

**WA Legislative Council
Public Administration Committee –
Inquiry into WorkSafe**

**Prepared by the WA Police Union
July 2017**

Contents

Introduction	3
WA Police Union	4
WA police officers and the <i>Occupational Safety and Health Act 1984</i>	4
WA Police Occupational Safety and Health Advisory Committee	5
WAPU Compliance with OSH Act	5
Inquiry Terms of Reference – WAPU Response	6
TOR 1: WorkSafe’s performance against the objects of the <i>Occupational Health and Safety Act 1984</i>	6
TOR 2: Funding and resourcing of WorkSafe	8
TOR 3: Adequacy of WorkSafe’s training, oversight and accountability processes	10
TOR 4: Adequacy of administrative processes, including complaints, investigations and prosecution processes.....	10
TOR 5: Adequacy of WorkSafe’s audits of training providers delivering occupational health and safety training	11
TOR 6: Timely implementation and public education of coronial inquest recommendations arising from a workplace death	11
TOR 7: Legislative and jurisdictional issues.....	12
TOR 8: Any other relevant matter	12

Introduction

On 27 June 2017, the Standing Committee on Public Administration (the Committee) announced the commencement of an inquiry (the Inquiry) into WorkSafe Western Australia (WorkSafe).

Part of the WA Department of Commerce, WorkSafe is the Government agency responsible for the administration of the *Occupational Safety and Health Act 1984* (the OSH Act).

The Inquiry's terms of reference are¹:

- a) WorkSafe's performance against the objects of the *Occupational Health and Safety 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; and
- h) any other relevant matter.

The Committee called for public submissions to the Inquiry closing on 28 July 2017.

The WA Police Union (WAPU) welcomes the opportunity to make a submission to assist the Committee.

In addition to providing our views on WorkSafe, WAPU hopes its submission can assist with advancing and improving WA's existing Occupational Safety and Health (OSH) framework. This especially includes the proposed *Work Health and Safety Bill* announced by the Hon Minister for Industrial Relations on 12 July 2017².

¹

[http://www.parliament.wa.gov.au/parliament/commit.nsf/\(WebInquiries\)/512F85A59812D69848258147001CE0E1?opendocument](http://www.parliament.wa.gov.au/parliament/commit.nsf/(WebInquiries)/512F85A59812D69848258147001CE0E1?opendocument)

² <https://www.mediastatements.wa.gov.au/Pages/McGowan/2017/07/New-Work-Health-and-Safety-Bill-to-protect-workers--.aspx>

WA Police Union

WAPU was founded in January 1912. Since then, WAPU has been at the forefront of representing the rights, interests and welfare of police officers throughout the State.

WAPU currently has more than 6,500 Members – 98 per cent of all police officers in WA Police. Members consist of sworn police officers, police recruits, police auxiliary officers, protective service officers, Aboriginal liaison officers and cadets employed by the Commissioner of Police.

WAPU assists Members by providing a range of services including industrial, legal and welfare support.

WA police officers and the *Occupational Safety and Health Act 1984*

WA police officers are covered by the *Occupational Safety and Health Act 1984* administered by WorkSafe. However, police officers are treated differently under the Act than other employees in terms of refusing to work under in certain cases.

Section 26 of the Act grants employees (including emergency service workers such as paramedics and firefighters) the right to refuse dangerous work that has a reasonable risk of causing serious harm to themselves or others. Police officers are prevented from exercising this right due to Section 4A that expressly states:

“(2) A police officer cannot refuse to work as mentioned in Section 26(1) if the refusal to work would adversely affect, or could reasonably be expected to affect adversely, a covert operation or dangerous operation”³.

Section 4A represents a significant impost on WAPU Members given there are no WA Police Manual Policies or Procedures that provide standard operating guidelines for certain planned events. Examples of ‘dangerous operations’ could include:

- A police officer who is stationed in a remote location might be directed to attend a violent domestic with poor communications and no immediate back up.
- Method of Entry activities at high risk search warrants invariably expose police officers to serious injury when breaking down doors and searching ceiling void areas.
- No clear Standard Operation Procedure guidelines have been produced in relation to general traffic stops. This is despite Worksafe issuing WA Police with an improvement notice on this issue.

Section 4A doesn’t just deny police officers the same legal protections afforded to other emergency service workers. By refusing to work a dangerous operation, an officer jeopardises

³ Occupational Health and Safety Act 1984 (Version 07-h0-08)

their employment by refusing to obey a lawful order or direction, whether or not it is unreasonable is not always a consideration.

WA police officers are further hampered as they are not currently protected by workers' compensation legislation. Compared to other workers, police officers receive limited financial support if forced to retire due to work-related injuries.

Under the current OSH Act, dangerous operations are not just inherently more risky to a police officer's safety, but that officer will receive a lesser form of compensation compared to other workers, should that operation result in medical retirement.

