

SUBMISSION

Safety Procedures

Work Safety

**SUBMISSION TO THE INDEPENDENT
REVIEW OF SAFEWORK NSW**

March 2023



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Submission to the Independent Review of SafeWork NSW.

The Public Service Association of New South Wales is the primary union for public sector employees, with coverage across the NSW public sector with 40,000 members in multiple agencies, including SafeWork NSW. The Public Service Association of New South Wales is a state-registered employee organisation. For the purposes of this submission, the Public Service Association of New South Wales will be referred to as 'the Association'.

We welcome the opportunity to submit on the review of SafeWork NSW which is timely and long overdue. However, for the Association, the wider issue of safe work per se across the public sector and beyond are critical to all citizens within the State. In presenting our case, we draw upon data from a number of sources including, peer reviewed evidence from the academic literature.

Our overriding belief in making this submission is that Safework NSW is an ***inherently unsafe place of work*** and for the reasons outlined below, is failing to adequately fulfil its statutory obligations.

1. In terms of the overall operational effectiveness of SafeWork NSW we have grave concerns about the organisations on-going capability to fulfil its legal obligations. We have reached this conclusion primarily as a result of the leadership within SafeWork NSW and its inability to function effectively. Currently, there are five Executive Director roles and eight Director roles within the organisation. Of these, none have a diploma of Government Inspection (Supplementary Estimates, 2022). In short, Safework NSW lacks the organisational capability and institutional knowledge to operate in an effective, impactful manner. This lack of both expert, professional and institutional knowledge is reflective of the New Public Management ethos that 'management is management', irrespective of the setting or organisation (c.f. Hood, 1991; Pollitt, 1993). As such, this position ignores the lessons and clear distinctions between managing in the public and private sectors illustrated by Allison (2017); Boye et al (2022) and Boyne (2002).

This situation has a knock-on, trickle-down effect of effectively removing both organisational capability and institutional knowledge throughout SafeWork NSW. In the example below, we illustrate the failure to comprehensively understand and deal with situations by SafeWork NSW:

An account of one of our Industrial Officers working within the Corrections area:

"In December 2016, ██████████ (SafeWork NSW) attended ██████████ Correctional Centre in relation to an assessment of the sterile zone. Representatives from the PSA, State POVB, local delegates, and Staff Safety and Support also attended. All parties met prior to an inspection of the sterile zone. ██████████ was provided a brief history of the centre and concerns in relation to carrying out the inspection. The party then conducted a walk of the zone.

██████████ identified that the stones (pebbles) in the area were a risk to staff safety. This was based on frequency of the checks (daily), depth of the pebbles and the ability of the pebbles and dirt to shift underfoot. ██████████ stated that there is a risk and the risk needs to be mitigated further. ██████████ advised that undertaking the inspection from today onwards without any further risk mitigation could cause ██████████ issues from any potential injury. Obviously the ██████████ PSA clarified that without further risk mitigation the inspections should not take place. ██████████

██████████ reaffirmed this. ██████████ noted that all the responsibility fell to the worker under the current arrangements.

██████████ advised that the matter could be dealt with through a local working, or he could make a determination based on his assessment. The parties present agreed to form a working party and escalate to a formal resolution, by SafeWork NSW, if an agreement could not be reach. A short-term solution offered by the ██████████/PSA was the use of a golf cart to allow staff to drive the zone. This may raise further risks and was not agreed to at this time.

There appears to be no short-term solution that would address the pebble issue. A long-term solution providing some form of path seemed to be the only realistic option that would not cause further risk to staff or security of the centre.

It was strongly recommended that the inspection of the zone be ceased until a long-term solution was finalised. Fence checks, microphonics and a visual inspection of CCTV equipment can be undertaken from inside the centre. This type of check would not identify issues with microwave sensors or video motion detectors. Such actions would help to mitigate and minimise the safety issues identified.”

2. We would argue that SafeWork NSW consistently fails in fulfilling its legal obligations in terms of its educational functions.

We, the Association, have had some success accessing SafeWork NSW inspectors to speak with our Health & Safety Reps (HSRs) at their network meetings. These presentations have focused on: the HSR role; the role of SafeWork NSW and how SafeWork NSW can support individual HSRs. In addition, we have run a session for industrial staff on how and where SafeWork NSW can assist them. We are currently trying to organise a session on Hazardous Manual tasks, and one on Psychosocial Hazards and Risk Management. SafeWork is willing but coordinating dates is difficult.

