

TRANSCRIPT OF PROCEEDINGS



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INDEPENDENT COMMISSIONER AGAINST CORRUPTION

COMMISSIONER LANDER

PUBLIC HEARING - EVALUATION OF SAFEWORK SA

ADELAIDE

1.00 PM, THURSDAY, 12 JULY 2018

Continued from 11/7/18

MS H. STANLEY appeared as counsel assisting

COMMISSIONER: Mr Joe Szakacs? Mr Szakacs, thank you very much for coming today and providing the submission that you've already provided to me in relation to this evaluation. I'm grateful that you've taken the time to come here today to speak to it. When you're making whatever submissions you
5 make today, I'd be glad if you'd keep in mind the scope of the evaluation, which is, as you know, the evaluation of the practices, policies and procedures of the regulatory arm of SafeWork SA.

I'd also be glad if you'd take into account that this is a public hearing and that
10 anything you say may be published to the public. For those reasons, I'd prefer that no reference is made to any particular individuals in relation to their particular conduct. If you feel it's necessary for me to know about the conduct of a particular person, I'd be glad if you'd let me know privately rather than in circumstances where those persons might suffer some embarrassment.

15 I intend to authorise publication of your identity, unless you would argue otherwise.

MR SZAKACS: No, no reason for that, Commissioner.

20 COMMISSIONER: Thank you. I intend at this stage, or I expect at this stage that I'll make an order - I'll advise that I do not intend to prevent publication of any parts of your submission.

25 Mr Szakacs, you said in your submission, in paragraph 21 and paragraph 40, that you'd wish to add to those. I'm happy for you to do that now and any other matter that you think would help me in relation to this evaluation.

MR SZAKACS: Thank you, Commissioner, and I thank you for the
30 opportunity - invitation for SA Unions to attend to add some further detail around our submission, and I do note the framework for which this evaluation is taking place.

By way of background, SA Unions is the peak trade union council for South
35 Australia. We represent 26 different trade unions, who are members of SA Unions. That accounts for about 160,000 trade union members across South Australia in a very, very diverse and wide-ranging number of industries and sectors. We are also the state branch of the Australian Council of Trade Unions, which collectively represents 1.8 million trade union members across
40 the country.

We're very pleased to participate in this evaluation and provide assistance to the Commission, as we may do, and we do so because health and safety -
45 ensuring health safety of people at work is core business of every trade union, and of course SA Unions as the peak represent those collective goals. We do

that and we prosecute that agenda through representing members in workplaces, we do that by influencing and shaping public policy, and we also do that by running public and community campaigning.

5 Our vision is one that is very clear. It is that nobody should go to work or be hurt or killed and our aim is that work injuries are reduced and that deaths should not occur. We believe that trade unions play a critical role in enforcing workplace health and safety.

10 During the last eight years SA Unions has made submissions to five separate inquiries into work health and safety legislation and/or structures and functions of SafeWork SA. I also note that there is currently an inquiry afoot into the framework surrounding prevention, investigation and prosecution of workplace deaths, and this is being conducted by the Senate Education Employment
15 References Committee. SA Unions is also participating and contributing to that inquiry.

SafeWork SA is an entity of nine - one of nine national state and territory regulators - and it's this participation in a national framework through model
20 laws that unions across the country have for many years participated in developing policy around monitoring and reviewing.

The legislation in South Australia is almost a mirror of the model act which most states and territories are and continue to be committed to, and the
25 provisions of the South Australian Work Health and Safety Act of 2012 and the Commonwealth Work Health and Safety Act of 2011 are virtually identical. These nationally-consistent model laws mean that powers of inspectors and investigators are similar and widely understood to be necessary and appropriate across various jurisdictions.

30 We submit that the discretionary powers afforded to South Australian inspectors are not exceptional, nor do they differ from those conferred to those inspectors operating in other jurisdictions. The strong enforcement of workplace safety is highly desirable and, in our submission, necessary.

35 SA Unions submits that it is not in the public interest that the discretionary powers of inspectors or investigators are curtailed, nor that these powers are seen to be of such specific nature to render an inspector specifically open to corruption, maladministration or misconduct.

40 In a number of submissions that SA Unions has made over the years into these matters, what is necessary and vital to the safety of working South Australians, minimising the risk of corruption and maladministration, has not featured from our perspective. To the best of our knowledge, the major inquiries into workplace safety have not suggested that these matters are of high priority or
45 concern, nor has there been a single or multiple identified series of conduct or

processes that have led to further public examination.

