

**Submission to the Hon. Robert McDougall KC,
Independent Reviewer of SafeWork NSW.**

1.



2. CHANGES OVER TIME.

3. The various ways WorkCover – SafeWork has operated has demonstrated some alternatives that might be worthy of consideration for future effectiveness. As a safety inspector from 1994 to 2022, I experienced different ways in which business was done. Over that period there were changes in objectives, culture, work methods and impacts on our customers. Some changes have retarded the achievement of the objectives of the WHS Act.

4. **Broad coverage of issues.** Prior to 2010, the inspectorate in Sydney was divided into generalists and construction inspectors. There was an emphasis on on-the-spot enforcement for the construction industry, because site conditions and personnel quickly change. However, inspectors, who usually had a work history in construction, also provided guidance about what compliance should look like. Generalist inspectors, who usually came from a manufacturing background, also provided guidance, but with a reduced emphasis on immediate enforcement

**Submission to the Hon. Robert McDougall KC,
Independent Reviewer of SafeWork NSW.**

because the businesses would still be there to follow up. In regional areas, inspectors were tasked with everything. As a general inspector in (redacted place name), I undertook a broad range of work. I provided advice, routine enforcement via notices, as well as investigations leading to prosecutions. These work activities encompassed, workers compensation, return-to-work, and safety in all industries with a strong emphasis on manufacturing, construction and transport in which the most notifiable injuries occurred. Then as now, employers had access to a lot of useful publications.

- 5. Ongoing Relationships.** In the 1990's managers sought to allocate work to each inspector from a designated geographical area and / or with businesses that the inspector had already dealt with. Inspectors who had developed **relationships with local businesses** were sought out for advice. Ongoing communication did a lot for risk prevention. Even after the end of the work allocation to inspectors who "owned" a geographical area, inspectors were still encouraged to persuade employers to co-operate and improve the overall management of safety. By acting as a potential one stop shop (or at least a referral point) for workers compensation, return-to-work and work health and safety, with graded responsiveness ranging from advice, all the way to prosecution, inspectors could be very persuasive and effective at focusing businesses on their most significant safety risks. An inspector could do a quick walk around covering a number of issues to persuade the employer to voluntarily improve safety management and to report back. Alternatively, the inspector could take a relatively light touch by writing only one notice and later doing a follow up visit to see how that, as well as other issues, were going. This approach of mostly trusting each employer to run their own business was appreciated. It was also a way of winning a lot of positive change with relatively little use of the

Submission to the Hon. Robert McDougall KC,

Independent Reviewer of SafeWork NSW.

regulator's time. This freed time for contact with other businesses. If an inspector came across an exceptionally poor performer, local management would sometimes authorise case management aimed at improving both the immediately dangerous issues and also the safety management capability. Our responses could be tailor made to the needs of the individual business.

6. No band-aids. Establishing a sense that there may be an **ongoing relationship** that takes a broad overview of compliance to all SafeWork legislation, is much more effective than a rare one-off visit during which an inspector is focussed on discovering if there is evidence of a single issue. It could well be that at the moment of a one-off visit, the inspector does not discover sufficient evidence to write a notice on that single issue. For example, at that moment the inspector may not witness unlicensed crane operation, or may not see alleged bullying behaviour or may not see more workers than appear to be covered by insurance. Instead, the inspector would be more likely to see relatively minor issues such as untagged electrical leads or unclean amenities. The reality is that there are often far more serious inadequately managed risks than what the inspector is able to see at first glimpse. This is why persuading the employer to focus on high priority issues would be of greater value. At the present time, if we only issue notices on low priority issues, SafeWork runs the risk of being perceived as a minor annoyance. The carve out of most workers compensation and return-to-work compliance, reduces our scope and persuasive leverage.

7. Little Paperwork. During the 1990's, the reason most of an inspector's time was able to be spent dealing with customers was because most files only required brief handwritten reports that were checked and signed off by managers. Inspectors at that time had not taken over a lot

Submission to the Hon. Robert McDougall KC,

Independent Reviewer of SafeWork NSW.

of administrative work that was once done by clerical officers. The number of **genuine workplace visits** seemed to be much higher than in recent years.

