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INDEPENDENT COMMISSIONER AGAINST CORRUPTION

COMMISSIONER LANDER

PUBLIC HEARING - EVALUATION OF SAFEWORK SA

ADELAIDE

1.31 PM, WEDNESDAY, 11 JULY 2018

Continued from 5/7/18

MS H. STANLEY appeared as counsel assisting

COMMISSIONER: Mr Kitchin. You don't need to stand up. Mr White, you're appearing with Mr Kitchin?

5 MR WHITE: Yes, I'm here to assist Mr Kitchin if necessary, your Honour.

COMMISSIONER: Certainly. Mr Kitchin, thank you very much for your written submission and thank you also for making yourself available today for the purpose of this evaluation. Is there anything further you wish to add to your submission before I ask you a few questions in relation to it?

10 MR KITCHIN: Yes, sir, if I may.

COMMISSIONER: Of course.

15 MR KITCHIN: I've got a statement to read out.

COMMISSIONER: Yes, of course.

20 MR KITCHIN: Thank you, sir. By way of introduction, I'm the current general secretary of the Public Service Association and have been for about two years. Prior to that I was the assistant general secretary for around 10 years and I have a 35-year plus career in the public service, which includes seven years as a police officer, during which time I became a qualified police prosecutor.

25 I'm a former elected work health and safety representative and a former member of SA Union's work health and safety worker's compensation committees and the asbestos coalition committees.

30 Could I acknowledge the work of my staff here today and in particular the work of my members in providing me with the information from which I'm reading.

35 A brief introduction. The PSA is a registered organisation under the State Fair Work Act. The CPSU and SPSF Group SA Branch is a registered organisation in the federal jurisdiction and essentially the PSA covers anyone in the public service who is not a doctor, nurse, firefighter, ambulance officer, sworn police officer or teacher.

40 Our main agreement, the salaried agreement, covers some 39,000 people and, while the PSA has some members covered by the weekly-paid enterprise agreement, most of the employees covered by the weekly-paid enterprise agreement are not covered by the PSA. SafeWork SA employees are eligible to be PSA members and many are PSA members.

45

By way of introduction to the submission, we thank the commission for the invitation to attend this evaluation. We have provided a written submission and appreciate the opportunity to expand on some of the matters raised in that submission, as well as the opportunity to deal with some of the matters that
5 have arisen in other submissions, including at the public hearing on Monday, 2 July at which the executive director of SafeWork SA made submissions.

SafeWork SA does need change. However, considering the levels of staffing, lack of continuity of leadership, lack of resources, direction and other issues,
10 our members believe the work of SafeWork SA inspectors as a whole has been exemplary.

The primary role of the agency to make South Australian workplaces safe for workers and people who attend those workplaces is central to everything
15 SafeWork SA inspectors do. We confirm our essential position in summary is that the issues in SafeWork SA largely are the result of inadequate resourcing and a revolving door at executive and team leader level.

Some context in inspectoral powers. The powers available to SafeWork
20 inspectors reflect the importance of the parliament's intention, as set out in the Work Health and Safety Act of 2012, that inspectors should have the tools necessary to discharge their functions in accordance with the objects of the legislation and more particularly section 160(d) and (e) of the Act which
25 enables inspectors to require compliance with this Act through the issuing of notices, to investigate contraventions of this Act, and to assist in the prosecution of offences.

Although broadly based, these powers are not unfettered. They have also been
30 widely embraced in other Australian jurisdictions. As far as I'm aware, no substantive evidence has been presented to suggest that these provisions have been abused, let alone on a systematic basis. Both the parliament and public expect regulatory agencies, such as SafeWork SA, to be equipped with the necessary powers to have timely access to work places where breaches of the Act may occur or have occurred.

35 Regulatory intervention is to prevent work related deaths and injury are of fundamental importance. Conversely, if the current investigative powers were to be wound back, it could compromise the ability of inspectors to effectively protect the community and undermine SafeWork's capacity to prosecute law
40 breakers whose breaches of the Act result in the death or incapacity of workers or members of the public. A far more measured approach would be to undertake case reviews, ongoing training and operational issues, including regulatory powers, to ensure that professional standards are maintained or
45 enhanced.

On the subject of leadership turnover and instability, sound leadership is essential in any enterprise, but arguably considerably more so in managing a regulatory authority. In the three-year period to June 2018 SafeWork SA has had four executive directors. This seemingly revolving door exercise in executive succession leaves a lot to be desired. It can often give rise to a lack of strategic focus, ad hoc short-term priorities, declining staff moral, staff retention issues, misinformation and loss of direction and guidance. The revolving door syndrome at SafeWork has also affected key management positions, most notably the director of investigations and manager of investigation team positions. In the case of the former there have been six leadership turnovers since February 2016 and four in the case of the latter.

This unprecedented situation has been exacerbated further by a lack of investigators. As pointed out in the PSA submission to the commission, the number of ten authorised work, health and safety investigators deemed necessary by SafeWork itself has fallen dramatically from the already low level of eight in 2016 to one as of May 2018. What this means is that SafeWork has lost virtually all of its most experienced work, health and safety investigators. This is a disaster for SafeWork and its many hard working, talented and committed staff members, and what is also troubling is that this issue was not raised at all during the presentation by SafeWork's executive director to the commission.

Another consequence of the revolving door syndrome is the loss of corporate memory and a clear focus of SafeWork's core business, that of effective regulation. The foundation stone of effective regulation is ongoing in respect to training. It is the essential ingredient of professional development that drives effective regulation. The environment in which SafeWork inspectors operate is often complex and demanding. Rapid changes in technology, the emergence of new industries and workplace hazards highlight the need for up to date knowledge and competence.

Employers and unions, SafeWork's major stakeholders, have little time for inspectors who don't understand their industry and effective control measures that address complex or emerging work, health and safety hazards. On the upside, both unions and employers have a high regard for those inspectors who know their industry and are able to provide guidance on how to more effectively integrate health and safety into an organisation's work procedures.

People's skills, particularly communication skills, are another essential training requirement for work, health and safety inspectors. Inspectors not infrequently are confronted by hostile employers during the course of their duties and in these circumstances they need the ability to defuse a situation in order to address the substantive work, health and safety issues at stake. Consequently, it is essential that inspectors are provided with the skills that enable them to

navigate their way through the situation.

5 A sound understanding of legal principles associated with work, health and safety inspectoral functions, including their powers and evidentiary requirements to support proofs of evidence and prosecution proceedings under the Act, is another important training requirement for the inspectors. This is especially so given that the substantial increase in maximum fines for breaches of the Act has resulted in an increased lawyering up of employers facing charges. In conjunction with a revitalised management team, a renewed emphasis on professional development is one of the key ingredients required if SafeWork SA is to regain respect as an effective work, health and safety regulator.

15 If I can refer now to the budget cuts. Notwithstanding its management and operational shortcomings, the biggest threat to work, health and safety regulation in South Australia appears to be the incoming government's apparent intention to slash millions of dollars from SafeWork's budget. This comes on top of several efficiency dividends previously extracted by the former government. The last financial year SafeWork SA had a reduced budget allocation from government of \$9.7 million.