We submit that the objects of the Work Health and Safety Act provide an appropriate and suitable framework for the Commission to evaluate and identify practices and procedures of SafeWork SA that are both successful and that leave room for improvement. At the core of the objects of this Act are:

... the principle that workers and other persons should be given the highest levels of protection against harm to their health, safety and welfare.

In practice, SA Unions submits that this object and these objects are achieved through various practical ways. These include engagement of industry, employers and unions in a tripartite manner in improvements across industries; strong and meaningful workplace structures; good prevention programs that include industry engagement and campaigns to make safety a public and community issue; an active SafeWork SA inspectorate that undertakes random visits, audits, and effective use of improvement notices; the enforcement of codes and workplace consultations processes, and strong enforcement and proactive and timely prosecutions of those who do not comply with laws, regulations and codes.

SA Unions submits that the highest priority for the Regulator should be increasing and expanding activities that deter parties from breaching the Act in the first place. Practices, policies and procedures should be directed towards increasing the number of successful prosecutions and reducing the instances of injuries. SA Unions is advised that prosecutions and convictions have been steadily falling since the 08-09 financial year. SA Unions submits that an effective enforcement and prosecutorial regime plays an important role in preventing and deterring serious workplace injuries and deaths. SA Unions submits that there is at present a deficiency in the prioritisation and number of prosecutions for breaches of the Act.

Any agency or enterprise, be it public sector or private sector, must prioritise its business and operational priorities based upon revenue and budgetary concerns. We have been recently advised and understand that evidence has been provided to the evaluation that SafeWork SA staff have been formally advised that there will be further budgetary cuts in the vicinity of \$6.3 million to the agency and currently we are unsure how these budgetary cuts will operate within or in addition to the foreshadowed South Australian public-sector-wide cuts of \$1 billion over the next three years that were contained in the new government's election costings.

As a principle, as the regulator of workplace safety in South Australia, SafeWork SA should be properly resourced to enforce the law. This involves

adequate resources to ensure the proper exercise, enforcement and prosecutorial functions.

5 In conclusion, SA Unions submits that the current balance of the Act and the powers and functions of inspectors contribute properly to promotion, educative and the inspectorate functions of SafeWork SA. To the extent that I've submitted further and complemented the written submissions of SA Unions and that I'm able to assist the Commission, that concludes my additional submissions.

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COMMISSIONER: Thank you, Mr Szakacs. Can I take you to your written submission and in particular paragraphs 15 and 16. You mention in paragraph 15 a number of submissions that SA Unions has made relating to minimising the risks of corruption, misconduct and maladministration which are not featured in those submissions, and in paragraph 16 that they are not a high priority or concern. What exactly do you mean by that?

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MR SZAKACS: To the extent that SA Unions has provided submissions or contributed to inquiries, the question of maladministration or potential corruption hasn't featured in a number of ways. For example, it may not have been that submissions were sought on that subject matter. It would also go to the fact that when SA Unions has consulted with our various member unions, that subject matter has not been fed up through the processes by which we have made an inquiry.

25

So it's not to say that as a question of fact those matters aren't of importance to the overall performance of the scheme. However, when we have been providing our information or contributions, they haven't featured, in our own submissions. And so far as we're aware the conclusions or recommendations arising from those inquiries haven't sought further detail or information on the question of maladministration or corruption.

30

COMMISSIONER: Of course, you'd understand that the ambit of my jurisdiction is to investigate and to minimise the risks of corruption, misconduct or maladministration. In a sense therefore, if there have been so many inquiries which have not addressed those issues, it's probably timely to do so.

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MR SZAKACS: As you said, that's the particular ambit of this evaluation, and we would and have contributed to that in the best way that we can do so.

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COMMISSIONER: Yes. I hope you understand that that is the ambit of the evaluation. I don't intend to make any recommendations which would affect the powers that were given to inspectors or the manner in which they exercise those powers. I think, as you have said and the Public Service Association has

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also told me, they are national powers and there's no reason why in South Australia they should be any less robust than they are in the rest of Australia, and certainly I agree with that as a proposition.