- 8. More Recent Changes.** In recent years Safety Inspectors have also taken on work assisting the work of the office of Fair Trading, the Department of Health and more recently some assistance to the Building Standards Commissioner. These things of value came at some cost to the safety inspection work.
- 9.** From about 2010, the work of inspectors became much more narrowly focussed as **specialist teams were formed** and have continued to be formed. Restructures and the formation of new teams appears to be designed to protect or create managerial positions. The latest example is that the Health, Safety and Design directorate are in the midst of a “realignment” where 5 teams will soon be 7, creating an additional 2 manager positions. (Of note, there are only 2 remaining substantive managers - requiring a recruitment process of 5 new managers over the next 2-4 weeks.)
-
- 10.** One may also reasonably deduce that this same proposed realignment in Health Safety and Design Directorate, is for the purpose of avoiding the embarrassment of their Director’s answer to a question he was asked at a recent parliamentary budget estimates committee hearing. He had to reveal that there were only 3 inspectors in the psychological specialist team. Now with their coming inclusion with many others in a new intervention team, the Director will in future be able to quote some inflated number, giving the impression that all could potentially work on psychological matters. The reality will be that the number of

**Submission to the Hon. Robert McDougall KC,
Independent Reviewer of SafeWork NSW.**

psychological specialists will continue to be small and that their colleagues will continue doing other types of work.

11. Specialisation promised and sometimes delivered more technical capability to our customers. On the other hand, the response to businesses has often fallen down between our organisational divisions. An every-day example, is that inspectors who are first responders to incidents are often not members of the team that does investigations for the purpose of prosecutions. Consequently, first responders have little self interest in recording all of the facts and preserving items from an incident scene that may be relevant. If the matter is later determined to be worthy of a full investigation, it is normally allocated to another inspector who weeks later has to reconstruct the scene not knowing what information may have become irretrievable. In earlier times the first responding inspector usually took full carriage of a file from start to finish.

12. Another reason for declining effectiveness, is where a business has failed to comply with a notice. Such a business no longer needs to have much fear of prosecution because, the matter would usually have to be escalated to the investigations team. Theoretically the matter could be escalated, but the original inspector would normally not be motivated to write a report that would probably not be acted on by the Independent Decision Making Panel. Gone are the days when a local manager could make that decision. The result is that the average inspector has less perceived authority to persuade employers to comply.

13. The separate organisational structures of the specialized teams have reduced the informal advisory networks among inspectors. With **most supervisors having fewer staff**, there is time for micro-management and ensuring accountability for the most minute details of inspectors'

Submission to the Hon. Robert McDougall KC,

Independent Reviewer of SafeWork NSW.

work. Concurrently, the growth of the inspectors graded career paths, was used to justify using higher level inspectors to write policies and procedures. They are also involved in co-ordinating field projects, training, development of communications media, and evaluation of the work of other inspectors. These things of some value have opportunity costs. The written procedures that prescribe in great detail how an inspector's work must be done, promise greater consistency, but these procedures are also used for micro- management and bullying. Control and accountability are increasingly enforced through databases and other information technology. The main cost is the overall **decline in time spent in meaningful contact with businesses**. Higher-level inspectors do a much lower percentage of their hours in the field. Lower-level inspectors, are heavily tied up with filling in data bases.

14. The problem with the decline in time spent in the field is worse than the data bases would reveal. Since 2010 it has become widespread practice to write up every business contact on one construction site, as if it is an additional field visit. SafeWork should stop using each business contact as a measure of performance. It would be better to record each discrete site address physically visited. More importantly, each inspector should be required to record time actually spent at worksites. To enable more face-to-face worksite time, there should be mechanisms for reducing other demands on inspectors' time.