25 If I move now to resourcing and the lack of resources. The PSA has identified resourcing as the source of a number of issues in SafeWork SA. Some impacts of reduced or insufficient resourcing in SafeWork SA are covered elsewhere in the submission and in our original submission. Examples include redirecting employees from the field into longstanding temporary higher duties positions to fill the revolving door at manager and team leader level.

30 A savings target of 6.4 million for 2017/18 was announced by the SafeWork South Australian ED to all staff by email on 15 May this year. In the email the ED said, "The next few months will be a challenge for a number of reasons, including successfully delivering strategies to reduce costs and meet targets." This would mean that SafeWork's budget is expected to have a 17 per cent cut in its budget. Even the most sophisticated and efficient inspector would find it difficult to function effectively with such cutbacks. The ED said he expected to have a plan developed in order to meet the target.

40 In any industry already suffering from insufficient resources such as drastic reduction can only be expected to exacerbate and create further serious issues. Cuts of this magnitude will be inevitably have far reaching consequences. It is likely to result in job losses which would have a significant impact on the capacity of SafeWork to carry out its enforcement and related operational obligations. The bottom line is that these cuts will likely result in fewer inspections, less assistance for employers, less enforcement, fewer prosecutions, less deterrence and, most importantly, less safety for workers.

The public may well view this as a form of maladministration.

5 If I could turn now to the employment issues. Performance development and review. The PSA strongly supports the requirement for up-to-date and accurate role descriptions for all public service employees so that all employees have clarity about their roles and what is expected of them. What has been identified as an issue in SafeWork SA is also an issue in many areas of the Public Service.

10 The PSA also strongly supports performance development and regular, that is, biannual reviews of employee's roles. We identified deficiencies across government in this area in our preparation of our proposals for a new salary and enterprise agreement last year in 2017. Our proposals in relation to this were as follows and can be provided, performance management development
15 review of duties:

*The premier's direction, performance management and development requires that performance management and development reviews must be conducted with all employees at least
20 biannually. A job specification role statement or statement of duties sets out the operational functions of an employee's contract of employment and forms the basis for any or every performance management and development review. All employees are to be provided with a formalised statement of the duties they are to
25 undertake as approved and dated by delegate, and this is to be reviewed in consultation with the employee annual for currency and appropriateness as a pre-requisite to the employee's performance management and development review.*

*30 At the commencement of the performance management development review, the reviewed statement of duties is to be formally affirmed and dated as accurate and relevant by the reviewing manager/supervisor and formally acknowledged and dated by the employee, and copies are to be retained by the agency
35 and employee. If there is a disagreement as to the duties, this is to be elevated forthwith to the approving delegate for consideration.*

An employee's performance management and development review may not proceed without a current statement of duties in place. Employers are required
40 to provide constructive ongoing support to employees throughout the performance management and development review implementation process. In addition to fulfilling the Premier's direction, performance management and development reporting requirements, chief executives are required to report annually to the CPSE the percentage of employees with a current job
45 specification role, statement of duties formally reviewed within the previous

12 months. The CPSE will make agency-level reports available to the association as part of normal consultation.

5 Those proposals were put forward in this regard. They were not accepted by the government of the day and were not included in the final agreement. We do not understand why these proposals were not accepted, particularly as they gave effect to the Premier's direction issued under the terms of the Public Sector Act. The PSA considers our proposals in this regard to be consistent with best management principles.

10 Referring now to consultation, consultation with employees is a long-accepted industrial requirement which recognises that decisions are better if they are informed and the changes better managed if people are included in the decision-making process.

15 The PSA's approach to consultation in SafeWork SA and elsewhere is consistent with the definition described by Smith C in his decision in the CPSU v Vodafone. Smith C says the following at paragraph 24 of that decision:

20 *In deciding whether or not to make the orders sought, I have considered the importance of consultation. Consultation is not perfunctory advice on what is about to happen. This is a common misconception. Consultation is providing the individual, or other relevant persons, with a bona fide opportunity to influence the*
25 *decision-maker. Consultation is not joint decision-making or even a negative or frustrating barrier to the prerogative of management to make decisions. Consultation allows the decision-making process to be informed, particularly as it may affect the employment prospects of individuals.*

30 The consultation provisions of the current salaried enterprise agreement and its predecessors simply give effect to this longstanding approach. We make no apology for ensuring the terms of the relevant enterprise agreements are implemented. We reject the suggestion that consultation either by itself or as
35 we seek to have it implemented in SafeWork SA is a frustration or barrier to change.

40 The current ED of SafeWork SA's submission to this evaluation clearly indicates it does not accept the definition of consultation as described by Smith C. The ED's submission to this evaluation characterises consultation as the misconceived, negative and frustrating barrier to the prerogative of the management to make decisions, which was referred to in Smith C's decision.

45 The ED, in his submission to this evaluation, clearly indicated that he is not open to change his position through consultation. He has clearly shown that he

is not open to making better decisions through receiving relevant and informed contributions. The ED's indication that he would only change positions on a particular issue if forced through SAET confirms an unwillingness to engage with his employees in a genuine, consultative and constructive manner.

5

On the matter of engagement with employees, the ED said "felt it only proper to assist staff to remain engaged". In relation to the Oranges resilience training, the PSA's position is that the ED should be assisting staff to remain engaged through genuine consultation. Of course consultation is also a requirement under the Work Health and Safety Act when change will impact the health of safety of workers.

10

The SafeWork SA ED identified six matters about which he was either frustrated about consulting or forced to consult. These were: job and person specifications. The issue here is about changing from voluntarily being on call to being required to be on call. This is an appropriate matter for consultation. The removal of refreshments. This was never a matter for consultation and, although we were aware of the issue, we did not involve the PSA in consultation about this matter, nor did we seek to be consulted.

15

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COMMISSIONER: Sorry, what was that matter again, Mr Kitchin? I missed you.

MR KITCHIN: This was about the removal of refreshments, when I read his submission, and I didn't know what he was actually referring to.

25

COMMISSIONER: Yes.

MR KITCHIN: The roll-out of training. As we will come to later, the PSA supports appropriate training. We are aware of only one issue in relation to whether training was appropriate in an individual case, and that was not an inspector. The use of vehicles. This is a genuine issue for consultation, as vehicles are essential for carrying out the work of inspectors.

30

Efficient and effective use of inspectors' time, expertise and resources is important for both SafeWork SA and our members. However, any undue focus on this matter may detract from focusing on the more important issues we have identified. Industrial issues include whether use of a vehicle forms part of an inspector's formal employment arrangements.

35

40

Expiations. Consultation on this matter is continuing and progressing well. InfoNET. Consultation is continuing about some changes to reporting. This is progressing. Our original submission referred to a matter that better and genuine consultation could have resolved.

45

We submit that the evaluation should give little weight to the SafeWork SA ED's exaggerated and misdirected submissions about consultation. In regard to this matter, it may be pertinent to seek clarification as to whether SafeWork SA's ED has been provided with any training himself in relation to his consultation responsibilities under the terms of the enterprise agreement. This is particularly relevant given his correct emphasis on the need for training for others. However, notwithstanding what we have said, the PSA has had very few formal disputes with SafeWork SA in relation to consultation or about matters which are properly the subject of consultation.