[WA Police Occupational Safety and Health Advisory Committee](#)

From 2005 to early 2017, the WA Police 'Superior Safety Committee' was better known as the 'Occupational Safety and Health Steering Committee'. The latter was chaired by the Executive Director (after initially being chaired by a Deputy Commissioner) with Assistant Commissioners representing the WA Police portfolios.

The current WA Police Occupational Safety and Health Advisory Committee is chaired by the Assistant Director of the Health and Safety Branch.

WAPU still maintains a solid working relationship with the WA Police Safety Branch. A WAPU Field Officer is also a member of the WA Police Occupational Safety and Health Advisory Committee.

[WAPU Compliance with OSH Act](#)

WAPU endeavours to meet the objects of the OSH Act set out in Section 5. This includes Section 5(e) that states:

“(e) to foster cooperation and consultation between and to provide for the participation of employers and employees and associations representing employers and employees in the formulation and implementation of safety and health standards to current levels of technical knowledge and development;”

To comply with the spirit of Section 5(e), WAPU employs two full-time Field Officers to:

- Contribute to the promotion and security of police officers at work;
- Protect Members against workplace hazards;
- Assist in securing a safe and hygienic working environment for Members;
- Foster OSH co-operation and consultation between WAPU and WA Police;
- Assist in technical advancement to enhance safety at work;

- Provide input for formulation of sound WA Police Manual Policies; and
- Promote education and community awareness relating to the dangers and hazards faced by police officers.

An OSH component is also included in the accredited training given to WAPU Branch Officials. This is in part due to the strong relationship WAPU has developed with several safety and health training providers.

WAPU also presents a 'police safety' course to Curtin University students.

WAPU engages in discussions and inclusion with other established professional associations such as the Safety Institute of Australia, Occupational Health Society of Australia (WA Branch) and the Working Time Society of the International Commission on Occupational Health.

WAPU is proud of its commitment to Member OSH resulting in notable achievements over the last 20 years:

- Successfully campaigning to ban the single officer patrol policy.
- Funding a trial leading to Cancer Council approved headwear as a uniform item for WA Police.
- Supplying WA Police with a WAPU-developed Member OSH Risk Card.

[Inquiry Terms of Reference – WAPU Response](#)

WAPU does not purport to speak on behalf of WA Police. But given the extent of WAPU coverage, the interactions between WA Police and WorkSafe almost invariably impact on our Members.

To that end, WAPU's response to the Inquiry's Terms of Reference (TOR) credibly represents the views of a wide number of the State's police officers.

[TOR 1: WorkSafe's performance against the objects of the *Occupational Health and Safety Act 1984*](#)

Following the inclusion of sworn police officers in the OSH Act in August 2003, a Co-Agency Agreement between WorkSafe and WA Police was instigated to facilitate protocols for enforcement of the OSH Act. With respect to its application to police officers, a WorkSafe Guidance Note was prepared regarding the application of dangerous operations and covert operations.

The Co-Agency Agreement was amended in 2007 and replaced with a Memorandum of Understanding in March 2015.

Other than dangerous operations and covert operations, WorkSafe is unfettered in relation to enforcement of sections of the act and regulations. However, WAPU believes there has been two distinct periods of WorkSafe interaction with WA Police.

From 2003 to 2009, WA Police safety and health representatives were provided with excellent support from WorkSafe including:

- Annual WorkSafe Forums held during Safety Week in October;
- Similar WorkSafe forums in major regional centres around WA;
- Hard copies of the Codes of Practice;
- A WorkSafe library that enabled access to supplementary information to support OSH regulations, Codes of Practice, Guidance Notes and Police Manual Policies in the form of Australian and New Zealand Standards; and
- Attendance invitations to specialised seminars, especially concerning intangible issues such as bullying and fatigue.

However, such support has notably declined from 2008 onward. WAPU noticed a distinct change in the cooperation and exchange with WorkSafe senior management during this period tending towards a bureaucratic style, quite different from the previous inclusive and conciliatory style. WAPU found itself having to intervene in OSH matters using its own knowledge and experience.

There have been a number of incidents where WAPU considers WorkSafe fell well short of its statutory obligations (including prosecution actions) regarding breaches of legislation.

Potential prosecution actions included:

- Allowing major construction and renovation work to occur whilst our Members remained in the facility exposing them to serious hazards such as Rockingham air conditioning replacement and Margaret River asbestos tile removal.
- Allowing Members to remain in facilities in Karratha and South Hedland that were subject to an outbreak of serious mould spores being present caused by totally ineffective air condition systems and poor workmanship.
- Applying OC Spray to Members attending a Transitional (Overseas) Recruit Course and not providing immediate after care. A WorkSafe prohibition notice was issued and upheld when challenged.
- Not investigating an incident resulting in serious burns to our Member at the Maylands Complex even after demands made by WAPU (WA Police Incident # 100110285).
- A working at heights incident in Wembley where an officer suffered life threatening injuries while investigating a crime scene (WA Police Incident # 10009294).