However, a major concern the Association has is that much of the information in the SafeWork NSW prescribed Health and Safety Representative (HSR) training is out of date. An excellent example of this is the fact that resources provided include a list of **current** codes of practice dated **2012**. The Association updates this from the SafeWork NSW website for our own training sessions. However, if such fundamental core information is out of date, we are left wondering what other material contained within the SafeWork NSW systems is similarly dated and incorrect, and importantly what the potential implications are of this failure?

From a pedagogical perspective, the material provided by SafeWork NSW demonstrates a clear lack of understanding and appreciation of the key concepts and principles involved in adult learning. It is not uncommon to find SafeWork NSW teaching materials which lack flow and structure. In addition, often PowerPoint presentations contain slides which are overloaded with content and poorly exhibited.

We would argue that both the HSR 5 day and HSR 1 day Refresher Courses need significant and serious review. Each of these courses contain material which is not current. As noted above the

PowerPoint slides are poorly designed, repetitive, overloaded with content and do not meet the pedagogical needs of adult learners.

In an attempt to rectify the situation, a meeting with stakeholders was convened around a **decade** ago to review the HSR 5 day and HSR 1 day Refresher Courses. Despite persistent follow-up from a range of trade unions, the revisions identified by the review were not implemented, resulting in the status quo prevailing. The predominant view at the time – and one which persists today, is that SafeWork took the position that to revise both the content and presentation of its material would be a huge and costly exercise to undertake. It was therefore abandoned. This abdication, we have consistently argued, was a grave error of judgement and a failure on the part of SafeWork NSW to adequately fulfil its statutory obligations. The very fact that this situation was permitted in the first place, and allowed to continue for over a decade, does not reflect well on either SafeWork NSW as an organisation or its leadership over this period.

The extent of the organisational and leadership failings at SafeWork NSW can be illustrated by the fact that at the meeting a decade ago, an educational expert was engaged to advise on the content and presentation of the SafeWork NSW material. The educator expert made it clear that they were clearly concerned by the course materials and presentation.

As such, a strategic review of all SafeWork NSW education material is both long overdue and desperately needed. In specific relation to the HSRs. Both the 1- and 5-day Courses are invaluable to HSRs, as they need a solid grounding in the WHS legislation, something which the current material does not adequately provide. As such we would argue that a fundamental review of the structure, content and presentation be undertaken to including but not be limited to a clear understanding of the following:

- PCBU obligations to HSRs.
- HSR powers and functions under the legislation.
- Comprehensive and practical guidance on how to best assist the workers they represent.
- An understanding of the protections available to HSRs and workers under the legislation.
- Where and when to seek assistance.

An in-depth review will provide an opportunity to make the courses far more relevant, reduce repetition, remove unnecessary content, and introduce more practical content.

3. In both Points 1 and 2 (above) we have highlighted a number of underlying issues around the capability of Safework NSW which are directly related to and are symptomatic of failings in both the governance and culture of the organisation. There is a well recognised body of both academic and applied literature which demonstrate these important connections. Examples here can be found in amongst others Bevir (2012) and Hughes (2023) who chronicle the importance of governance, The literature abounds with demonstrations of the impact of effective leadership in nurturing desired behaviour and culture (c.f. Tichy and Ulrich (1984); Waldman (1987); Wilson (2020).

An excellent example which illustrates the Associations concerns around governance is provided by the current situation regarding the election of a HSR at TestSafe in Londonderry. As we have been unable to reach an agreement with management on the number of HSRs/Work groups, we

requested an independent umpire, which would normally be SafeWork NSW. However, TestSafe sits within Safework NSW. This therefore means that Safework NSW has a clear conflict of interest which it should formally declare and refer to the Resource Regulator as per custom and practice.

4. The issues around governance and culture within SafeWork NSW noted in Point 3 (above) provide a backdrop to the failure to provide an adequate voice to those raising issues around the complaints, investigation and enforcement process. A clear example here is the use of a SafeWork email (enquiries@safeworknswreview.com.au) address for queries about the McDougall Inquiry. This potentially exposes submitters who for reasons of their employment may wish to remain anonymous to SafeWork NSW. The Association has a number of examples from within SafeWork NSW of employees being too intimidated to raise issues where there have been systemic failures to pursue health and safety issues within the remit of the organisation.

We attach to this submission another submission the Association received from one of our members who is employed by SafeWork NSW (Appendix 1). The member did not feel comfortable in making the submission themselves given the issue (noted above) concerning the SafeWork NSW email to be used.

Recommendations.