The issue of the enterprise agreement consultation requirements being modified in the new salaried enterprise agreement has arisen in this evaluation. This modification came about because both government and the PSA were seeking clarity about what matters needed to be consulted on. Removing the word "significant" in relation to the number of employees affected by a proposed change assists both the employer and the employees to understand the requirement to consult.

I refer now to training. The PSA as an organisation and our members strongly support appropriate training being provided and undertaken. Appropriate training is essential for members to be able to perform their functions. PSA members advised internal training packages, which some years ago were of a 12-month duration, have been reduced to five weeks. This is an indication of one effect of reduced resourcing.

The PSA is supportive of the SafeWork SA training, but it has to be possible to be implemented. PEACE training, for example, requires two inspectors to attend a visit. The resourcing for this is not provided, so the procedures inspectors are receiving instruction on cannot be properly implemented unless significantly fewer visits are actually performed. Adequate staffing is required for training.

In relation to the instructions to employees and operating procedures, the PSA supports clear directions and instructions being provided to employees. The PSA agrees that a lack of clarity in relation to instructions is an issue in SafeWork SA.

Policies and procedures. Outdated existing policies and procedures and training records must be brought up to date. The PSA supports establishing relevant policies and procedures where policies and procedures are not currently in place. Currently there are multiple policies, procedures and practices in various states of currency. We acknowledge that individual units have adapted or adopted their own arrangements.

The PSA supports the updating and standardising of policies and procedures,

making workloads fair and reasonable and having KPIs which are achievable. The priority must be to make workplaces safe by giving employers and workers certainty and clarity and holding them both accountable. With legislation harmonised nationally, it may be possible to consider consistency, not just within SafeWork SA but even across states.

Referring now to document control, PSA members advised the PSA that many of the matters of which the SafeWork SA ED has said in his submission is unaware of or unable to confirm are available. The PSA is willing to provide the commission with such documentation that is available.

I refer now to internal corporate issues and organisational structures. Organisational structures were identified by the SafeWork SA ED as an issue in his submission to this evaluation. One issue was the lack of communication between educator and regulator functions. Better communication is required. Better communication is required. Our members tell us that a working group was established prior to Mr Campbell's employment to look at communication issues. Draft terms of reference appear to have been proposed on 9 May 2017. It is still not clear to the PSA what has happened since then.

PSA members have raised a number of issues in relation to the educator regulator issue. For example, our members need clarity on how the educator and regulator interact with the same PCBU. In a context of maintaining separation, clarity is needed on the process for alerting the regulator when or if a member of the help centre, or educator, hears or sees something that is unsafe in a workplace.

If I refer now to the effect of change. Changes in SafeWork SA have had a serious effect on the capacity for SafeWork SA to perform its role appropriately. Some effects have been dealt with in other parts of this submission. An example relevant to this evaluation is the investigations team. In this team most work, health and safety experience has gone from the team and initially been replaced by former police officers.

One of Mr Campbell's issues in his submission was the lack of investigation skill and training. However, investigation skills need to be balanced against the need for extensive work, health and safety knowledge. Mr Campbell has suggested it takes five days to do the CSU investigation training. Our members would say it takes a great deal longer than that to learn about work, health and safety systems and to gain industry experience than it takes to complete the CSU investigation training.

The investigations team is seriously under resourced. The funding for the team consists of 10 investigator positions, two team leaders and one manager. Actual numbers have been fluctuating and temporary, as outlined in our initial

submission. We do acknowledgment SafeWork SA has recently recruited to fill the remaining two vacant positions. The CSU training requires that people do the investigation. This is currently unrealistic. It would require sufficient funding to be able to work this way. We confirm our initial submission that
5 our inspector PSA members feel that many cases which would meet the criteria for investigation are being referred back. Our members believe that this has a lot to do with a lack of experienced investigators.

If I refer now to employment issues and conditions of employment. Cars. The
10 PSA is aware that a number of inspectors have had the use of cars included and documented as part of their contracts of employment. This documentation includes the requirement for garaging cars at employee's homes, which means that employees can go directly to work sites on their way to and from work. It's also recognition of the efficiencies gained for SafeWork SA in that as well
15 as being able to visit more sites, there are efficiencies gained in minimising the need to continuously load and unload kits, equipment, materials and documentation.

The including in the employees' contracts of employment of car use is not in
20 the nature of a personal entitlement. It is there principally to enhance efficiency and productivity, especially for SafeWork SA. This is one of the issues which is subject to consultation. Once again the PSA makes no apology for ensuring member's industrial conditions are complied with, whether that be through enterprise agreements or their contracts of employment.
25 Commissioner, I would note that these contractual documents are available to be provided to you if you would like them.

In terms of stakeholder issues, the role of the unions and the relationships of SafeWork SA to the unions, the PSA has two roles in relation to SafeWork SA,
30 one is our role representing SafeWork SA employees who are members of the PSA, another is our role in ensuring the work, health and safety of our members and workers generally is protected. The PSA refers to SafeWork SA in the same way that other unions or other stakeholders do.

35 An example is the recent referral to and involvement of SafeWork SA about specific concerns for our corrections members' safety at ministry workshops at the Mobilong Prison. The issue of the support from members for the road map arose in the ED submission. The ED said he did not think the road map was embraced by unions. The minutes of the SafeWork SA consultative committee
40 of 27 February recorded that the PSA understood the rationale before the road map and raised the issue that structural changes did not appear on the road map.

SafeWork SA agreed that this was the case and the minutes shows that
45 SafeWork SA undertook to provide further information which it subsequently

has. The PSA has given no indication that it has difficulty in understanding the road map. However, we indicated that we expected a strategic plan to be in place, which the same minutes record that the PSA believes a strategic plan should be developed.

5

The issue of whether SafeWork SA has been the subject of capture by unions or stakeholders has arisen in this evaluation. The PSA does not believe that it has captured SafeWork SA, nor is it part of the wider union movement to capture SafeWork SA. The PSA has no interest in capturing SafeWork SA.

10 Our interest is ensuring that SafeWork SA is equipped and resourced to ensure the health and safety of workers and people who attend workplaces in South Australia.

15 Unions have a legitimate key and legislative role to play in protecting and promoting worker's health and safety, unions have obligations in relation to maintaining the health and safety of workers. Unions were instrumental in original introduction of work, health and safety legislation and have been long leaders in ensuring that work, health and safety legislation and related industrial instruments are complied with. Elected HSRs throughout
20 government are instrumental in the enforcement of work, health and safety protections.

The PSA is aware that a number of people who work at SafeWork SA have previously worked in unions and may have also worked in the industry and
25 employer organisations. The skills and experience gained in working in these kinds of organisations are particularly useful for people working with SafeWork SA. The PSA sees these workers as being committed to preventing workplace fatalities and injuries and as people who care about their roles and responsibilities.

30

If I refer now to the risk of corruption, misconduct or maladministration. In terms of identifying risks and protections, well, for example, the funding reduction of 6.4 million announced to all staff by the ED, dealt with under
35 resourcing heading, is clearly a major risk for the checks and balances, audit processes. The SafeWork ED in the submission focused somewhat on the lack of checks and balances and audit processes for the decisions of inspectors. Our members have said that it appears the ED is unaware of some of his checks and balances.