5 What I'm concerned about is because those powers are so wide and so robust that there is a risk of corruption, misconduct or maladministration in the exercise of those powers, because there are interests such as the interests you identified in paragraph 20 of your submissions - there are interests who would wish the inspectors in SafeWork SA not to exercise powers over employers or
10 persons conducting business units, and sometimes it might be in the interests of unions to have SafeWork SA exercise particular powers.

It's probably for those reasons that I'm carrying out this evaluation, because I think what can be significant risks where regulators do have very strong
15 powers is - that's understood?

MR SZAKACS: Yes. No, I understand that that's the purpose of this evaluation and that you, in your and counsel assisting's remarks, have referred to that potential conflicting interest.
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COMMISSIONER: To be quite frank about it, my organisation has got very strong powers and my investigators have got powers probably more robust than the powers offered to inspectors. For that reason, I have to be alive to the risk of corruption or maladministration within my organisation, but that's the reason
25 I'm carrying out this evaluation where there are organisations with similar if not identical powers.

In paragraph 18 of your submission you've included examples of fundamentals that you say are important to ensure the principle that workers and other
30 persons should be given the highest levels of protection against harm to their health, safety and welfare, and I'm grateful for those. In the third dot point you have mentioned good prevention programs. Has the decision made by SafeWork SA to separate the educator and the regulator functions impacted upon those programs do you think?
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MR SZAKACS: I should comment that there were public submissions sought on the question of separating the education and inspectorate functions. That was a proposition that SA Unions and various unions supported. We did so on the basis we think they're quite distinct but intertwined benefits that both bring
40 to the maintenance, prevention and prosecution of workplace safety.

Insofar as the structural changes have taken place, my advice is to date that there hasn't been enough water under the bridge to see how the net benefits of that have played out sufficiently, but we do support the continued separation of
45 those functions.

COMMISSIONER: I've not made up my mind about this, but I have some problems with the separation of the two functions, especially where the educative function proceeds upon the basis that information provided to the educators will not be provided to the inspectors. I have difficulty in those circumstances because SafeWork SA will, by definition, be aware of some unsafe practices and do nothing about it. What do you say about that?

MR SZAKACS: In our opinion, that would be a fundamental flaw in processes, and I would agree with your observations.

COMMISSIONER: Yes.

MR SZAKACS: I wouldn't go as far as to say that that's a fundamental problem that is caused by the separation of the powers, but I would submit that it would be something that would materially need to be addressed.

COMMISSIONER: I think the fundamental flaw is not only because of the separation of the powers but because - but the process whereby employees of SafeWork SA will proceed on the basis that they will not inform inspectors of - - -

MR SZAKACS: I beg your pardon, Commissioner, could you repeat that, please.

COMMISSIONER: Yes. I think the flaw in the system is if any employees of SafeWork SA, which are in this case the educators, proceed upon the basis that they will not inform inspectors of unsafe systems. That would seem to me to be a flaw that has to be addressed, because there could well be circumstances where the educator is aware of a very dangerous situation which is not passed on to the inspectors to be addressed in accordance with the Act.

I don't think the other states have adopted this business plan. Are you aware of what the other states do in relation to the separation of those functions?

MR SZAKACS: I must say, Commissioner, I'm not fully abreast of the stocktake of other jurisdictions with separation. If it were to be something that would be of use to the Commission, I would be happy to take that on notice and provide some assistance.

COMMISSIONER: That would be helpful if you'd do that, thank you. In the next dot point you've talked about the inspectors undertaking random visits, audits, et cetera. By random visits, do you mean unannounced visits - - -

MR SZAKACS: Yes, that's correct.

COMMISSIONER: - - - rather than random visits?

MR SZAKACS: Yes.

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COMMISSIONER: I must say I see significant benefits in inspectors carrying out unannounced visits. Random visits not so much, because they may not be properly focused, but I'm right to understand random to be effectively unannounced.

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MR SZAKACS: Unannounced would be a far better characterisation of that. Random would imply some lack of plan, whereas our view is that unannounced visits, both from a workplace perspective but also from a community safety perspective, are in the public interest.

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COMMISSIONER: Quite. You've mentioned - I think it's in the sixth dot point - or you refer to high-quality data collection and measurement based on outcomes rather than reporting alone. I don't quite follow that. What do you mean by that?