- The provision of unstable plants for use in Deployment Readiness Training, especially in areas of regional WA. Many instances where serious but no reportable injuries have occurred.
- A lack of PPE (clothing) for Quad Bike Training at the WA Police Academy.

There have also been incidents where WAPU considers WorkSafe should have intervened and issued a prohibition notice or, at the very least, an improvement notice as a control measure to ensure workplace hazards were not repeated. These incidents include:

- A lack of Police Manual Policies concerning method of entry procedures at high risk search warrants where proper tools and PPE (clothing) were not provided.
- Allowing pooling of police motorcycles to occur.
- Allowing the use of police utility vehicles fitted with cages to transport prisoners.
- Unreliable communications in certain areas of regional WA.
- Single officer custodial care rostering in remote areas of regional WA.
- Procedures regarding investigations and employer biased outcomes of bullying complaints.
- Not following the laid out guidelines contained in the WA Police Prevention and Management of Adverse Workplace Behaviour Procedures.
- Roe 8 earthworks when asbestos hazards were being disturbed, crushed and fragmented releasing fibres mixed with the hot and dusty conditions.

Other WorkSafe inactivity can be attributed to lack of spot inspections of police facilities, especially where contractors, customers and visitors frequent the premises.

TOR 2: Funding and resourcing of WorkSafe

The McGowan Government was elected on a platform of increased funding for WorkSafe⁴. WAPU believes it vital this commitment is kept to properly enforce the objectives of the OSH Act.

There has been debate over the correlation between workplace fatalities and the level of WorkSafe funding⁵. WAPU believes the number of investigations and rate of notices also need to be considered in determining funding levels.

⁴ WA Labor Platform 2015: Clause 211(a).

⁵ <https://thewest.com.au/business/finance/deaths-at-work-hit-7-year-high-ng-ya-127852>

WAPU has used Department of Commerce Annual Reports to compare the number of FTE Inspectors employed by WorkSafe against the number of investigations and notices since 2007 – 08:

Year	FTE Inspectors employed	Investigations	Improvement Notices	Prohibition Notices	Prosecution Notices
2007-08	103	12,000	9,726	722	18
2008-09	103	11,000	9,852	722	37
2009-10	103	10,800	10,648	705	45
2010-11	91	9,400	10,419	602	66
2011-12	89	7,600	8,216	399	35
2012-13	87	8,794	11,972	552	33
2013-14	93	8,700	12,500	550	13
2014-15	90	8,029	12,044	427	16
2015-16	93	8,736	11,897	279	12

Using the Annual Report data, the number of investigations per WorkSafe inspector can be compared alongside the rate of notices issued (Number of Notices per 1,000 Investigations):

Year	Investigations per Inspector	Improvement Notice Rate	Prohibition Notice Rate	Prosecution Notice Rate
2007-08	116.5	810.5	60.2	1.5
2008-09	106.8	895.6	65.6	3.4
2009-10	104.9	985.9	65.3	4.2
2010-11	103.3	1,108.4	64.0	7.0
2011-12	85.4	1,081.1	52.5	4.6
2012-13	101.1	1,361.4	62.8	3.8
2013-14	93.5	1,436.8	63.2	1.5
2014-15	89.2	1,500.1	53.2	2.0
2015-16	93.9	1,361.8	31.9	1.4

Annual Reports appear to suggest the average WorkSafe inspector is conducting **19 per cent fewer** investigations compared to 2007-08. A multitude of factors may be behind the fall (such as the drop in FTE Inspectors or decline in the State's economy). But the increasing rate of improvement notices arguably shows the need for inspectors for better workplace safety remains strong.

And while the rate of improvement notices has increased by **68 per cent** over the period, the rate of prohibition notices has fallen by **47 per cent**. The rate of prosecution notices has also remained relatively stable.

There is no evidence that the trend in improvement notices and prohibition notices are somehow correlated. WAPU would be concerned if improvement notices are being used for situations that previously would have attracted a prohibition notice. Unlike improvement notices, prohibition notices can be used when an immediate control measure or elimination of risk is required.

TOR 3: Adequacy of WorkSafe's training, oversight and accountability processes

WA Police has a very high ratio of qualified safety and health representatives (SHRs) per employees (approximately 1,200 SHR to 6,600 police officers) due to the deployment policy and generally short terms spent at each location. On transfer, qualified officers can only assume the role of SHR if elected on a vacancy occurring.

Approximately 100 police officers (sworn, auxiliary, and unsworn) are annually trained to be a SHR.