40 For example, the following, every statutory notice issued has all the reasons for issuing recorded on the notice and on the SafeWork SA's InfoNET; all notifiable incidents are the subject of a case conference; businesses have a right of review which is free and is rarely pursued. In relation to the general directions of SafeWork SA, the position of the PSA as an organisation of its
45 members in relation to the general direction of SafeWork SA is dependent on a

number of matters, most of which are covered in our submissions. Having a genuine strategic plan, adequate resourcing, consistent leadership, proper processes and accountabilities in place will determine the general direction of SafeWork SA.

5

I refer now to the engagement with staff. Our members are concerned about the way the union sometimes represents them in public. They are sometimes characterised as being responsible for things for which they are not responsible. For example in March this year Mr Campbell and the media publicly appeared to blame inspectors for not classifying a particular death as a workplace fatality. He said, "We have begun a comprehensive retraining program for our current staff and are recruiting to increase our investigative capabilities". The PSA is not aware of any inspector who thought that this matter was not work-related. The decision to originally classify this fatality as not work-related sits above the inspectors' level.

15

Amendments, modifications to the PSA's original written submission. In our original submission the PSA referred to decisions to prosecute were not being made at executive or ministerial level. This was based on information that had come to us. Upon further inquiry we have determined that we cannot substantiate that such decisions have been made at ministerial level. We now withdraw that statement and apologise for its inclusion in our original submission. Our members' position remains however that these decisions are made at a much higher level than inspector level and are sometimes delayed and made by agencies external to SafeWork SA, for example Crown Law.

20

25

We confirm that there have been very few formal disputes with SafeWork SA arising from consultation. In fact there has only been three or four disputes in recent years. One was about the matter in which SafeWork SA breached its own principles in relation to (indistinct) and a restructure, and the other two simply maintained the status quo while a single matter was resolved. I take my role as a union leader very seriously in this regard, and I believe I have a duty to minimise industrial disputation wherever possible. Effective, genuine consultation is the principal tool through which industrial disputation can be avoided or minimised. That would end my current statement, thank you, Commissioner.

30

35

COMMISSIONER: Thank you. Thank you very much, Mr Kitchin, for that statement. It included a significant number of issues in that statement which - in that submission which were not included in your previous written submissions which I of course have to consider, and it may be that on consideration of the matters that you've raised today that I'll need to perhaps write to you and ask you for further comments in relation to some of those matters.

40

45

Can I just make a couple of comments in case there's a misunderstanding about what this process is? This process is about evaluating the policies, procedures and processes of SafeWork SA insofar as they may impact upon corruption, misconduct or maladministration as those terms are defined in the ICAC Act.

5 It is not a process whereby I will make any recommendations in relation to any issues outside of that. I must confine myself to the jurisdiction that I have, and that is, as I say, the evaluation of the policies, procedures and processes.

10 You mentioned earlier in your submission - and I won't deal with all of that submission now. You mentioned earlier in your submission that it would be regrettable effectively if there was a winding back of the powers of a regulatory agency. There is no suggestion that that would happen for two reasons. First, the powers that are given to this regulatory agency are the same powers given in the other States, and it would be inappropriate I would
15 have thought for this State to march out of step with the other States. But, secondly, I recognise that regulatory agencies ought to have robust powers. My agency has those, and agencies such as a kind of SafeWork SA ought to have robust powers available to it to inspect and to investigate where
20 necessary.

25 The other matter I just wanted to comment on earlier was - or the other matters were you mentioned Commissioner Smith's statement in relation to consultation which, as he observed, is not perfunctory advice, but is a process whereby the decision-maker may be influenced by the person with whom the consultation process takes place, and that seems to me to be entirely reasonable. I would have thought that that's what consultation is all about. But, as the Commissioner said, the process should not negatively impact upon management's right to manage, and in the end that is another matter, an issue that has to be addressed. The next matter that if I can comment on before I
30 raise issues with you, is you mentioned that the present contracts of employment with the inspectors provide for the use of cars. Do I understand that was your submission?

35 MR KITCHIN: Yes, Commissioner. I believe that some of them do.

COMMISSIONER: Yes. Could you provide me - you offered to provide me with evidence of that.

40 MR KITCHIN: Yes.

COMMISSIONER: And I would be glad if you did. Thank you.

MR KITCHIN: Certainly.

45 COMMISSIONER: But as I understand from your just most recent answer,

you're not saying that all of them have a contractual right to the use of a car.

MR KITCHIN: No.

5 COMMISSIONER: No. Well, that would mean, would it, from management's point of view it could discriminate between those who had the contractual right against those who didn't?

MR KITCHIN: Well, yes, but I mean that may be part of an attraction and
10 retention incentive as well.

COMMISSIONER: I see. Thank you. And the last matter I just wish to comment on at this stage is you mentioned that your association has not captured SafeWork SA. I'm not suggesting that to be the case.

15

MR KITCHIN: No.

COMMISSIONER: I'm not suggesting that the union has captured the organisation. What I'm concerned about is whether employers and unions
20 might capture an individual inspector. I don't suggest for a moment - I won't suggest for a moment that you've captured the SafeWork SA. Can I raise a few issues with you in relation to, please, your original submission and, as I say, I may raise other issues with you later in relation to the helpful submission that you made today. First, before I directly address the submission, what
25 percentage of employees at SafeWork SA are members of your union to your knowledge?

MR KITCHIN: Look, Commissioner, the majority. As to the specific number, I would have to get that for you.

30

COMMISSIONER: Is it about in the order of 90 per cent?

MR KITCHIN: I would suggest amongst the Inspectorate yes.

35 COMMISSIONER: And the rest of the employees as well, or is that - - -

MR KITCHIN: No, no. It would vary.

COMMISSIONER: A higher number of inspectors, or a higher percentage of
40 inspectors would be - - -

MR KITCHIN: Yes.

COMMISSIONER: - - - members of the union rather than the other members
45 of staff.

MR KITCHIN: Without double-checking I would surmise that's correct.

COMMISSIONER: Would it be possible to advise me of the percentages?

5

MR KITCHIN: Yes, we can.

COMMISSIONER: Thank you. A 90 per cent coverage would be quite high, would it not?

10

MR KITCHIN: Look it varies from area to area. It's higher than that for example in Corrections.

COMMISSIONER: Is it? All right. Now, in the fourth paragraph of your submission you mention that 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. What measures are you referring to?

15

20 MR KITCHIN: Commissioner, if it's not in dot point form in our submission, could I take that question on notice - - -

COMMISSIONER: Sure.

25 MR KITCHIN: - - - and get a more distinct answer for you?

COMMISSIONER: Yes. Look, Mr Kitchin, I'm happy for you to take any questions on notice. As I say, I think we will have to be communicating in any event in relation to the matters that you've raised today. You've said in paragraph 5 - sorry. If I go to page 2 of your submission, in the fourth paragraph you mention about inspectors requiring adequate resources, and then you've said, "Inspectors have performed brilliantly considering the inadequacy of the above requirements", and the requirements are adequate resources, tools, policies and procedures and relevant training. Are you saying that all of those matters are inadequate?

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35

MR KITCHIN: Yes, we are.

COMMISSIONER: Well, I understand your argument in relation to resources. What are the policies and procedures that you say are inadequate?

40

MR KITCHIN: The confusion around a current number of policies and procedures and, once again, I'd need to take that question on notice and get some distinctive facts for you.

45

COMMISSIONER: Do you mean by that the multiplicity of policies and procedures?

