



The Evaluation of Practices, Policies and Procedures of SafeWork SA

For the Independent Commissioner of
Corruption: The Hon Bruce Lander QC

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VOID SUBMISSION

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PREFACE

First, we would like to thank the Commissioner for providing the public and other stakeholders the opportunity to submit their views in relation to the practices, policies and procedures of SafeWork SA.

We hope the information provided here might offer the inquiry a perspective that comes from the families of those who have died in a workplace incident.

Our motivation for contributing relates to the high level of discretionary powers the department has, but more so the lack of review processes that currently exist and have existed under the laws that govern work health and safety.

We offer examples of other difficulties that have faced some other families within our small organisation. Our submission highlights the vulnerability of third parties, or rather, innocent parties to the table.

ABOUT VOID

- 1 VOID was founded in May 2006. The group is made up of family members who have, at some time or another, needed some support in their dealings with the various governmental institutions that's become involved after a workplace death.
- 2 Our experience suggests that SafeWork SA plays a pivotal role in dealing with families and therefore, also plays a role in how that family comes through the various procedural systems within the department. The issues these affected families deal with after a death at work are often highly complex and so a great deal of faith is placed in the department and its ability or, even willingness, to operate its procedures in a fair and equitable manner.
- 3 At the outset, we suspect the directorship of the department and indeed, the Government of the day, would have preferred that the gathered families would merely exist to console one another. However, the reason why a support group like VOID was needed in 2006 and is still in 2018, cannot be merely rationalised as a provider of grief and comfort. Whilst there is always some consolation in the similar position we find ourselves in and that it is nice to

know what people are experiencing is common, we have sadly had to accept the fact that we were powerless to deal with the injustices that have been delivered by controlling governmental departments. SafeWork SA is front and centre on this.

HOW FAMILIES ARE AFFECTED

- 4 We would like to direct your attention to important research conducted by the Sydney University in recent years. The project examined a range of issues that have confronted families affected by a workplace death.¹ The experience has been compared to other forms of crime responses by the above research. We verify this in comparing the experiences by members inside VOID where their matter was investigated and prosecuted by the Police.
- 5 While we respectfully acknowledge the Commissioner is unlikely going to have an opportunity to review the several peer reviewed journals that have flowed from this research, we can now at least affirm with a level of academic verification, the unfettered regulatory powers of a departments like SafeWork SA can and do cause additional psychological harm to the family of a deceased worker. That is to say, there is nothing in the statute, past or present, that counteracts any practices, processes and procedures to protect a family from unfettered ability to interfere with the normal grief response to an already traumatic event. It is our view therefore that this issue should become a consideration in the examination of this evaluation.

DISCRETIONARY POWERS

- 6 It is important to mention here that the issues and concerns raised in this submission predate the current and directly preceding executive controls. The examples we offer also do not relate to the current harmonised legislation; although the lack of statutory accountability certainly will.

¹ Lynda R Matthews et al, 'Traumatic Death At Work: Consequences for Surviving Families' (2012) 42(4) *International Journal of Health Services*, 647; Lynda R. Matthews et al, 'The Adequacy of Institutional Responses to Death at Work: Experiences of Surviving Families' (2012) 6(01) *International Journal of Disability Management*, 37; Lynda R. Matthews et al, 'Investigation and Prosecution Following Workplace Fatalities: Responding To the Needs of Families' (2014) 25(2) *The Economic and Labour Relations Review*, 253; Lynda Matthews et al, 'Death at Work: Improving Support for Families' (Consultation Report University of Sydney- Work and Health Research Team, August 2016); Lynda R Matthews et al, 'Bereaved Families and the Coronial Response to Traumatic Workplace Fatalities: Organizational Perspectives' (2016) 40(3) *Death Studies*, 191.

