

Date 25 October 2018

Dear Ms Maclou, Mr Steenholdt and Ms Smirmiotis.

CC: Mr Hoffman, Ms Webb, Mr Gavrielatos, Mr Williams and Commissioner Murphy.

In accordance with Commissioner Murphy's direction at the IRC on 10 October 2018, the PSA and the Safety Inspectors Vocation Group (VG) are writing to you to inform the Department of Finance Services and Innovation (DFSI) of our position regarding the current recruitment of Inspectors and the reasons for our position.

We would like to reiterate that we have, on multiple occasions, over considerable time, communicated our objections to the recruitment of Assistant State Inspector's (ASI) and State Inspectors (SI) without the applicable units of the Advanced Diploma of Government (Workplace Inspection) to representatives of DFSI and SafeWork NSW Senior Executives (the Department).

The PSA and VG position is that the criteria for appointment to the position of ASI and SI includes the candidate having the necessary units of competency as specified in the *Crown Employees (Department of Finance, Services and Innovation – SafeWork NSW Inspectors 2007) Award (Inspectors Award)*, specifically clauses 15.2, 16.1, 17, 18, 19 and 20 as well as in schedule 3 of the *Memorandum of Understanding WorkCover Inspectors (MOU)*, which is called up under clause 16.1 of the Inspectors Award.

We hope that the following information provides the Department with a clear understanding of the reasons for our position.

Background.

The regulator has a number of functions in accordance with section 152 of the *Work Health and Safety Act 2011* (WHS Act). In order for the regulator to enliven these functions the regulator appoints Inspectors. This appointment is as per section 156 of the WHS Act. Nothing in the WHS Act overrides the current requirements in the Inspectors Award for appointment and progression of Inspectors. In fact, the Inspectors Award places a requirement on an appointed Inspector to meet specific standards in order to progress or be appointed at higher Inspector levels such as ASI or SI, ensuring the regulator functions are being fulfilled appropriately and to the highest standards.

An Inspector at ASI and SI levels is considered to be skilled and capable to not just implement and regulate in accordance with the WHS Act but also to mentor, train and assist more junior Inspectors. It is these skills and capabilities to regulate that help businesses improve workplace practices, therefore securing the health, safety and welfare of persons at work.

With the exception of the period in which a Temporary MOU was in place, at all times prior to the current recruitment, the appointment to ASI and SI positions has met the requirement of the competency units (as per the Inspectors Award). It has only been since the commencement of the *Government Sector Employment Act 2013 (NSW)* (GSE Act) that the ASI and SI positions have been externally advertised. The Department insisting that since the positions are 'merit' based then they must be advertised to be GSE compliant. At the time of drafting the award this was not the intention of either party. The intent was for the ASI and SI positions to be progressive and filled by Inspectors with the units of competency, (the skills and experience) to meet the capabilities of the roles. They were based on 'merit' since there are a limited number of positions at this higher level.

We acknowledge that the GSE Act has implications to how positions are filled and have NOT been against external recruitment at any stage. We have in fact encouraged the department to advertise, so long as it meets the Inspectors Award provisions.

The ELI's are provided with face to face training and take 12 months to complete the Diploma of Government (Workplace Inspection). As part of the ELI training and development, face to face training, mentoring and assessment is provided by experienced Inspectors to assist ELI's in gaining the skills, experience and capabilities to carry out their role.

This initial training includes specifics on provision of advice and assistance as well as gathering evidence, legislation, notice writing, responding to incidents and undertaking investigations amongst many other crucial regulatory functions performed by an Inspector. Training within the Inspectorate is ongoing and is generally provided by other more experienced Inspectors, assessors and external parties.

In 2013, a restructure of the WorkCover technical area was conducted and a number of departmental professional officers (DPO) were transferred across to the Inspectorate, to an equivalent pay scale (i.e. at the ASI or SI level). Prior to the restructure, the DPOs provided technical advice and assistance to the Inspectorate. DPO's were not Inspectors and did not regulate WHS (i.e. they did not issue notices but provided advice and assistance to the Inspector).

The Inspectors Award and MOU did not allow the transfer of DPO's to occur as they did not hold the competencies required. As a result, a TEMPORARY MOU (a 12 month agreement) was negotiated between the PSA and WorkCover to allow these workers to continue employment with WorkCover. The Temporary MOU provided additional pathways for the appointment to ASI and SI positions (i.e. tertiary qualifications and / or professional association accreditation).

In addition to the DPOs transferring under the Temporary MOU, the Department at the time used this Temporary MOU to recruit a number of 'specialists' into ASI and SI positions. These new Inspectors were mostly engineers and filled positions in the specialist teams such as Plant & Engineering.