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MR SZAKACS: That's an important point in respect to measuring the whole breadth of effective workplace injury and also prevention of workplace injury. So that is as relevant when it comes to workers compensation as well as it is with work health and safety. For example, some of the - this formed part of some previous submissions that SA Unions made. For example, the question isn't simply of how many random - sorry, unannounced visits are made or how many education forums are made or undertaken but also linking that back to the overall instances of serious workplace injury or fatalities.

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COMMISSIONER: Well, not simply by adding up the numbers of inspections or the numbers of education seminars but trying to work out what effect they've had is your point?

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MR SZAKACS: That is our position, yes.

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COMMISSIONER: In paragraph 26 you mention, in the third dot point, the rate of attrition of inspectors being of concern. I wasn't aware - and I might be wrong - that there was a significant rate of attrition.

MR SZAKACS: The best advice I have in respect of that, Commissioner, is that the rate of attrition has improved somewhat. There was, going back now potentially two or three years, what was in the views of unions both representing workers in that area but also in workplaces - that there'd be often different faces on similar issues; that they may from one week be speaking to one inspector and then knowing down the track that inspector is no longer

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there.

I don't have the best available precise data, as I'm not sure that would be available to us as a peak council, but that is the, at worst, anecdotal feedback that we've received from our affiliates.

COMMISSIONER: Yes. I'll address that, because I thought - my understanding at the moment is that the rate of attrition is not at all high, but I'll have a look at that.

In the next dot point you've talked about examples of failures by inspectors to contact health and safety representatives while undertaking their duties and failures to inspect work and operations rather than just documentation while undertaking these duties. Are you suggesting therefore in that that there is too much emphasis placed upon considering documentation rather than actually inspecting the workplace itself?

MR SZAKACS: Commissioner, I can contribute two thoughts on that. The first is that this was also a head of concern that unions had when the education and inspectorate functions were not separated.

COMMISSIONER: Not separated?

MR SZAKACS: Not separated, in that there would be - advice that we received would be that a visit may be made that would have reasonably required a degree of enforcement or a degree of remedial action, whereas the inspector that would be undertaking that visit would skew or err on the side of education.

As those two functions have separated, there has been continued feedback through our members and affiliate unions that - as you have said, that sometimes - and it's hard for me to say how many times or how often, but there are instances where inspections are administrative or procedural in nature and can err on that side as opposed to a deeper dive into the nature of the risk or hazard that may or may not present.

COMMISSIONER: Thank you. Without naming names, are you able to give me some understanding of the examples that you talk about?

MR SZAKACS: In respect of that dot point?

COMMISSIONER: Yes.

MR SZAKACS: I can undertake and seek some details from industry unions, yes.

5 COMMISSIONER: Okay, thank you. That'd be helpful. You've mentioned in paragraph 29 that, to the best of your knowledge, there's no widespread or systemic abuse of discretionary power. Two questions. Do I infer from that that there is some evidence of abuse of discretionary power but it's not widespread or systemic?

10 MR SZAKACS: No more succinctly - I'm not and SA Unions is not aware of any abuse of discretionary power. It's not something that has been in our consultation to feed into this process or, sorry, to this evaluation or others that have been fed to us. So it's not a question of degree. It's just that we are not aware of it.

15 COMMISSIONER: And your awareness of the fact that there is no evidence of widespread or systemic abuse of discretionary power comes from where? How do you get that awareness?

20 MR SZAKACS: So, as the peak council, I and we do not have a direct role in workplaces. So my role as the secretary of SA Unions is different in a large way to the secretary of a trade union that may be representing an industry, so not to say that I and we are not aware of it because of dislocation, but we also do not have a direct nexus with workplace organising or workplace representation.

25 COMMISSIONER: Would you agree, as I mentioned earlier, that there is a risk though of an inspector abusing a discretionary power, and the risk is a consequence of the availability of the power and the fact that the exercise of the power can affect adversely persons who are interested in not being affected?

30 MR SZAKACS: I agree with your observations that the question of corruption, maladministration or misconduct is a real one and something that's properly evaluated. I would respectfully disagree that it's specifically attached to or more susceptible as a result of the discretionary powers conferred upon workplace inspectors in South Australia. It's not to say that it's not a real or reasonable proposition, but our submission is that workplace inspectors are no more or less susceptible to those improper influences than other professionals either with or without discretionary powers.