5 MR KITCHIN: Yes, and, for example, the confusion around what the policy is between those on the education team referring information back to the regulatory team.

COMMISSIONER: All right. Thank you. If you wouldn't mind considering that question.

10 MR KITCHIN: Certainly.

COMMISSIONER: Thank you. Now, if I could take you to the third page. In the first paragraph, under the heading Workloads, you've said, "Excessive workloads have resulted in workers carrying excessive flexitime and time off in lieu." Up until recently if an employee took home a car which was to be used for the purpose of an inspection, either to or from work, when did the employee clock in or start work; at the time that he or she left his or her house or at the time he or she arrived at the workplace the subject of the inspection?

20 MR KITCHIN: Commissioner, it may be, in part, dependent upon their current level of remuneration. So if, for example, an ASO6 or above, or depending upon the classification, they may be expected to do particular tasks outside of normal hours as part of their normal duties and as part of their normal remuneration. So I would need to get greater detail on the classification levels of those involved to determine when or if the clock was starting from the time they left or from the time that they got home.

COMMISSIONER: The inspectors are ASO5s?

30 MR KITCHIN: Yes, they are.

COMMISSIONER: Assuming the inspectors are ASO5s do they claim to start work when they leave their house or when they arrive at the premises which are to be inspected?

40 MR KITCHIN: If they were going to a job on the way to work or on the way home then their time should start from the time that they left home. If they were to go into work first then their time would start from the time that they left work which is part of the reasoning behind having those tools of the trade and the car.

COMMISSIONER: That would lead to anomalies, would it not, that in some cases they are said to be working when they get in the car and in other cases they are said to be working when they leave the premises to go on an

inspection?

MR KITCHIN: It may, yes.

5 COMMISSIONER: That should be avoided, I would have thought.

MR KITCHIN: Yes.

10 COMMISSIONER: And that would add, would it not, to the flexitime and time off in lieu that might arise?

MR KITCHIN: Yes, it would but there may also be an internal policy in play at SafeWork as to what the clear understanding is as to how they're going to do that on their time sheets so I would have to get guidance on that.

15 COMMISSIONER: Thank you. Now, if a worker or inspector lives in the country, and I think some do - a couple of inspectors live in the country - does that mean that they start work when they fire up the car to leave to go to an inspection?

20 MR KITCHIN: Look, it may because depending upon what time they start work they may be entitled to overtime rates, as an example, and there has also been that situation whereby in the unfortunate incidents that you were involved in an accident then it's important that you're actually on duty at the time. So if
25 you are living in the country and leaving to go to a job from your home then realistically it's important that you're covered under the Workers Comp legislation as having been at work at the time.

30 COMMISSIONER: But that's not necessary, is it? The Workers Comp legislation would address that without SafeWork SA determining that the worker started work when they left home or when they arrived at the workplace?

35 MR KITCHIN: No, that's true. That would be an argument for a later date depending upon the case.

40 COMMISSIONER: Yes, so I don't think that's relevant but what I'm putting to you is that you might have a worker who say lived in Goolwa who adds two hours to his or her work time every day by travelling to a workplace to and from work.

45 MR KITCHIN: Commissioner, that may be the case. I would have to actually see individual records and get a clearer understanding of what the internal policy is within SafeWork in regards to that.

COMMISSIONER: Yes, if you wouldn't mind.

MR KITCHIN: Certainly.

5 COMMISSIONER: In your submission on page 4 you've included tables.
What are authorised investigators or who are authorised investigators?

MR KITCHIN: Commissioner, I will just get some clarification on that but
my understanding is that they are the educators.

10

COMMISSIONER: Who act as investigators?

MR KITCHIN: Yes.

15 COMMISSIONER: Not inspectors? Investigators?

MR KITCHIN: Yes.

20 COMMISSIONER: On page 5 in the second paragraph under
Changed Management you pointed out the numerous reviews over the last
five years which I've also noted and the effect that that's had upon staff. Then
you talk about consultation which, again, you mentioned in your further
submission today. You say that consultation is improving but has regularly
25 been non-existence or insufficient and as a result the subject of multiple
disputes. I understood from what you said today that there hadn't been
multiple disputes arising out of consultation.

MR KITCHIN: Commissioner, you're correct. I think what we're trying to
say there is that there's a difference between what I would call a formal dispute,
30 as in going to site, as opposed to disputes in the workplace which we settle in
the workplace with management. So there would have been a number of
loosely called disputes or argy-bargy about certain issues that have been
resolved in the workplace itself without going into formal disputation.

35 COMMISSIONER: And do I understand it from the next sentence in that
same paragraph that you're referring to management since Mr Campbell has
been the executive director?

MR KITCHIN: Commissioner, I would have to double-check that. I don't
40 know that that's fair.

COMMISSIONER: Yes. What type of matters do you say require
consultation? Anything that might change the way in which SafeWork might
45 carry out its business?

MR KITCHIN: Look, it's a really interesting and debatable question. From my perspective anything which is going to change an employee's job description or the work that they perform, any matter that arises from changes in government direction or reorganisation, they're all of such gravity that they need to be consulted on.

There may be very simple matters involving employees that, unbeknown to management, cause an enormous amount of angst and grief simply because management is not aware that making very small changes, whether it's to, for example, changing people's lockers or changing, I think an example was a vending machine at SafeWork SA. There may be a range of matters which, quite frankly, do not need a formal consultation framework.

It's always a really difficult process, as a manager, in dealing with staff in terms of how far do you consult. I would be the first one to admit that dealing with staff is very complicated. I mean human beings, by their very psychology, can be complicated to deal with. If I used, as an analogy, a computer programmer would be the first person to say that when you're writing lines of code you've only got to miss certain keys and the code won't work. It can have a crippling effect upon the system.

When we're dealing with staff and our members you're dealing with human beings and if you were a programmer you could actually see on a piece of paper the code. You can't see what's in a person's head. You don't know what's happened to them in their lives. You don't know what's happened to them in their particular work environment which can cause them to react in the way that they may react depending upon a consultative issue that they believe they should have been consulted on. So it is fraught with complexity, and I'm sure the best minds in the world, when they're referring to HR, struggle with that particular concept of it. I know I certainly do.

COMMISSIONER: Yes, thank you. There are some matters where self-evidently there's consultation required because of the enterprise agreement, clearly, and there are some matters where minds might differ as to whether or not consultation is necessary. It's a matter of degree, I suppose, as to the effect upon the workers by the decision which is to be made.

MR KITCHIN: Yes, I agree, and certainly the experiences we've had when we have been called into SAET in relation to the disputation process - that is to say, either we've asked to come into SAET or a department has taken us to SAET - you know, we are very, very mindful that, when we're in there with the president or the commissioner, that's an issue that comes up on a regular basis, and certainly from my experience the president or the commissioner has no hesitation in telling me one way or the other as to their view about why the matter is before him and how it can be resolved and how it is or isn't a matter

of formal consultation. We are very cognisant of that.

5 COMMISSIONER: There has to be a time, I suppose, if the process is one of consultation, when the decision-maker has to call an end to the consultation process and make the decision. Do you agree with that?

MR KITCHIN: Yes, I do, and I do exactly the same in my role. I'm a manager.