15. SafeWork does not allocate inspectors time in a way that accords with greatest risk. **Work allocation is a purely top-down process** driven by broad trends in notifiable incidents reported by industry and then filtered by the triaging process and management priorities as these change from time to time. Inspectors can rarely contribute their own local

**Submission to the Hon. Robert McDougall KC,
Independent Reviewer of SafeWork NSW.**

knowledge to the decision-making process about which sites need a visit. The long lead times of ergonomic, mental and substance induced harms, causes these harms to be given relatively little allocation of inspectors' time. SafeWork skews its allocation of field responses towards acute risks that have been reported. There seems to be a relative lack of Requests For Service (WHS complaints) from those who have insecure employment or those who work for small businesses. I make this claim based on my observations that workers in these circumstances usually have higher risk workplaces than those in larger businesses with permanent employment. I suggest that SafeWork should not be so heavily reliant on big data. SafeWork should also seek out input from inspectors and workers to guide decisions about how to allocate resources to workers at highest risk.

16. Allocation of resources varies according to the processes that SafeWork NSW initially applies to a matter and / or applies to a matter as it may progress through the decision making processes of SafeWork NSW. It may begin as a project proposal by an interventions team. It may begin as a triaged response to a Request For Service (complaint). It may begin as a triaged response to a workplace incident which itself may be affected by potential for media and political profile. After some initial information gathering, a matter may be chosen for a full investigation by the so-called Independent Decision Making Panel. During and after the production of an investigation report, a matter may be curtailed or overblown according to the whims of the responsible manager and Director. The case management process does not allow the investigating inspector to have control of significant decisions about the course of an investigation.

**Submission to the Hon. Robert McDougall KC,
Independent Reviewer of SafeWork NSW.**

17. TRIAGING

18. The Investigation Team has a sub team known as Response Coordination and Enforceable Undertakings. It is because this team does the triaging of incidents and complaints, that it has strong control of the work that other teams do. The triaging system frequently does not operate in alignment with its documented procedures. The written procedures and the WSMS database into which incidents are entered, create the impression that it is a consistent unbiased process of determining the type of response that should be given to each notified matter. This is often not correct. There are a number of reasons. First, with calls coming in at an uncontrolled rate, there is often not time to look up the prior history of each business. Second, there may be insufficient information provided by the notifier. Third with the notifier waiting on the phone, there is a pressure to communicate a decision to the notifier when sometimes a few additional calls need to be made to other involved parties. What really happens is that a quick **seat-of-the-pants decision** is communicated to the notifier, and then the database questions are worked through like a flow chart in a way that ensures that the initial seat-of-the-pants decision is also recorded in the system. After that, the decisions are reviewed by the Response Coordination and Enforceable Undertakings team manager.

19. The RCEU manager and other managers have sometimes allocated unusual or sensitive jobs to themselves; and contrary to usual requirements for recording all dealings, have sent administrative response letters to the employers without these letters appearing on the WSMS database. These letters, informally known as **scrap letters**, prevent the such matters being included in SafeWork's program for compliance check follow up visits. The follow up program is officially

**Submission to the Hon. Robert McDougall KC,
Independent Reviewer of SafeWork NSW.**

documented as the Administrative Response Action Compliance Program Framework. Another effect of the use of scrap letters is that managers could close off their own files without review. A third problem with “scrap letters” is that because there is no easily accessible prior history, the next time there is a complaint about the same issue with the same business, the recidivist business does not get the recommended automatic upgrade to an inspector field visit response. Following from this lack of the perceived need for a field visit, these businesses do not generate statistics that would justify their inclusion in project work and industry focus initiatives. It may be useful to ask:

20. How many complaints did Team Managers allocate to themselves to complete since 11 April 2012, rather than the inspectorate?

21. How many of those jobs that were allocated by Team Managers to themselves were handled by them using a "Scrap Letter", meaning - a version of an Administrative Response Letter that is generated manually and not generated through the WSMS platform?