40 There's an important and proper series of processes around managing conflicts, managing these situations, with any profession which has a role in determining matters, so it's our submission that it's that overarching framework that should be either better explored or better developed in managing those discretionary powers, but it's not those discretionary powers in themselves that give rise to
45 the potential for the misconduct, maladministration or corruption.

COMMISSIONER: Yes, I understand that. I think there is a risk with anyone who exercises a discretionary power that the power may be exercised for the wrong reason. Would you accept that?

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MR SZAKACS: I do, yes.

COMMISSIONER: And the risk is greater, I would have thought, by reference to the effect that the exercise of the discretionary power could have in favour or against any particular person, so the risk becomes greater where the effect is greater.

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MR SZAKACS: And by "effects" you mean consequences of?

15 COMMISSIONER: Consequences, yes.

MR SZAKACS: Yes. I agree it's a risk. I suppose from one perspective it's a risk management framework where you've got risk and consequence, and risks are somewhat separated from consequence, so the risks that may be applied to a situation or the risk of something happening in one circumstance may or may not be attached to the potential large or small consequence that is arising.

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COMMISSIONER: Yes. Where the exercise of a discretionary power might confer a benefit, that also is a risk. For example, someone who has the ability to grant a licence to someone, whatever type of licence which is in the power of a particular person, has a power which could be exercised for the wrong reason, because the person who is seeking the licence may not be entitled to it but it is worth a lot to that person if the licence were granted. What I'm really putting to you is that all discretionary powers would carry some sort of risk of corruption or misconduct or maladministration associated with the exercise of the power itself, and that's what I'm evaluating in this exercise. You'd accept that as being the risk?

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MR SZAKACS: Yes, I do. Not that I have specific information in respect to the managing of these potential risks, but I know that and I would submit that there is a reasonably sophisticated and mature framework across the entire public sector in respect to your point around the issuing of licences, for example. There are many different government agencies and entities that are empowered in the granting of licences, and if there were to be a conclusion or finding that SafeWork SA had deficiencies in policies and procedures and frameworks around the managing of that, it would be useful to look to other South Australian government entities in the first instance for guidance.

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COMMISSIONER: I think, as you say, the public sector addresses those sorts of risks, and they do so by all agencies having a fraud and corruption policy.

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The question is whether the policy recognises the real risk and how that risk can be better addressed. In paragraph 33 you've submitted that:

5 *Focusing on minimising the misuse of resources is likely to result in risk-averse bureaucratic culture that has distracted from addressing the higher-order priorities.*

Are you saying by that I shouldn't focus on the risk?

10 MR SZAKACS: No. What we'd submit is that we, from a union perspective, would not like to see a perverse outcome from proper administration. As I submitted a little earlier, every entity, public or private, has budgetary constraints and we're aware that there are particularly acute budgetary constraints within SafeWork SA and potentially being faced by SafeWork SA
15 moving forward into the future. It's a question of the level of resourcing available more so than a proper framework around the use of resources, because there would never be a time more important to use resources properly and in a more streamlined way than when there are budgetary pressures.

20 COMMISSIONER: I don't see it's any part of my role to advise or instruct inspectors as to how they ought to exercise their powers. That's a matter for them because the power is vested in them. My role, I think, is to work out how to minimise the risk of that power being exercised for an improper purpose, and simply that, and I will confine myself to that, which you'll be pleased to hear.
25 In paragraph 33, what are the higher-order priorities that you mention?

MR SZAKACS: As we've noted in our written submission, we think that in respect to where SafeWork SA is currently not contributing to the overall framework in such a way we'd see to be leading would be in the inspectorate and prosecutorial functions. In our submission there's a strong public interest
30 in prosecuting breaches of the Act.

COMMISSIONER: I agree with that.

35 MR SZAKACS: And it is, of course, a question or perhaps an opinion of varying degree to which that should occur, but it is our both submission and opinion that that function is not being utilised in a manner that would necessarily provide the most adequate deterrence factor.

40 COMMISSIONER: That really leads to what you've written in paragraph 36 where you say there's a deficiency in the prioritisation and number of prosecutions for breaches of the Act. Firstly, priorities. Are you saying that prosecutions are not given appropriate weight and priority?