7 We would also like to add that with the appointment of Marie Boland in 2014, came a substantial effort to address the damaged relationship between the department and VOID's families. The implementation of a 'Family Forum' on 2 November 2016 was an important step toward collaborating toward a solution. Families were invited to discuss their concerns with a panel of key jurisdictional and administrative representatives. They included representation from SafeWork SA, ReturnToWork SA, The State Coroner's Office, the Industrial Magistrates Court (now SAET), the Crown Solicitor's Office and the Commissioner for Victims of Crime. Unfortunately, there was not enough time to implement changes to remedy the issues uncovered due to a change in executive. [REDACTED]

[REDACTED] It certainly was our experience, prior to her appointment, the department was anything but amenable when family members delved into their loved one's death or its processes.

8 It was important to mention this because while there clearly had been an attempt to address some issues in terms of the departmental practices, the solutions cannot and should not be wholly dependent on one person's commitment. We believe there are statutory solutions that might better address these problems longer term.

9 It has also been our observation, that any positive measures that may have been put in place to help alleviate the kinds of problems families deal with, can quite easily be reversed due to resourcing or changing staff allocations. This has been a constant source of frustration for us in being able to deal with issues within the department over time.

EXAMPLES

10

[REDACTED]

11

[REDACTED]

[Redacted text block]

12 [Redacted text block]

13 [Redacted text block]

14 [Redacted text block]

15 [Redacted text block]

16 [Redacted]

17 [Redacted]

18 [Redacted]

19 [Redacted]

20 [Redacted]

21

[REDACTED]

ACCOUNTABILITY

22 There does not appear to be any provisions under the current *Work Health and Safety Act 2012 (SA)* that import a level of accountability that might address the examples we have provided. While we acknowledge to some degree that the current executive has shown no indications that it intends to revert to the bloody-minded attitude of the department's predecessors, we are equally mindful how quickly executives can change.

23 We are currently lobbying for changes to provide families with a formal level of support to deal with these kinds of failings. We have found it all too easy for administrators to turn a blind eye to take responsibility for the systemic failures that can happen when discretionary powers are so broad they fail to deliver responsible outcomes.

24 We hope to ensure affected families are not drowned out by other influential actors – being the corporate employer and its powerful lobby interests, the political interests and of course the administrators of justice.

25 We note that in the existing legislation, the business entity is provided with some protections in terms of a right to be compensated for damage caused as a result of the broad inspector's powers.² We believe such rights should extend to the vulnerable families also.

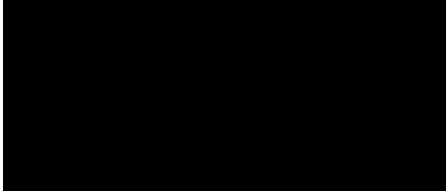
CONCLUDING REMARKS

26 On behalf of VOID, thank you for providing us with an opportunity to present our view to this inquiry. There are documents available that will elaborate on these matters should you require them. They are reflected in evidence given during an inquiry as well as various correspondence with the Coroner's Office.

27 I personally will also make myself available to speak with the Commissioner regarding any matters relevant to his evaluation.

² *Work Health and Safety Act 2012 (SA)*, s 184.

Yours Sincerely,



Andrea Madeley
Founder VOID

REFERENCES

Articles

Lynda Matthews et al, 'Death at Work: Improving Support for Families' (Consultation Report University of Sydney- Work and Health Research Team, August 2016)

Lynda R Matthews et al, 'Traumatic Death At Work: Consequences for Surviving Families' (2012) 42(4) *International Journal of Health Services*, 647

Lynda R Matthews et al, 'Bereaved Families and the Coronial Response to Traumatic Workplace Fatalities: Organizational Perspectives' (2016) 40(3) *Death Studies*, 191

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Lynda R. Matthews et al, 'The Adequacy of Institutional Responses to Death at Work: Experiences of Surviving Families' (2012) 6(01) *International Journal of Disability Management*, 37

Legislation

Work Health and Safety Act 2012 (SA)