



Central Law Courts  
Level 10, 501 Hay Street  
PERTH WA 6000

Telephone: (08) 9425 2900  
Facsimile: (08) 9425 2901

**STATE CORONER'S SUBMISSION**

**TO**

**STANDING COMMITTEE ON**

**PUBLIC ADMINISTRATION**

***INQUIRY INTO WORKSAFE***

**28 July 2017**



## **Background**

On 27 June 2017 the Standing Committee on Public Administration (**Committee**) commenced an inquiry into WorkSafe Western Australia (**Inquiry**).

The Committee has determined the following terms of reference for the Inquiry:

- (a) WorkSafe's performance against the objects of the *Occupational Safety and Health Act 1984*.
- (b) Funding and resourcing of WorkSafe.
- (c) Adequacy of WorkSafe's training, oversight and accountability processes.
- (d) Adequacy of administrative processes, including complaints, investigations and prosecution processes.
- (e) Adequacy of WorkSafe's audits of training providers delivering occupational health and safety training.
- (f) Timely implementation and public education of coronial inquest recommendations arising from a workplace death.
- (g) Legislative and jurisdictional issues.
- (h) Any other relevant matter.

The Committee has invited me to provide a written submission in response to the terms of reference.

This submission provides information and comment in response to the following two terms of reference:

- (d) Adequacy of administrative processes, including complaints, investigations and prosecution processes; and
- (g) Legislative and jurisdictional issues.

The Office of the State Coroner has a working relationship with WorkSafe and I thank the Committee for the opportunity to provide submissions on potential changes that would continue to promote and improve this relationship.



**Adequacy of administrative processes, including complaints, investigations and prosecution processes**

I understand that WorkSafe investigates all fatalities within its jurisdiction and following that investigation, a report is generated by an inspector appointed under section 42 or 42A of the *Occupational Safety and Health Act 1984* (WA) (**OSH Act**). The current practice of WorkSafe is that it will not produce to a coroner, or a coroner's investigator, a copy of any inspector's report either voluntarily or in response to the exercise of the coroner's power to authorise a coroner's investigator to enter a place, inspect a document and take a copy of a document pursuant to section 33 of the *Coroners Act 1996* (WA). I understand WorkSafe previously provided copies of the inspectors' reports to the coroner, but ceased to do so on the basis of review of this practice.

Section 25 of the *Coroners Act 1996* (WA) requires that a coroner investigating a death must find if possible the identity of the deceased, how the death occurred and the cause of death. In so far as an inspector's report contains references to facts, inspector's findings or inspector's opinions regarding the details of the fatality, particularly how the fatality occurred, those details are useful to assist a coroner to fulfil his or her statutory functions under section 25 of the *Coroners Act 1996* (WA).

**Submission 1**

It is submitted that the administrative and investigative processes of WorkSafe be reviewed to determine whether:

1. WorkSafe inspectors and coroner's investigators can conduct a joint investigation into workplace fatalities that avoids unnecessary duplication of inquiries and investigation,

and/or

2. WorkSafe can and/or should provide a coroner with a copy of an inspector's report either voluntarily or in response to the exercise of the coroner's power to enter a place, inspect a document and take a copy of a document pursuant to section 33 of the *Coroners Act 1996* (WA).

**Legislative and jurisdictional issues**

I am informed by WorkSafe that the annexures to the investigating inspectors' reports, being the evidence gathered during the investigation are protected by legal professional privilege and public interest immunity.



Section 43 of the OSH Act empowers an inspector to conduct a compelled interview of a person, subject to the limitations set out therein.

WorkSafe has submitted to me that WorkSafe is prohibited by law from providing records of compelled interviews to the coroner.

An interview conducted by a WorkSafe inspector focuses upon the objects of the OSH Act. An inspector's knowledge of workplace health and safety provides that inspector with unique understanding and therefore ability to question the interviewee in relation to workplace practices that would likely assist a coroner with ascertaining the circumstances attending the death.

At present the coroner may not know whether or not a particular witness has been subjected to a compelled interview by a WorkSafe inspector.

In addition, in the event that a coroner's investigator were to seek to take a voluntary statement with the same person already subjected to a compelled interview by WorkSafe, there is the potential for duplicity of work for which the witness is likely to be inconvenienced and the cost burden falls upon the State.

#### Submission 2

It is submitted that consideration be given to amending the *Occupational Safety and Health Act 1984* (WA) to expressly allow WorkSafe to share compelled records of interview and/or voluntary witness statements and/or other evidence gathered during the course of the investigation with the coroner.

#### Submission 3

It is submitted that consideration be given to a process that allows for a coroner's investigator to attend and participate, as interviewer, in a compelled interview being conducted by a WorkSafe inspector for the express purpose of a coroner's investigation.

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