- That the leadership team of SafeWork NSW be professionally qualified in relevant disciplines aligned to the purpose of the organisation. The idea of simply requiring someone to be a manager is both outdated and inherently dangerous. The leadership of SafeWork NSW needs to have an in-depth understanding of the tasks the agency fulfils, and the operating pressures and environmental challenges faced by those charged with front line implementation of the Safe Work legislation. All other recommendations relate to issues which may not have happened with a more informed and qualified leadership team.
- The education function of SafeWork NSW needs to be fundamentally examined within the organisation. At best the current operating procedures can be described as both laissez faire and reactive. If the agency is to fulfill its obligations under the legislation, then the agency needs to become proactive – consciously promoting health and safety education with current, accessible material designed by someone with relevant pedagogical expertise.
- The governance and culture of any organisation stems from the capability and style of the leadership provided. With renewed and reinvigorated leadership which resonates and understands the operational issues faced by SafeWork NSW, both the culture and governance would be reframed, thus leading to enhanced operational effectiveness and greater efficiency.
- Proactive promotion of health and safety by SafeWork NSW would provide a voice within the wider community for champions of health and safety. A lead by SafeWork NSW in this space would empower others to speak out whenever health and safety are imperilled in organisations. Such a significant shift not only moves SafeWork NSW into the space it is legally required to occupy, but it fulfils a wider societal health and safety obligation and makes workplaces safer for everyone – with knock-on long-term benefits.
- Moving forwards there is a need to guarantee and preserve the operational autonomy and independence of SafeWork NSW Inspectors. We would advocate the creation of an independent entity, similar to the Independent Commission Against Corruption for SafeWork NSW to facilitate this. Such a body would empower SafeWork Inspectors to fulfil their professional obligations enforcing the rights of workers across the State knowing that they immune from interference from vested interests.

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Appendix 1.

I welcome the opportunity to respond to the SafeWork review.

I believe that Safework plays a vital role, but over the last few years, the decisions made by the business has impacted this ability to work effectively with the best suited Inspectors for that role. Not only in terms of processes, but significantly in the way and manner in which Inspectors have been treated. I truly believe we have been in a phase of presenteeism – not due to sickness, but due to a sense of sadness over what is occurring to us as individuals, but also what's happening to others.

The Inspectors love their job and see it as a calling, and truly believe we are saving lives, unfortunately, under the current business structure, and the way people are being created, lack of consistency, constant failure to address issues in a timely manner or at all, etc is resulting in the largest exodus of Inspectors I have seen in over 15- 20 yrs. It has been unprecedented. As a result of the way decisions are made and the way people treated – I wouldn't be surprised if there are currently more inexperienced Inspectors than experienced.

I am also aware that Inspectors extremely experienced Inspectors are retiring earlier, due to what has been occurring over the last few years.

I truly believe that when SafeWork was a previously stand-alone department it was effective. Since coming under the broader DCS it has been a complete and utter failure and does not adequately address work health and safety in the workplace.

This isn't only due to the fact that it's no longer stand alone, its due to all the other changes etc that has occurred as a result that has left us segregated, alone, isolated.

We are in silos, we do not know what the each other is doing, and it is impacting on our ability to ensure safe workplace.

These Inspectors aren't leaving because they don't like the job, it's because the way they have been treated, the way that they've been overlooked, the fact that managers are bullying and harassing, not looking after our health and safety, and nothing is being done to investigate complaints against them

Talent Pools – recruitment:

The business uses Talent pools – when it suits them!!!

However, there's no requirement to use them, what a waste of tax payers' money.

There is no accountability if they do not use them, there's been multiple occasions where there are inspectors who meet the criteria, they have been excluded and the job has gone for external advertising.

When they are used, Talent Pool allows for nepotism and favouritism:

Inspectors are missing out because they do not get on with manager who is recruiting and managers will use the Pool when there's someone on there they want but not when there's someone they don't like.

Inspectors are leaving because they have been on the Talen Pool and missed out. New candidates have been chosen over them.

There is a high-level of anger, angst and discontentment amongst inspectors about the way in which people are recruited.

A whole range of experienced inspectors are missing out on progression as the business is than advertising externally rather than allowing internal Inspectors to progress.

In particular, the way in which Inspectors progressed to Principal Inspector was changed. Some Inspectors had applied under the previous system and were denied that opportunity to progress.

External candidates are successful, commencing with no experience, at a higher grade, yet the more experienced lower grade inspectors are expected to train them

Mobility:

A process called subsequent reassignment use to occur every two years.

Inspectors had the capacity to transfer a move around.

It was well-organised, well-established and extremely popular.

Inspectors had the capacity to increase their skills knowledge and experience, could leave an area if they had issues with the manager.

More significantly, this process allowed those people in the investigations and emergency response (IER) area to transfer out if they had identified they were at risk of psychological injury.