**Submission to the Hon. Robert McDougall KC,
Independent Reviewer of SafeWork NSW.**

22. INTERVENTION PROJECTS

23. Project proposals and guidelines are generated by the WHS Interventions teams. A decision to run an intervention project in an industry on a particular issue is supposed to be based on data that shows that that industry has a problem. Even when that is true, most businesses in any industry will not need our involvement. A minority of the businesses generate the incident statistics for that industry. Inspectors would have more time to spend with the minority of businesses that do need us, if we were not required to waste the time of the majority of businesses that do not need us. We also waste time of everyone by an excessive emphasis on ticking boxes in forms and data bases.

24. When a project is announced that requires us to do a given number of site visits on a particular issue, we often cannot find many instances of the issue during the period of the blitz. SafeWork then reports what a great success, the project was, when the reality was that we ended up ticking boxes relating to a host of low-risk matters such as whether or not the business had relevant written procedures. A better way forward, would be to work with individual businesses to prioritize their issues as we find them. Knowing our broad corporate priorities, we could still report progress on these over time. The problem has been that, the design of projects and their time frames has been too driven by the desire to quickly have outcomes to report to the media. SafeWork projects should not be dominated by slavish adherence to long one size fits all checklists. Our priority should be to attend to the high priority risks of our individual customers. Checklists should be treated as no more than helpful guidance. (In the past we have had our earlier box ticking thrown back in faces in court, during prosecutions of related

Submission to the Hon. Robert McDougall KC,

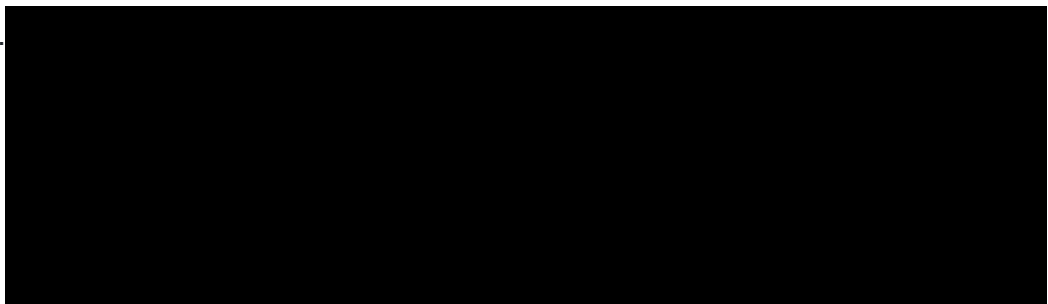
Independent Reviewer of SafeWork NSW.

breaches.) The origin of the problem is that experienced field inspectors are not in charge of the design and approval of projects. The projects are approved by managers who are not required to have been field inspectors. The experience of the field inspectors in those teams carries no more weight than the project officers they work with.

25. THE EXISTENCE OF A SEPARATE INVESTIGATIONS TEAM

26. In the year 2000, the number of prosecutions done by the whole inspectorate was approximately 600 or 2 for each field inspector. Now that we have a specialised investigation team there far fewer full investigations and prosecutions. Only a small number of inspectors outside of the investigations team are permitted to do investigations and then only with the agreement of the Independent Decision Making Panel. If the Director of Investigations allows too many investigations to be done by inspectors from the other teams, then the Director invites the question as to why his/her specialised team really needs to exist. The Director and his/her team of managers have a self-interest in maintaining their own employment. This self-interest affects the consistency of the decisions of the Independent Decision Making Panel. During those meetings, the Director of Investigations has informed panel members of the investigation team's capacity to take on new investigations. The result is that some matters are not approved to progress, when in previous months almost identical matters had been approved. The public are the losers. One easy reform would be to only allow the appointment of truly independent members of the Independent Decision Making Panel. At most the Director of Investigations might be allowed to be present for consultation by members of the Panel. A more substantial reform might be to abolish the investigations team, to allow all inspectors to do investigations approved by the Independent Decision Making Panel.