10 COMMISSIONER: Yes. Well, you have to.

MR KITCHIN: Yes.

15 COMMISSIONER: You can't otherwise manage an organisation.

MR KITCHIN: Yes.

20 COMMISSIONER: Again that's probably a matter of degree, a matter of circumstance upon which minds might differ from time to time.

MR KITCHIN: Yes.

25 COMMISSIONER: In the end you would agree, would you not, that the consultation process does not require the decision-maker to accept the view of the union or the worker?

MR KITCHIN: That's correct.

30 COMMISSIONER: In the end the consultation process is, as Smith C said, a process whereby the decision-maker considers what is being put to him or her in relation to the decision to be made.

35 MR KITCHIN: Very much so, and I found - you know, when I was reading through the evidence from the current ED, I found it, I must say, quite riveting in terms of his interpretation of consultation and the frustrations he was having. In particular, I think I looked at one particular matter where he was talking about the number of people to send on a course or whether or not to send them on a course. Well, if it's his decision to send them on the course, he sends them on the course. I don't have an argument with that.

40 COMMISSIONER: You read Mr Campbell's evidence, clearly, for the purpose of your submission today. Would you agree that he has expressed concerns about the consultation process which, on his evidence, he considers frustrates the ability of SafeWork SA to make changes that are necessary?
45 Would you agree that that was the thrust of his evidence?

MR KITCHIN: Yes.

COMMISSIONER: What could you do to reassure him in that regard?

5

MR KITCHIN: Well, it's a very good point, and I think one of my - one of the things that I to a degree regret doing is that, when he actually got into the position, I could have picked up the phone and given him a call, introduced myself and offered to meet with him, some worksite reps and others to engage.

10

I say that on the basis that, when I was the assistant general secretary and working as an industrial officer, one of my portfolio areas was SafeWork SA and I had regular meetings with the management down there and subsequently with the CEO Murray Bold^(?) on that very basis, and many issues were resolved, you know, through those meetings.

15

COMMISSIONER: Would it be possible, in your opinion, for you to identify those issues upon which you would not require consultation as a union, although a particular employee might - but as a union, and those that you would require consultation, or is that not possible?

20

MR KITCHIN: Look, I think it has to be possible up to a certain degree. I would need to see the specifics of what the issues are that he wants to discuss.

25

COMMISSIONER: Yes.

MR KITCHIN: Ultimately, of course, you know, Commissioner, it's a matter for SAET, if it comes to that, and quite frankly from our perspective we feel a bit of a failure if we finish up in SAET. If we can't resolve these issues in-house with the CEOs and management, we all feel a bit of a failure. Having said that, it is nice on occasions to get into SAET, where you have an independent person with a completely different view and train of thought who's had experience in very similar circumstances and who can often provide very constructive suggestions on how to resolve the matter.

30

35

COMMISSIONER: When you come to SAET, are you coming to SAET because you say there has been no consultation or are you saying that the consultation process has been inadequate?

40

MR KITCHIN: Look, it depends. We may be directed to attend SAET because a government department may feel that they have done sufficient consultation and enough is enough and where our members or myself, our union, make the decision that we believe it's not enough and matters still need to be pressed. The department may have a different view, and quite correctly force us into the commission and, vice versa, we can do the same.

45

COMMISSIONER: So it's really about the extent of the process, is it?

MR KITCHIN: It is. The extent of the process, the complexity of the process.
5 I'm just very cognisant of - I've been caught many a time by that situation that
you find yourself in where, for example, I may have thought I'd consulted
enough about a matter with my own staff and then out of the blue somebody
will say to me, "Well, do you realise if you pull that lever the following
happens over here?" and I had no idea.

10 So, you know, the complexities of these large government departments is just
such that - and when you do have a revolving door of executive directors and
management, it must be extremely difficult for them to actually get a handle on
where they're up to, they are such dynamic places. Look, I think it's really
15 interesting in the sense that, you know, the current ED has clearly raised a
whole number of issues.

I guess I would simply pose the question, if there were a number of issues that
he was really frustrated about, he's certainly welcome to call me at any time,
20 but also - I mean, there are former CEOs who he could actually just pick up the
phone and say, "What goes with this? What's going on? Can you give me
some background on how I can address this situation. Something seems to be
missing from the puzzle."

25 COMMISSIONER: Thank you. Can you provide some examples of what
kinds of matters where in the recent past - say since Mr Campbell has been
executive director, where you say there's been insufficient consultation.

MR KITCHIN: I can. I'll take the question on notice and give you the
30 specifics.

COMMISSIONER: Thank you. On page 7, in the third paragraph, it talked
about - that's under Resourcing. Before I get to that, the first paragraph under
Resourcing - and you said a number of executive decisions have had a major
35 impact, which flows onto resourcing, and you mention two executive members
having been dismissed. I don't want any names mentioned, if you don't mind,
please. Are you saying that they should not have been paid out on their
contracts?

40 MR KITCHIN: No, I wouldn't make any comment on that, Commissioner. I
don't have the personal details on that, nor should I. That'd be - - -

COMMISSIONER: I just wonder what the point is you make there.

45 MR KITCHIN: Just the diminishing staffing levels.

COMMISSIONER: I mean, if it was necessary to make those payments because of a contractual obligation - which seemed to me to be a point that can't be made. That's all. Do you agree?

5

MR KITCHIN: Sorry, Commissioner, your comment was?

COMMISSIONER: Would you agree that, if there was an obligation to make those payments because of the contractual obligations, there's not much in that point?

10

MR KITCHIN: No, correct.

COMMISSIONER: You mentioned the new tablets in the next sentence and you've mentioned that otherwise. Was there no consultation about the introduction of tablets?

15

MR KITCHIN: Commissioner, there would have been, but I'm not across the minutiae of that particular consultation.

20

COMMISSIONER: Yes. You've said in the next paragraph the introduction of InfoNET has also led to issues, which were raised on multiple occasions. What are the issues that have arisen as a result of the introduction of InfoNET?

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MR KITCHIN: My understanding is that - and if I use the example of the education team and the regulatory team, one of the examples put to me was that when, for example, an educator goes to a particular worksite by invitation that they would make extensive notes on the infoNET so that if, at some later time, the regulator or inspector needed to reattend the site then the information would be on the infoNET, but I believe that there is confusion between the education team, the inspectors and others as to what specific information needs to be on the infoNET.

30

COMMISSIONER: So it's not the tablets themselves; it's what's being recorded on them?

35

MR KITCHIN: Yes.

COMMISSIONER: You say the inspectors need better instruction in relation to that?

40

MR KITCHIN: As do the education team, yes.

COMMISSIONER: You've mentioned, also, in the next paragraph that issues were identified when SafeWork SA became part of the AGD and now

45

SafeWork SA will move into the Department of Treasury. What are the issues that were identified two years ago?

5 MR KITCHIN: Can I take that notice on the question, Commissioner, and get the points for you?

COMMISSIONER: Thank you, and do you see issues arising, necessarily, by the fact that SafeWork SA will come under the jurisdiction of Treasury and Finance?

10

MR KITCHIN: I will take the notice on the question, Commissioner.

COMMISSIONER: In the last paragraph under Resourcing you've mentioned the budget cut of \$6.3 million in the coming financial year.

15

MR KITCHIN: Yes.