These Inspectors appointed under the Temporary MOU at higher Inspector grades were provided training as part of the new Inspector training program and completed the Diploma of Government (Workplace Inspection). However, they were being paid as ASI or SI's but were not able to fulfil the regulatory function of that position for some time while they completed training, often provided by Inspectors at a lower grade.

As a result, the Inspectorate voted against maintaining the temporary MOU, reverting to the original Schedule 3 of the MOU, requiring appointments at the ASI and SI level to have the necessary number of units of the Advanced Diploma of Government (Workplace Inspection) prior to appointment. This, the Inspectorate saw as a way of ensuring that these higher Inspector positions were being filled by Inspectors who were not just qualified, skilled and capable but in a position to regulate, mentor and assist junior Inspectors.

Current Recruitment

The advertising campaign for the recent recruitment conducted by DFSI does not follow the requirements of the Inspectors Award and MOU in that:

- The recruitment for ASI and SI positions identifies that the candidates did NOT have to:
 - a. have been an Inspector; and
 - b. hold the relevant competencies (specifically 10 units of competency for an ASI or the full Advanced Diploma of Government (Workplace Inspection) for an SI).

The *SafeWork NSW – Inspector Information Guide* (Applicant Information Guide) confirms this on page 7 and provides that an internal candidate has 12 months to obtain the relevant units of the Advanced Diploma of Government (Workplace Inspection) or for an external candidate, up to 24 months to obtain the relevant units of the Advanced Diploma of Government (Workplace Inspection).

This recruitment is also not following the requirements of the Inspectors Award clause 16.2 in that, current Inspectors are also required to apply for positions at lower or same grades as part of this recruitment, to obtain access to (as per clause 16.2 of the Inspectors Award) “work of a nature that provides learning and development in the disciplines and fields of knowledge relevant to competency units. This may involve an Inspector changing groups, teams or locations to access these opportunities.”

This at level process, has been known as subsequent assignment. We have asked for this to occur on multiple occasions and were informed that this was not GSE compliant. Yet the department have now informed us that the subsequent assignment process will occur when the recruitment is completed.

Raising concerns

The PSA and VG Executive have met with representatives of DFSI and SafeWork NSW on numerous occasions, where both the PSA and VG have made it clear what our understanding of the requirements of the Inspectors Award and MOU are. This specifically being, that to appoint an Inspector to a position of ASI or SI, the candidate must have the relevant units of the advanced diploma and progress through a merit selection process.

On a number of occasions, representatives of the Department have stated “that our interpretation is wrong” and that this was not required. However, no person, to date has provided anything to explain how our interpretation of the Inspectors Award and MOU is incorrect. Noting this is also not being provided to the IRC either at this stage.

During meetings, it has been raised that the Department has a need for ASI and SI Inspectors who have a specialist knowledge. It has been raised by the Department that the current Inspectorate does not have the required skills or knowledge to meet this need.

To this, we have asked what exactly does the Department need? Examples such as tower crane incidents were provided, whereby it was identified engineers would be more appropriate for these positions. However, when we asked how an engineer who has not been an Inspector would issue the relevant notice to require compliance and obtain a safer workplace, these questions have not been answered. When also asked what is it exactly you need the engineer to do, (provide a technical report or regulate the controllers / operators) this question has not been answered.

Again, these higher Inspector grades such as Senior Inspector, Principal Inspector, ASI and SI require that an Inspector, (meaning someone who is already an Inspector having obtained specific skills and experiences that will assist them in completing the inherent duties of the specific Inspector grade.) is able to regulate through the utilisation of Inspector tools such as the issuance of notices.

The specific Inspector skill is one that requires detailed and comprehensive on the job training and is consolidated over years of Inspector practice through many workplace visits and interactions.

Skills and knowledge

An Inspectors role includes that of response and proactive work, communicating and enforcing the WHS Act and Regulations in workplaces throughout NSW.

An email provided by the Office of the Executive Director on the 13 August 2018, states “required specialist skills are in deficit. The business has formed a view that the current Inspector talent pipeline is not able to fully meet existing and future workforce needs.”

Further, Martin Hoffman, sent a letter to SafeWork All on 23 October 2018. This letter states “A detailed workforce planning approach was undertaken to review our existing workforce needs and challenges against the WHS Roadmap. This process highlighted that there are a significant number of inspectors fast approaching retirement and that there were considerable capability gaps in several areas including specialist roles in a number of directorates.”

Specifically, the argument that is being posed by DFSI is that industry has more skilled and experienced people that would be better suited to these higher specialised Inspector positions. This was also raised by Ms Maclou in the IRC on the 10 October 2018, clearly demonstrating the lack of understanding of how an external person who has never been an Inspector or regulated WHS previously will be in a better position to do this.

