

Independent Commissioner Against Corruption

SafeWork SA Evaluation



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

SUBMISSION OF: SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

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DATE: 15 June 2018

ICAC REFERENCE No: A349112

SUMMARY OF SAWIA SUBMISSION

- Weight given to HSR's complaints to be equitably considered against the usual criteria, same as employees (who are non-HSR's) and employers (not elevated because of position);
- Dealing with all parties equitably and impartial (natural justice/procedural fairness), particularly in an investigation stages;
- Request for confidential documentation (ie an independent bullying investigation report) be respected and extended by SafeWork SA for a live on-going investigation;
- Ensure that the case to answer is clearly articulated within the scope of investigating matters under the WHS Act;
- Improve process and communication regarding the status of investigations; and
- Improve decision-making processes from concluding an incident investigation to laying charges for civil or criminal prosecution.

ICAC EVALUATION

We refer to the public announcement of an evaluation process by yourself, as the Independent Commissioner Against Corruption on Friday 1 June 2018.

We subsequently received correspondence¹ from you inviting any written submission the South Australian Wine Industry Association Incorporated on any matter within the scope of the evaluation on any matter we consider relevant.

As at the date of this submission the evaluation will review and report on:

- Legislative and regulatory functions and responsibilities discharged by public officers within the regulatory arm of SafeWork SA;
- The discretionary powers given to inspectors and investigators employed within SafeWork SA and the practices, policies and procedures that are in place to safeguard against abuse of those discretionary powers;
- Practices, policies and procedures in respect of the availability and use of resources by public officers employed within the regulatory arm of SafeWork SA and whether those practices, policies and procedures provide a sufficient safeguard to minimise the misuse of those resources;
- Practices, policies and procedures in respect of the deployment of human resources within the regulatory arm of SafeWork SA and whether those practices, policies and procedures provide adequate measures to manage those human resources so as to ensure the proper and efficient discharge of core functions.

We would note that ICAC has stated that the scope may change during the evaluation process.

¹ Dated 5 June 2018

WHO ARE WE?

The South Australian Wine Industry Association (SAWIA) is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia. SAWIA (as it is known today) was established in 1840 as the 'Society for the Introduction of Vines'.

SAWIA is a not for profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership and services which underpin the sustainability and competitiveness of members' wine business.

SAWIA is also a registered association of employers under the South Australian *Fair Work Act 1994* and is also recognised as a Recognised State-Registered Association under the *Fair Work (Registered Organisations) Act 2009*.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

What SAWIA does for members is covered in four key areas:

- Representation and Leadership;
- Advice and Information;
- Products and Services; and
- Promotion and Opportunities.

SAWIA has put this submission together based on feedback from members in recent times and via consultation on the scope of the evaluation with our Work Health and Safety Committee which comprises of senior Work Health and Safety Managers, some with national responsibilities, drawn from our member companies.

OUR SUBMISSION

Of particular relevance to the evaluation from our member's points of view is your evaluation of the following two aspects:

- Legislative and regulatory functions and responsibilities discharged by public officers within the regulatory arm of SafeWork SA;
- The discretionary powers given to inspectors and investigators employed within SafeWork SA and the practices, policies and procedures that are in place to safeguard against abuse of those discretionary powers;

Issue #1

In summary, [REDACTED] one of our members was contacted by a SafeWork SA Inspector (the Inspector) regarding a complaint they had received from a Health and Safety Representative (HSR) (an employee of the member). Our member and SAWIA was concerned about the manner in which the Inspector was conducting the investigation and lack of clarity around the grounds for the investigation. SAWIA, on behalf of the member, wrote to the Executive Director of SafeWork SA raising our concerns and seeking clarification as to what behaviour an employer could reasonable expect from an Inspector.

In light of the *Principles of Operation for the WHS Inspector*²:

“Parts 8 & 9 and sections 171 and 172 of the *Work Health and Safety Act 2013* detail your rights and those of SafeWork SA and our inspectors.

The Principles states that inspectors conduct themselves in a manner that promotes a ‘professional and credible Inspectorate with Persons Conducting a Business or Undertaking (PCBU), workers and the general public.’”

Background:

Historically this employer member has had prior dealings with SafeWork SA Inspectors and therefore knows what to expect and has always complied with any Notices issued or requests for site visits. However this particular interaction caused our member some concern. The member has agreed for SAWIA to include this experience for the purposes of this submission.

The Inspector and the employer had an initial telephone call, which was followed up with an email from the Inspector, [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

The employer provided the incident reports to the Inspector and provided a date for the site meeting to take place. The employer also sought further particulars as to the licencing issues to be looked at, the nature of the complaint and an assurance that confidentiality of the external report³ would be maintained when provided to the Inspector, and not shared with the complainant. [REDACTED]

[REDACTED]

² SafeWork SA publication (undated but currently on the SafeWork SA website)

³ This was an external Independent Investigation conducted by SAWIA and was part of live issue, delicate and on-going process.

On behalf of our member we wrote to the Executive Director, SafeWork SA, in an email [REDACTED] [REDACTED] seeking to clarify the following:

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

On the [REDACTED], the SAWIA was assured by SafeWork SA that the initial Inspector was a highly experienced inspector and we were given the impression that everything they had done was within the scope of their statutory duty. However, later that day, our member was verbally advised by SafeWork SA that the initial Inspector had provide advice to the complainant (HSR) outside the scope of their statutory role.

We are unable to advise what exactly that was but understand it raised question about the Inspector's impartiality. This matter was actioned by and rectified by SafeWork SA once the initial Inspector was removed. SafeWork SA removed the initial Inspector and replaced them with another Inspector to complete the matter of complaint. No prosecution or further action was required.

In conclusion, SAWIA submits that this incident raises issues around the consistency of application of the practices, policies and procedures in investigating complaints. It also goes to question the aims of the regulator to foster co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives⁴.

Issue #2

Whilst we are not aware of any statistics for the time taken from an incident being investigated by SafeWork SA to being prosecuted, over the years members have shared stories about the lag time between incidents being investigated and a decision being made to lay charges.

There was no complaints in this process about the professionalism of the inspectors in conducting the investigations but rather the limbo that the company found themselves in whilst a decision was to be made by the regulatory authority to prosecute or not. So the point of raising this was to provide consideration as to whether there can be any improvements in the process for making decisions by the inspectorate or the Attorney General's Department in relation an incident, accident or fatality under the *Work Health and Safety Act 2012* so those involved can move forward after such an event.

NOTE:

In making this submission we would acknowledge that over the years we have had an ongoing relationship with SafeWork SA which has varied from strong contacts with individuals within the organisation to not having such strong relationships. Overall we would say the strong relationships have been beneficial to both parties and we are optimistic that our partnership with SafeWork SA will continue to strength.

We do not seek to be heard in regards to this submission but if ICAC would like any further details or would like to speak to the members involved in putting this submission together we would be happy to assist in this regard.

⁴ SafeWork Australia's publication "National Compliance and Enforcement Policy"