45 MR SZAKACS: Directly in response to that, one of the leading factors in the

evaluation of unions in supporting or otherwise of the splitting of the education and prosecutorial/inspectorate functions was at that time it was our view that by undertaking that split there would be a renewed distillation of focus around prosecutions. We also rely upon statistics which evidence that convictions
5 have declined in the last decade or so - - -

COMMISSIONER: Yes.

10 MR SZAKACS: - - - whilst the instances of serious workplace injury or fatalities have stayed around the same. So from the perspective of deterrence factor and considering the academic research in that area, we would think that a greater number of prosecutions would be warranted.

15 COMMISSIONER: Do you mean by that then that too much of the resources of SafeWork SA are being ascribed to education rather than inspection, investigation and prosecution?

20 MR SZAKACS: I don't think that I could say, nor would I say, that too much is proportioned to education. I don't think that it's a question of colloquially robbing Peter to pay Paul. I think both provide proper - or should be given proper importance, but in somewhat of a silo, if there is a question of resourcing which has influenced or affected the rate or the number of prosecutions which are moving forward, then we would submit that that would need to be addressed or should be addressed.

25 COMMISSIONER: The trouble with having silos, of course, is that each silo wants to be better resourced than the other silo and each silo thinks that they should be better resourced and can advance reasons for that. That might be one of the difficulties about separating education and inspection.

30 MR SZAKACS: I think that's a fair observation.

COMMISSIONER: Yes.

35 MR SZAKACS: I think there's highly competitive competition for resourcing across the entire public sector, and SafeWork SA would not be immune to that.

40 COMMISSIONER: No. In paragraphs 37 and 38 you've mentioned the falling off of the number of convictions and prosecutions over the period of time and you talk about a decline in the matters that have been referred to the DPP. I think you're probably referring to the Crown there rather than the DPP, but where do you get your information that that be the case?

45 MR SZAKACS: Commissioner, with respect to paragraph 37 or 38?

COMMISSIONER: Paragraph 38 more particularly. You talk about, "This decline does not appear to be due to any significant change in the number of prosecutions forwarded to the DPP" - as I say, I think you mean the Crown - "that are not proceeded with or a reduction in the number of cases."

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MR SZAKACS: I would believe that that would be - that information would be sourced from various - well, not various - unions representing staff internally.

10 COMMISSIONER: Publicly-available information?

MR SZAKACS: I would not think that there'd be publicly-available data in respect to the number of matters referred. I think it would be fair to characterise that as informal or anecdotal feedback that we've received from our members.

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COMMISSIONER: Right. In paragraph 42 you've talked about the curtailing of powers of inspectors. But, as I've said earlier, there'll be no recommendations in relation to that. I have no jurisdiction to consider the extent of their powers.

20

In paragraph 21 you talk about employers being hostile to the presence of unions in the workplace and possibly also, although you haven't mentioned it, being hostile to inspectors who are inspecting the employer's business units. You agree with that?

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MR SZAKACS: Not that I have any specific advice on that, so I wouldn't like to confirm that that is the feedback we've received, because I think if there is hostile behaviour towards inspectors, then that would be - inspectors would be best placed to report that.

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COMMISSIONER: But in that particular paragraph you've said you'd like to lead further evidence in respect of this evaluation. Do you have a further submission to make in particular in relation to paragraph 21?

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MR SZAKACS: No, Commissioner. I've got no further evidence to lead or submission to make in that respect, but I'm advised that the two unions that do represent building and construction workers have made a contribution to the evaluation by way of written submission.

40

COMMISSIONER: Yes. In paragraph 30 you've mentioned, "The complaints in regard to safety and the use of right of entry appear restricted to one industry, the building and construction industry." What exactly, Mr Szakacs, do you mean by that?

45

MR SZAKACS: That is twofold. One is that, as I previously stated, we rely upon advice and feedback from our member unions and that there is no doubt that the strongest voices in respect to the feedback around concern in that area are from the unions that represent building and construction workers.

5

We also rely upon the evidence or the statistics around workplace death and that the agricultural, forestry, fishing and transport industries account for around 50 per cent of all workplace fatalities, both in South Australia and nationwide, yet in respect to some of the more pointed or hotbed public narrative it seems to be in respect to building and construction and not in those areas such as agriculture, forestry, fishing and transport.

COMMISSIONER: Why do you think that is? Might that be a reflection of the militancy of a particular union?

