstrates the intellectual paucity of the agency decision making process.



The ongoing denigration of the specialist professional role and moves to empower administrative roles, does not bode well for the future, in an increasingly complex technical world. If the issues of professional expertise, agency culture, mentoring, education and training are not addressed, the agency will continue to limp along from one front page headline to the next.

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