It was part of an agreement with the PSA , that the unit could be established on the proviso that Inspectors would be able to transfer out after 2 years. It was a way to manage the risk – THIS NO LONGER EXSISTS.

Under the Direction of a particular Director, he picked and chose who could and couldn't transfer in and out.

There's no consistency, no accountability and the business interpret the GSE act as they see fit.

Bullying:

SafeWork has a bullying culture of managers.

The business constantly fails to address bullying of staff particularly by managers.

There is [REDACTED] who has had 8 inspectors lodge complaints against [REDACTED]

The previous Director failed to adequately investigate, respond and manage them.

Unfortunately, as a result there was [REDACTED]

Inspectors have been demoted because of actions, yet not one manager had been demoted or disciplined. Instead, they have been transferred to another Team.

The Business just loves referring all bullying complaints onto the external resource's regulator, why?, because on each occasion they haven't identified bullying, even when extensive evidence exists.

They undertake PMES surveys and often bullying questions are not included or the results of the bullying questions are not provided

Communication:

There is no clear, concise, consistent method of communication with Inspectors.

There are multiple ways that we receiving communication and it is getting really confusing from different parts of the organisation e.g., Teams, Emails, Yammer there's no consistency

Since splitting up SafeWork, Fair Trading etc we are all segregated, in silos and have no idea what each other area or section is doing.

They may be working on a project that is relevant to us and we have no idea.

There is no single way of communicating what each team is doing from a central point.

This is further compounded by the fact that we do not have a directory that we can use to identify relevant inspector to assist.

WHS:

DCS claim they are an exemplar organisation – THEY ARE NOT.

In the past we would be told to undertake projects, without a risk assessment being undertaken.

In particular is the Covid project where Inspectors were placing themselves at a serious risk to undertake covid 19 compliance visits when the Project Manager was insisting that inspectors

undertake visits without undertaking safety risk assessment. Even after it was requested by staff.

It was only because of intervention by the Inspector delegates, writing to Emma Hogan, that it was ceased until one was undertaken.

Even after the Second wave, and when new strains were identified, the Project Manager refused to re do risk assessment.

Inspectors have had to arrange for their own counselling following a fatality and serious incidents.

Inspectors will attend multiple fatalities, in teams outside of EIR, when other Inspectors aren't available to attend.

There have been examples where the business has failed to respond to Hazard reports.

The business has ignored notices issued requesting information from HSRs.

The business failed to display the improvement notice it was issued in relation to bullying.

Instead, it was saved in some obscured section on the intranet – they claimed it was an admin notice.

The business has failed to undertake PPE and fit testing in a timely manner, it was cancelled on numerous occasions.

More significant is the failure of the business to address psychosocial risks in the investigation and emergency response team.

Although there exists a wellness program, there have been a number of occasions when the Psychologist identified inspectors who were required to be transferred out of the team due to those risks, and there was a failure for that to occur.

I don't know whether she failed to pass on that information or whether the previous Director failed to act.

The inability of Inspectors to transfer out has and does exacerbate this issue – IT IS A SERIOUS CONCERN.

Complaints against Inspectors:

They are quick to investigate inspector complaints, however they are failing to provide copies of the complaints or advise the Inspectors that a complaint has been received.

Instead, they assume the Inspector is guilty and investigate to gather the evidence, covertly, to support this.

There is no due process or procedural fairness. Inspectors will answer allegations, they will investigate then add other issues that are outside of the scope.

The business has been found guilty of breaching privacy, by the privacy commissioner, due to sharing private and confidential medical information.

In some instances where they have identified an issue with the manager, rather than demoting or disciplining them, the manager has been transferred.

Award conditions:

The business constantly fails to comply with award conditions e.g., travel allowance.

They interpret the Awards as they see fit and refuse to negotiate/discuss or engage with any relevant parties.

Admin burden:

We often spend more time doing admin task than the actual site visit itself.

The current system we use is WSMS.

It is a good way of recording the information, unfortunately due to the way managers have been in the past, it has now become an evidence collecting program for inspectors to justify their work.

Time frames for responding to complaints, is based on the date received to the time that a manager signs off. In a lot of instances Inspectors respond to complaints within days, the time frame is extended because a manger has not "signed off" on it until days, in some instances weeks or months later.

Inspectors will not sign off on their completed work, because it physically disappears from the screen. A manger will review an Inspectors work load, note that the job isn't listed, assume they are not busy, when in fact there's a lot of work going on behind the scenes or a lot of work that continues with jobs.

WMS does not allow for activities undertaken to be accurately recorded. The majority are recorded as a "file note".

These activities are ones that can impact on our time frames and accurately record what 'work' we've actually been doing e.g., Phone calls, emails, texts etc.