COMMISSIONER: Is that not the amount that the Attorney-General's Department applied to SafeWork SA out of the Attorney-General's budget?

20

MR KITCHIN: I think that there was, quite correctly, some confusion around those numbers. My understanding is that a cut of \$6.3 million would effectively be 17 per cent so clearly when you refer to the \$9.7 million in the current financial year some of the other funding that the SafeWork SA receive would be through, you know, enforcement and licensing. So I think it's fair to say that that is misleading information in that sense.

25

COMMISSIONER: Would you mind giving that some consideration to correct it?

30

MR KITCHIN: Yes.

COMMISSIONER: Page 7 in the eighth paragraph you've said that, "Members have noted that files have been opened in the lead-up to the ICAC evaluation to ensure the content is as required." What do you mean by that?

35

MR KITCHIN: I'm sorry, Commissioner. I'm just making sure I've got the right page. So it's in the - - -

40

COMMISSIONER: It's in the third paragraph under Decision-making.

MR KITCHIN: I'll take the question on notice, Commissioner.

45 COMMISSIONER: Yes. Thank you. You've mentioned in the

ninth paragraph the previous review of prosecutions through 2017 and the PSAs not seeing the report. I have seen the report. I understand why the recommendations were made and I think I'm of the opinion that it was appropriate that the full report not be published. You are aware that the
5 recommendations are publicly available?

MR KITCHIN: Look, Commissioner, I'm not personally aware but we'll follow that through.

10 COMMISSIONER: All right. They were on the SafeWork SA website. Were you aware of that?

MR KITCHIN: I am now.

15 COMMISSIONER: Good answer and, of course, the members have access to all of those recommendations.

MR KITCHIN: Yes.

20 COMMISSIONER: The next matter that you mention is you're encouraging me in the evaluation to investigate the advice from different managers on how to approach section 155(2)(c) in relation to the Act which is the power given to require persons to answer questions. What is the difficulty about the effect of section 155?

25

MR KITCHIN: I will take that one on notice, Commissioner.

COMMISSIONER: Yes. I think, from what I understand, there might be a misunderstanding about the use of section 155. There might be a
30 misunderstanding on the part of some that section 155 and the power contained in it to obtain a written answer to written questions has to be invoked rather than someone be interviewed. Is that your understanding of section 155 or don't you have an understanding?

35 MR KITCHIN: No, I don't.

COMMISSIONER: Thank you. You said on the next page, at the top of the next page:

40 *PSA members encourage the evaluation to interrogate data on the use of powers because inspectors have sought to issue significant penalties and have been overruled.*

45 Can you give me some further information in relation to the occasions to which you refer there?

MR KITCHIN: I can. I'll take notice on the question.

5 COMMISSIONER: Thank you. In the fifth paragraph you said there is widespread - under Summary - recognition amongst your members that changes are required to make the organisation more effective.

10 *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 and required under the Act.*

15 It is likely that I'll make recommendations arising out of this evaluation process insofar as those recommendations could impact upon the policies, procedures and processes or that might, themselves, impact upon corruption, misconduct or misadministration. Are you satisfied that those recommendations ought to be made without any further consultation process; in other words - - -

20 MR KITCHIN: It's too hard for me to comment without knowing the context and the detail.

COMMISSIONER: Does that mean you want to see if you agree with what I already - - -

25 MR KITCHIN: That would be nice.

COMMISSIONER: Yes. Would you agree that the resources of any government department must be used for the purpose of conducting the business of the department - - -

MR KITCHIN: Yes.

COMMISSIONER: - - - and not otherwise - - -

35 MR KITCHIN: Yes.

COMMISSIONER: - - - and they must be used for the genuine business needs of the department? What, to your knowledge, is the culture at SafeWork SA amongst employees?

45 MR KITCHIN: I think it's a combination of uncertainty into the future and, you know, the email from the ED about those budget cuts would have really unsettled people yet again. They are, to a degree, lost in this process of perpetual change and then, on top of that, a change in government, so they are

very unsettled. There is confusion around the prosecution of offences and how that is determined by Crown law and the thinking behind the Crown law decisions to prosecute or not.

5 There is an element of frustration around solicitors and lawyers within
Crown law who may not have a wealth of WHS experience in making those
decisions. There is, as there is in all government departments, you have an age
demographic of people who are looking to retire into the very near future and
concerned about their future. So there are certainly examples of where people
10 have lost their mojo. Let's be frank. They are a bit lost as to where it's all
going and we'd like a clearer direction as to their purpose, powers and futures.

COMMISSIONER: Do you think there's, amongst some of the employees, a
culture of entitlement?

15

MR KITCHIN: It's a very good question. I think that that relates to where
there's been - and this come back to, in particular, the cars.

COMMISSIONER: Yes.

20

MR KITCHIN: Where it's been customary practice for year upon year that
particular employees either through contractual arrangements or agreements
with their line managers that they have access to vehicles, then it is logical to
build up a sense of entitlement that that would be the case into the future unless
25 there was the necessity to change and, if so, that that change was consulted
upon. The issue of having access to a vehicle is not insignificant when you are
talking about people at the ASO5, ASO6 level. It's a substantial benefit to
them in terms of attraction and retention, and in any other private industry
that's exactly the way that it would be treated.

30

It is different in the government and certainly driving vehicles with
government plates - and I've had an experience myself on a weekend in another
department, driving a car with government plates, and a formal complaint
lodged against me when, in fact, I was actually doing business. So I
35 understand to a degree the frustration of the ED in his belief that there is a
sense of entitlement, but that has come through customary practice and is fair
and reasonable where it is part of their contractual arrangements or there has
been a clear understanding with their managers or previous managers that they
could do so, and also in terms of using it effectively, and by that I go back to
40 your earlier comments about doing calls to and from work.

We've had this discussion and argument in previous departments. My own
former department, the Housing Trust, was exactly the same, and the issue
about FBT became bigger than Ben Hur, and that was on the basis of calls to
45 and from work.

COMMISSIONER: Putting aside contractual entitlements to the cars, which the force of the argument I understand immediately, the use of cars, the provision of cars to inspectors which, as you say, would be a substantial benefit, could only be allowed, could it not, in the public sector if that was to aid the conduct of the business or the agency.

MR KITCHIN: Yes. Unless there was an understanding from their line manager they could use it for personal use, which would be very rare. I haven't come across it, particularly a government plated car.

COMMISSIONER: Sorry?

MR KITCHIN: Particularly a government plated car.

COMMISSIONER: You mentioned in your submission today that investigators have been brought in who have been police officers and who don't necessarily have experience in the industries in which they carry out the investigations. There is a difficulty, is there not, a person who has experience in the industry but has no experience as an investigator is not going to be of any assistance in an investigation, as is, as the point you made, a person who can investigate but doesn't know how the industry conducts itself also has difficulties about carrying out his or her duties. How do you balance that?

MR KITCHIN: Through training, through mentoring. It is a process of trying to find the right blend. There's no easy answer. Some people are just natural at it, and others coming from, for example, a police background where it is essentially a paramilitary environment and when you're dealing with offences which are in some cases absolute offences, speeding being an example, when you're then thrown into a completely sphere of work dealing with employers and dealing with sensitive issues in their workplaces upon which their livelihood depends, it is a different skills matrix and it takes time, effort and mentoring.