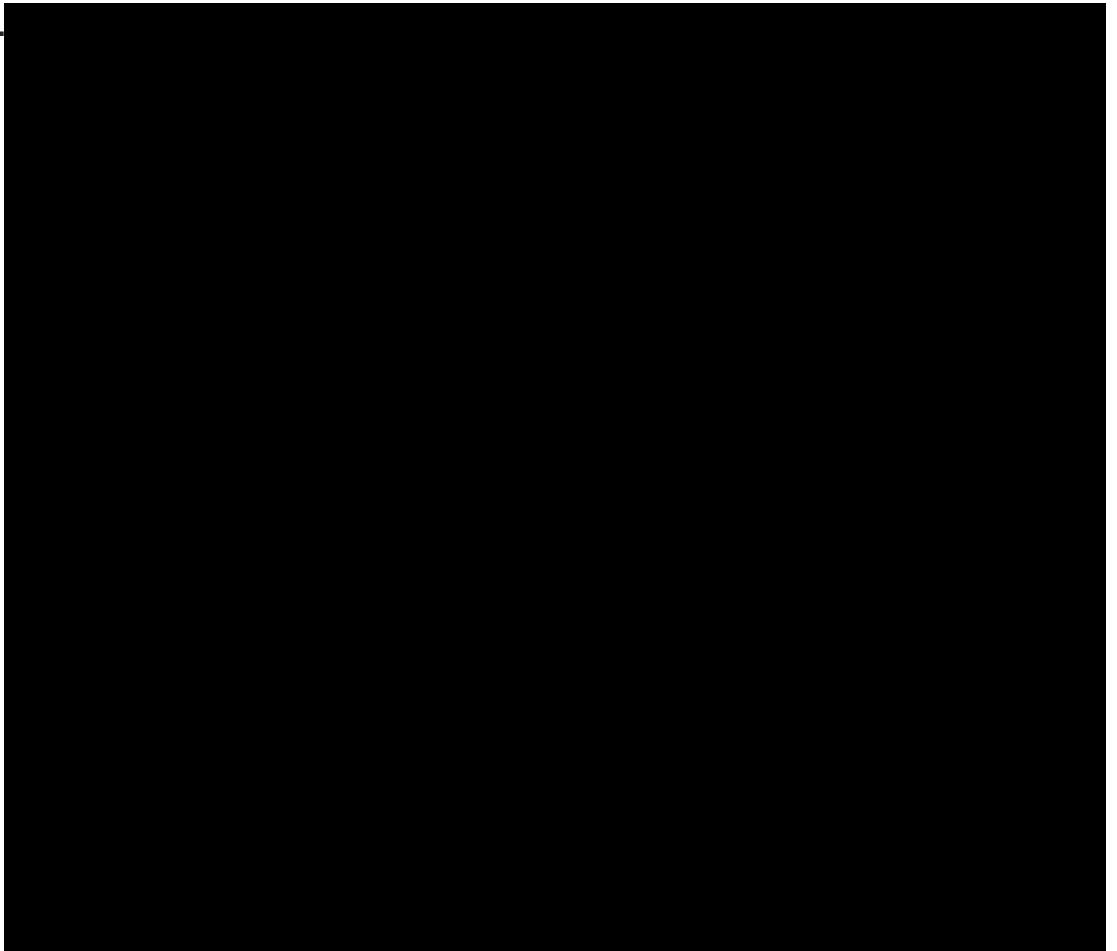
27.