The PSA and VG do not understand how current Inspectors are not seen by DFSI as skilled and experienced. Inspectors come from many different working backgrounds, prior to being employed as Inspectors, hold many different qualifications and continue to build on their skills and knowledge whilst employed as Inspectors. This is done as part of their career progression, as covered by the Inspectors Award.

In addition, Inspectors obtain further skills and experience by the role and function they complete in regulating workplace safety within Industry. Namely, their skills and experiences continue to develop during every workplace interaction. This is not limited to a specific industry type, or workplace situation.

The role of an Inspector is a specialised field, and it needs to be recognised as such. Inspectors often specialise in specific areas and rely upon technical skills and knowledge obtained not just within the Inspectorate but through additional training and knowledge, as well as utilising technical experts external to the Department when required, in order to assist investigations.

It is not uncommon for an Inspector to visit in one day, a work site with exceptional safety management practices and another with less than satisfactory safety management practices. It is the role of the Inspector to be able to regulate safety by utilising their skills and knowledge to issue the appropriate notices to rectify unsafe situations or activities.

Inspectors often hold qualifications in fields such as engineering, but have been an Inspector for some years; using this experience when attending workplaces to assess situations and make decisions about the regulation of workplace safety in the interests of safer workplaces across NSW.

In essence DFSI's argument that an external person with qualification such as that of an engineer is more current, skilled and experienced, is flawed.

We believe that an Inspector would be the most skilled and experienced and that with the addition of the requirements of the relevant units of competency as per the Inspectors Award and MOU, this Inspector would be in a position to manage risk, investigate complex issues, manage compliance with legislation and manage emerging issues as covered by the units of the Advanced Diploma of Government (Workplace Inspection).

Recommendations

The PSA and VG have suggested on multiple occasions that DFSI and SafeWork NSW could re-introduce the DPO classification (the previously deleted position) whereby these persons are not appointed as Inspectors, but are specialists who provide advice and assistance to the Inspectorate. This would allow the Department to be able to obtain and retain experts in various specialised fields.

We have also encouraged DFSI to look at encouraging new graduates of universities to apply for Entry Level Inspector positions. Therefore, modelling their skills and knowledge gained within the specific qualification and incorporating the regulatory functions through the correct training pathways, continually improving the Inspectorate.

Provision of refresher training and encouragement of Inspectors to obtain additional qualifications such as specific degrees, while maintaining the regulatory capacity and mindset. Therefore, improving upon and recognising the important role of the Inspector to safety in workplaces within NSW.

It has not been the PSA or VG role to help the organisation succession plan, however it is clear that there has been limited if any succession planning. This is evidenced by the number of positions now vacant (47).

This number of vacant positions at any level within the Inspectorate will adversely impact the Inspectorate for a minimum of 12 plus months, while appointments however well qualified learn the role and functions of a working Inspector.

The VG has recommended previously and continues to recommend that DFSI:

1. Do not appoint anyone to the ASI or SI positions unless they hold the relevant competencies.
2. Commence a subsequent assignment process immediately to allow Inspectors to transfer at grade to fill vacancies as per clause 16.2 of the Inspectors Award.

3. Reintroduce DPOs to provide technical and specialist advice to the Inspectorate (this worked successfully for many years and currently does so in the Major Hazard Facilities Team with Safety Analysts).
4. Consider other options as recommended to attract skilled specialists to apply to join the Inspectorate at entry level e.g. encouraging new university graduates.
5. Provide technical training to existing Inspectors e.g. engineering degree.

In conclusion, the VG Executive believe that, to appoint an Inspector to the position of ASI or SI requires the candidate to meet the requirements of holding the relevant competencies of the advanced diploma as well as going through a merit selection process.

The advanced diploma is not a restrictive diploma that can only be obtained from SafeWork NSW it is also available externally.

We understand that the *Government Sector Employment Act 2013 (NSW)* and the associated Rules allows for the Department to require applicants to hold certain qualifications. This Act does not exclude the requirements of the current Inspectors Award but rather allows for the advertisement to require the units of the Advanced Diploma of Government (Workplace Inspection), prior to the appointment.

We look forward to receiving the Departments considered response to our concerns and issues raised by the 19 November 2018.

As per order three of the IRC, the PSA and VG are happy to meet with representatives with a view to resolving the dispute and to look at the provisions of the Inspectors Award and MOU surrounding appointment and progression prior to close of business on the 23 November 2018.

And returning to the IRC at 10am on the 27 November 2018 to report back.

Yours sincerely

Maree Davidson

A handwritten signature in black ink, appearing to read 'Maree Davidson', with a stylized flourish at the end.

President of the Inspectors Vocational Group on behalf of the other executives and members of the Inspectors Vocational Group.