COMMISSIONER: Would you agree with the proposition that you have to teach those who are experienced in investigation the way in which industry works, and teach those who are experienced in the industry how to investigate?

MR KITCHIN: Yes, and, look, in particular, you know, the issues surrounding how to investigate, how to keep original notes, how to keep your chain of evidence, it's all crucial.

COMMISSIONER: Yes. You mentioned earlier two inspectors going out to a workplace. Are you putting, is it part of your submission that all inspections should be carried out by two inspectors rather than one?

MR KITCHIN: No.

COMMISSIONER: Are you saying that some should be?

5

MR KITCHIN: If it's part of training.

COMMISSIONER: Yes - - -

10 MR KITCHIN: That was my understanding.

COMMISSIONER: Yes, sure.

MR KITCHIN: They need to go in pairs for training.

15

COMMISSIONER: Sure. For training purposes I understand that immediately. But are you saying in the carrying out of the business of SafeWork SA that there should always be two inspectors?

20 MR KITCHIN: No, I'm not saying that. There may be naturally matters where if they know that they're going to a hostile environment they may well pair up. That happens throughout government, whether it's in housing or patrol protection or whatever, the inspectors or the employees, you know, have an obligation and a duty to themselves to actually make that decision and they
25 need to have sufficient information in order to make that decision and they need to have sufficient information in order to make that decision.

COMMISSIONER: There would be circumstances where there should be two inspectors, for example, as you mentioned, where the inspectors are going into
30 a hostile environment, or alternatively the inspectors consider that there might be a risk of their being comprised whilst they carry out the inspection.

MR KITCHIN: That could be an example, yes.

35 COMMISSIONER: Would you agree with the proposition that because of the discretionary nature of the powers that are enjoyed by these inspectors that there is a risk that they may be captured by either the employers or the unions involved in the particular industry?

40 MR KITCHIN: In every walk of life there will be people who are influenced in that manner. Naturally we would all like to think that doesn't happen. I have certainly never come across it and never been involved or represented members who have been involved in it. But, yes, it could happen.

45 COMMISSIONER: Yes.

MR KITCHIN: Let's be realistic.

5 COMMISSIONER: There's a risk of them being groomed by employers or unions to make decisions that suit either the employers or unions or whoever is doing the grooming.

10 MR KITCHIN: That would be possible. We would all like to think it is highly unlikely.

COMMISSIONER: I don't see it as unlikely. It's, I would have thought, an obviously risk for persons who enjoy these sorts of powers. I'm not saying they succumb to the risk, I'm not suggesting they succumb to it, but it's an obviously risk, would you agree?

15 MR KITCHIN: I must admit that prior to reading the transcript from the ED, it wasn't something that had crossed my mind. Obviously, you know, from the media you look at, you know, going back to BLF times. Clearly there were risks involved in those particular matters. From my role as general secretary to the PSA and my dealings with the inspectors at SafeWork, it's not something
20 that I have ever turned my mind to.

COMMISSIONER: I'm putting this in a theoretical circumstance. An inspector goes on to a workplace and has the discretion to issue a notice is at
25 risk of being persuaded for the wrong reasons to not issue that particular notice.

MR KITCHIN: Yes, as would a police officer.

30 COMMISSIONER: Absolutely. Yes, they have the same sort of risk, I accept that. I'm not suggesting that any inspector has succumbed to such pressure but what I'm concerned about is the risk of whether or not SafeWork SA's policies properly guard against that risk eventuating. Do you say that the present policies would properly guard against the risk occurring?

35 MR KITCHIN: Look, I would have to, you know, read the current policy in much finer detail to get a better understanding of that.

40 COMMISSIONER: But, presumably, you would support the proposition that there should be sufficient oversight to guard against the risk of corruption, misconduct or maladministration or staff of SafeWork SA being involved in that sort of conduct?

45 MR KITCHIN: Yes, there should be and at the moment, of course, the overarching code of ethics is one of those safeguards - - -

COMMISSIONER: Yes.

MR KITCHIN: - - - but that holds no water in the circumstances that you're referring to if the person is going to deliberately commit a criminal offence.

5

COMMISSIONER: I don't suppose it's your experience that most public sector employees read the Code of Ethics every night. Ms Stanley, do you have some questions of Mr Kitchin?

10 MS STANLEY: I do have a couple. Thank you, Commissioner.

COMMISSIONER: Thank you.

15 MS STANLEY: Mr Kitchin, you've referred to, in your submissions, some retention issues on page 2 and towards the bottom of that page, the second to last paragraph, there was a comment about inspectors from compliance teams being sought to relieve in the investigations team and that the compliance team refused or declined to do that because of their own lack of resources, workloads et cetera. You also just mentioned that there were issues and
20 concerns raised by inspectors. Are you able to detail what those issues and concerns were?

MR KITCHIN: I would have to take the question on notice.

25 MS STANLEY: Thank you. I appreciate that. You mentioned in your oral submissions today that there has been some consultation in relation to the issuing of expiation notices. Would you be able to detail what consultation the PSA felt was required in order to enable the inspectors to utilise that power that's under the Act?

30

MR KITCHIN: I will take the question on notice.

35 MS STANLEY: Thank you. There's also a number of dot points that are set out on page 6 under the heading, Training and Communications. You say that SafeWork SA has been unwilling to take a position on procedures to crucial uses of powers, and there's a number of dot points there. I appreciate you might have to take this question on notice - - -

MR KITCHIN: Yes.

40

MS STANLEY: - - - but I'm curious as to what is meant by "structure of briefs on evidence".

MR KITCHIN: We'll take the question on notice.

45

MS STANLEY: Thank you. Also, perhaps on notice, what is meant by "witnesses versus defendants".

MR KITCHIN: Yes. Thank you.

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MS STANLEY: That would be helpful. You continue on, on that particular page, to say that SafeWork SA management haven't given you a position with respect to the matters that are listed in those dot points. Again, I'm happy for you to take this on notice, but I would appreciate knowing which of those matters; that is, if there is supposed to be a procedure created, for example, as to how to structure a brief on evidence, would the PSA expect consultation on that or not? I would like to know that for each of those particular dot points.

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MR KITCHIN: Yes. On notice, yes.

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MS STANLEY: Thank you. Thank you, Commissioner, I have no further questions.

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COMMISSIONER: Mr Kitchin, when do you think you would be able to respond to the questions on notice? Mr White is going to answer this question.

MR KITCHIN: Look, they're all clearly very important questions. We really do pride ourselves on timeliness. I would suggest within seven days.

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COMMISSIONER: Thank you very much. I'm going to authorise publication of the fact that you gave evidence, made your submission during this evaluation today. You have no objection to that?

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MR KITCHIN: No objection.

COMMISSIONER: And I'm also going to have it noted that there is nothing you said today in your submissions that ought to be prohibited from publication. Are you content with that as well, Mr Kitchin?

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MR KITCHIN: Yes. Thank you, Commissioner.

COMMISSIONER: Mr Kitchin, thank you very much for your attendance today and thank you very much for the submission you made today. You've been most helpful. Thank you.

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MR KITCHIN: Our pleasure. Thank you for the opportunity.

COMMISSIONER: Thank you.

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MATTER ADJOURNED AT 3.00 PM ACCORDINGLY