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MR SZAKACS: It would be no surprise to you, Commissioner, that we, as the body representing trade unions in this state, have a wide range of views around that. I don't believe that I could provide a submission that would be relevantly within your terms of reference.

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COMMISSIONER: You've mentioned in paragraph 26 - I'm sorry to jump around - - -

MR SZAKACS: That's all right.

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COMMISSIONER: - - - that your members - in the first bullet point, that health and safety representatives need more support from SafeWork SA and better consistency of approach of inspectors. How do you say SafeWork SA could better support health and safety representatives?

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MR SZAKACS: Within the model laws, the South Australian Act and across some jurisdictions the role of health and safety representatives is quite critical to the operation of the functions of the Act.

35 COMMISSIONER: Yes, sure.

MR SZAKACS: The feedback that we've received - and this is from both unions but also from health and safety representatives themselves - is that they can experience differing levels of support or advice from various inspectors, and there's nothing in respect to that feedback that suggests some plan or greater narrative around that, other than to say that anecdotally we are told that sometimes, depending upon who you speak to or which workplace you're in, you may have a different experience of interaction as a health and safety rep and SafeWork SA.

45

COMMISSIONER: Does it depend on the industry again? You mentioned the construction industry as being slightly different to others. Does it depend upon the industry?

5 MR SZAKACS: In respect to the differing experiences from health and safety representatives, that's not confined to industries. That's within industries and it may not be within industries that have necessarily higher or lower rates of workplace injury or risk and hazard.

10 COMMISSIONER: Right. You mentioned earlier today that SA Unions represent unions throughout South Australia. Are all registered unions a member of SA Unions?

MR SZAKACS: No, Commissioner.

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COMMISSIONER: Are there many that are not?

MR SZAKACS: There are four unions in South Australia that are not members of ours.

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COMMISSIONER: Are they bigger unions?

MR SZAKACS: They range from very small to large, at varying degrees of the number spectrum.

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COMMISSIONER: Ms Stanley, do you have any questions of Mr Szakacs?

MS STANLEY: Just a couple of brief questions. The Commissioner took you to paragraphs 37 and 38 of your submission. I must admit I was a little
30 confused, so I just want to make sure that I understand it. At paragraph 37 you discuss the number of convictions having a downward trend and then at 38 you note that there's still a high level of serious injury and that:

35 *The decline in prosecutions doesn't appear to be due either to the number of cases being sent to the Crown or in a reduction in the number of cases in which defendants are found guilty of work health and safety offences.*

40 It's that last sentence I don't quite understand because that to me, a defendant being found guilty, is a conviction from a prosecution. So I just wondered if you could explain exactly what that meant.

MR SZAKACS: I'll agree with counsel assisting that there seems to be a phrasing question there between prosecutions and convictions. Insofar as we
45 may be of assistance, Commissioner, we'd be happy to clarify in writing those

too.

MS STANLEY: Thank you. While you're addressing those other matters. That would be helpful. Finally, you mentioned that SA Unions was invited to
5 make submissions at the time in which SafeWork SA were considering the split
of the educator/regulator function. Are you able to recall now whether at the
time you were asked to make that submission there was an understanding that
there would be in practice some sort of Chinese wall between the educator and
the regulator such that they wouldn't communicate about what they saw at
10 workplaces?

MR SZAKACS: I can't recall, I'm sorry. It's not a matter that I was directly
involved in in respect to that work.

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

COMMISSIONER: Mr Szakacs, thank you very much for coming today and
thank you very much for the assistance you've given us. You've taken a couple
of questions on notice. How long do you need to respond to those?
20

MR SZAKACS: I am aware, Commissioner, of my own personal travel
commitments next week due to an out-of-state conference that I have, and
work commitments, so the following week - I'm sorry, I don't have the date, but
the week after next?
25

COMMISSIONER: Could I ask you to do it as soon as you can conveniently
do so?

MR SZAKACS: I will undertake at the greatest pace to do that.
30

COMMISSIONER: Thank you very much. There's nothing you have said
today that you would object to being published?

MR SZAKACS: No, Commissioner.
35

COMMISSIONER: Then I confirm that there is no prohibition on publication
of information disclosed at today's hearing at which Mr Szakacs has made his
submission. Thank you again for coming.

40 MR SZAKACS: Thank you, Commissioner.

MATTER ADJOURNED AT 1.50 PM ACCORDINGLY