WAPU believes WorkSafe needs to undertake the following based on feedback about current processes:

- Informing Registered Training Organisations (RTOs) about the *Work Health and Safety Bill* prior to it being proclaimed. This will give RTOs time to assimilate the new legislative system and its impact on course delivery.
- Certificate III in Workplace Health and Safety is now offered by all RTOs. Guidance will be required to ensure course units and assessment requirements are in accordance with the new legislation.
- A greater degree of interaction with RTOs. This includes RTO input on WorkSafe training material provided to SHRs.
- WorkSafe courses developed by individuals with appropriate background knowledge and an understanding of the Vocational Education Training system.

TOR 4: Adequacy of administrative processes, including complaints, investigations and prosecution processes

WAPU Members have expressed frustration at WorkSafe's inconsistency when it comes to investigating serious breaches of the OSH Act. The frustration is in large part due to the thorough and commendable work WorkSafe inspectors have done on other occasions.

For instance, WAPU and WA Police Communications management were in dispute regarding Members operating phone and radio console desks. Intervention by WorkSafe resulted in an

improvement notice that ruled Members were protected by the Code of Practice for Call Centres.

WorkSafe inspectors also stepped in and acted appropriately when WA police officers were observed working on roads, especially in busy traffic areas, failing to wear the appropriate high visibility vests.

WAPU made a submission to the 2006 Hooker Review requesting that unions be authorised to commence prosecutions where WorkSafe have not proceeded with court action. This request was based on NSW legislation that grants unions similar authority where OSH legislation is breached. The Hooker Review, however, did not support this proposal.

Member frustration with WorkSafe still exists. WAPU continues to advocate it be allowed to commence prosecutions where its Members have been subjected to clearly avoidable hazards. It is noted that the McGowan Government is committed to allow unions and third parties to bring about prosecutions against breaches of the proposed Work Health and Safety Act and Regulations⁶.

[TOR 5: Adequacy of WorkSafe's audits of training providers delivering occupational health and safety training](#)

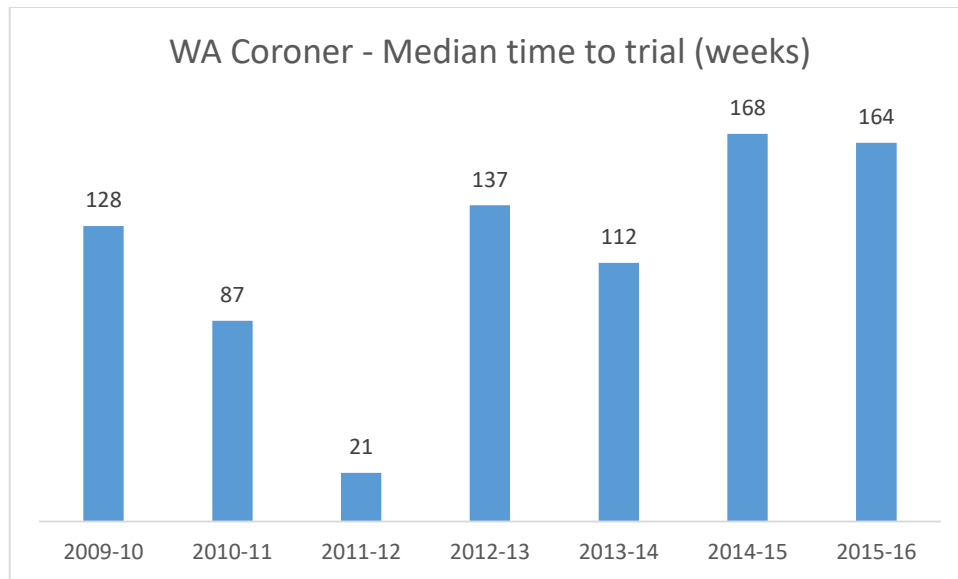
WAPU has no comment to make.

[TOR 6: Timely implementation and public education of coronial inquest recommendations arising from a workplace death](#)

WAPU believes this needs to be addressed in terms of resourcing the WA Coroner as a whole. Annual Reports for the WA Department of Attorney General reveals the median length to trial for the WA Coroner has increased eightfold since 2011-12⁷:

⁶ WA Labor Platform 2015: Clause 216.

⁷ WA Department of Attorney General – Annual Reports 2009/10 to 2015/16.



TOR 7: Legislative and jurisdictional issues

In June 2016, WorkSafe conducted a three-month public consultation on the proposed *Work, Health and Safety Bill*. Currently, there is still no indication when the legislation will be tabled in Parliament let alone if the McGowan Government is proposing further amendments.

WAPU is strongly opposed to any new legislation that mirrors Section 4A in the current OSH Act.

TOR 8: Any other relevant matter

WAPU has no comment to make.