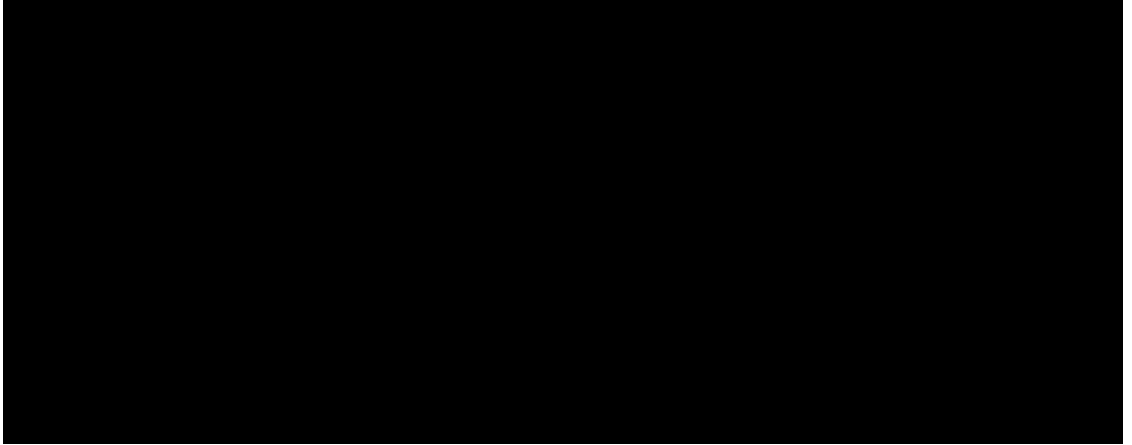
Submission to the Hon. Robert McDougall KC,
Independent Reviewer of SafeWork NSW.



28.



**Submission to the Hon. Robert McDougall KC,
Independent Reviewer of SafeWork NSW.**



29. CULTURE

30. During the 1990's, few inspectors left their positions, other than for retirement. However, there was moderate turnover of inspectors because most had been recruited when they were older after having had successful careers in industry. Inspectors who once did a broad range of work, freely mixed with and informally consulted their peers for advice. There was shared respect for inspector's technical knowledge and respect for their judgement of customers.

31. During the last two years there has been an unprecedented **turnover in the inspectorate**. The brain drain is causing a loss of capability. There are many reasons for the high turnover. These reasons would include the lack of respect for an individual inspector's knowledge of customers, the lack of control of their work, micro management, bullying, and inspectors' difficulty in seeing that their work provides value to the community. Too many inspectors feel that they are prevented from making a positive difference. Their performance is measured by file turn-around times, number of contacts with business, number of notices issued and compliance with procedures. In my own case this extended down to delayed approval of my prosecution files until I had removed double spaces from my reports.

32. I suggest that there should be development of higher level measures of success by both individual inspectors and SafeWork, that require us to demonstrate real value to our customers. These could include surveys and follow up audits of businesses that we have dealt with.

33. The low priority of workplace safety is not just a problem with a few individual managers. The recently published document, "Our Regulatory

Submission to the Hon. Robert McDougall KC,

Independent Reviewer of SafeWork NSW.

Priorities 2023” is shamelessly empty of detail. It shows that SafeWork as a whole business is abandoning the ambitiously detailed Health and Safety Roadmap 2022. That 2022 “Roadmap”, rightly stated the priorities of improving health and safety management practices and involving workers through communication, consultation and capability raising. These need to be retained and actualised with a new culture in management.

34. More training courses and policy statements will not convince the workforces, both inside and outside the organisation, that SafeWork is serious about workplace safety. The culture cannot change unless most people witness action against people and business structures that have supported harmful behaviour and decisions. There has been a deterioration in the culture since the Department of Customer Service took over SafeWork NSW. I say this because, the Department’s People and Culture have wasted a lot of money on sham “independent” investigations that they have in fact directed. They have blatantly refused to have WHS complaints investigated under the WHS Act and have supported those who have been involved in harmful behaviour. The independence of SafeWork should be restored. In addition, those SafeWork managers who are permitted to continue need to be set new priorities.

35. I recommend that an independent oversight body should be established to set priorities, monitor behaviour, monitor performance of SafeWork and review work methods to ensure efficient service delivery.

36. For internal WHS matters, the workforce needs access to a truly independent WHS regulator with the same powers as SafeWork NSW. I could explain why the model of referring WHS matters to the

Submission to the Hon. Robert McDougall KC,

Independent Reviewer of SafeWork NSW.

Resources Regulator is just a sham. I suggest that the Director of Public Prosecutions could employ up to three former SafeWork inspectors to perform similar functions for the workforces of the Resources Regulator and SafeWork NSW.
