

PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO THE MANAGEMENT AND OVERSIGHT OF THE PERTH CHILDREN'S HOSPITAL PROJECT



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 13 SEPTEMBER 2017**

SESSION ONE

Members

**Dr A.D. Buti (Chair)
Mr D.C. Nalder (Deputy Chair)
Mr V.A. Catania
Mr S.A. Millman
Mr B. Urban**

Hearing commenced at 9.22 am

Mr DOUG HEATH

Union Organiser, Construction, Forestry, Mining and Energy Union, WA Branch, examined:

Mr CAMPBELL McCULLOUGH

Assistant Secretary, Construction, Forestry, Mining and Energy Union, WA Branch, examined:

Mr ROBERT BENKESSER

Safety Officer, Construction, Forestry, Mining and Energy Union, WA Branch, examined:

The CHAIR: Welcome. On behalf of the PAC, I would like to thank you for appearing today to provide evidence relating to the committee's inquiry into the management and oversight of the Perth Children's Hospital project. My name is Tony Buti. I am the committee Chair and the member for Armadale. With me today on my right is fellow committee member Simon Millman, member for Mount Lawley, and to my left is Mr Barry Urban, member for Darling Range. The committee's Deputy Chair, Dean Nalder, member for Bateman, forwards his apology, and the other committee member, Mr Vince Catania, member for North West Central is currently engaged with one of the other standing committees and hopefully will join us later.

It is important that you understand that any deliberate misleading of this committee may be regarded as contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything you may say outside today's proceedings. Do you have any questions about your attendance today?

The WITNESSES: No.

The CHAIR: Just for the record, I disclose that Mr Millman and Mr Urban are members of your union and, of course, Mr Millman used to represent you in his previous career before coming to Parliament. Of course, Vince Catania's brother works for the union, so it is a family affair!

Thank you very much for your comprehensive submission. We would like to publish it online. Do you have any objections to having it published online?

Mr C. McCULLOUGH: Not at all.

The CHAIR: Would you like to make a brief opening statement before we ask questions?

Mr D. HEATH: Yes, I suppose just to initially thank you, the committee, for the process in which we are currently engaged. The branch looks forward to making a submission in respect to the construction of the children's hospital and hopefully assisting the inquiry with the findings that they will ultimately make about the construction process.

The CHAIR: Thank you very much. As I said, thank you very much for your comprehensive submission. In your submission you make it quite clear that you consider there was a failure of governance and integration of accountability and quality assurance. Can you expand a bit on that?

Mr D. HEATH: The whole process of accountability, we believe, is tied into the procurement process, which the government enacts when they award the tender for these major government projects. In this case, the procurement of the contracts for the construction of the children's hospital went to John Holland without, in our view, proper regard for the track record of John Holland in the commercial construction sector, without regard for the track record of John Holland in respect to

its capacity to build projects in accordance with the Occupational Safety and Health Act or their own legislative obligations that arise under Comcare, and without any regard for the track record of the type of subcontractors with whom John Holland would engage. We believe that those factors are integral to how the children's hospital was built and we believe that the problems that we are all aware of certainly over the course of the last four or five years can be traced back to the short-sighted view of how contracts should be awarded, and we see that as being the fundamental cornerstone of the problems that we have encountered.

The CHAIR: I assume your members were heavily involved in the construction of Fiona Stanley Hospital and Midland?

Mr D. HEATH: Yes.

The CHAIR: Would you like to make a comparison between those projects and Perth Children's Hospital?

Mr C. McCULLOUGH: I will answer that question. I worked for Multiplex at the time. I was actually out at Midland hospital and I spent quite a bit of time at Fiona Stanley. There was a marked difference in the way subcontractors were chosen insomuch as their ability to do the job. They went for price rather than ability and experience.

Mr S.A. MILLMAN: Mr McCullough, when you say they went for price—

Mr C. McCULLOUGH: Sorry, John Holland Group. Their whole process of picking subcontractors that they used was price driven. They took no account of whether the subcontractors had the ability or the experience to do the job. They used second tier, I suppose, tier 2 contractors more than tier 1 contractors.

Mr B. URBAN: Can you explain the tier system?

Mr C. McCULLOUGH: Tier 1 contractors usually tend to be—they have trade certificates; they are trade certified. They have far better occ health and safety systems in place and they have a far better ability to do the larger jobs. They are bigger and they have more money behind them. Those are the major tier 1 contractors that you would expect would work on a job of that size. Where we found that a lot of the contractors on that job—the tier 2—style contractors—were much smaller and had never done jobs of that size before. In some cases, companies started just to do that job. They had never had any experience at all.

Mr S.A. MILLMAN: This rating system—tier 1 and tier 2—is that something that the union has devised or is that something that is industry standard and people recognise?

Mr C. McCULLOUGH: It is recognised as an industry standard, tier 1 builders and tier 1 subcontractors down to tier 2.

Mr S.A. MILLMAN: What sort of project would be a tier 1 project?

Mr C. McCULLOUGH: A major project of any size, usually government projects or major commercial projects of sizes over \$100 million, I would suggest.

The CHAIR: So the three hospitals would have all been tier 1?

Mr C. McCULLOUGH: All should have been tier 1 jobs—yes, definitely.

The CHAIR: Before my colleagues ask questions, I have one more initial question. You make it quite clear in your submission that you were not happy with the way John Holland handled the asbestos issue—I am talking about from the time asbestos was found—and you also comment on the Building Commission's interim report of September 2016. You believe that the Building Commission basically said they were happy with John Holland and thought John Holland reacted or behaved in

an appropriate manner in regard to the initial discovery of asbestos and the revocation of the problem. We had the previous Building Commissioner in last week. We put your submission and he stood by his interim report. Can you give us verbally now why you have a problem with the Building Commission's interim report?

Mr R. BENKESSER: Basically, the first thing is when you suspect there is asbestos on a site, you treat it as if there is asbestos on the site; you put those controls in place. John Holland continued to allow the work to continue and allowed people to be in potentially affected areas pending getting a result. That is not the normal practice of a tier 1 builder. They would always treat it as there is exposure to asbestos, so they did not do that. When the issue was raised by the workers to the union and we tried to gain access there, they did not allow access, which we have a right to under the Comcare system and under the state system. Just the whole way it was managed by the builder was not the way you would expect the tier 1 builder to manage the system.

[9.30 am]

The CHAIR: In your submission you also make comment on the attitude of John Holland in respect to your workers and union officials who tried to address the issue. Did the Building Commissioner speak to any union reps or workers before he delivered his interim report?

Mr R. BENKESSER: First of all, I cannot remember the Building Commissioner speaking to us about it at the time.

Mr B. URBAN: Cam is shaking his head as well. Is that a no, Cam?

Mr C. McCULLOUGH: That is a no.

Mr R. BENKESSER: I have no recollection of that at all.

The CHAIR: The other question is that in your submission a few times you make comment on the attitude of John Holland in respect to workers trying to highlight their concerns.

Mr R. BENKESSER: Yes. With a normal tier 1 contractor—this should be in compliance with the act—a worker raises an issue and the builder has a consultative and cooperative requirement under the act to hear what the workers' issues are and to consult with the workers through safety reps, through safety committees, to identify that there are hazards there and implement controls for those hazards. None of that happened. As far as the union being made aware of the issue and then going down and trying to deal with the issue, John Holland's attitude was completely combative. They tried to prevent us access to talk to workers and prevent us access to conduct an investigation of the suspected breaches, which turned out to be legitimate breaches. All along the way, they have obstructed and hindered our access to the workforce and to investigate the breaches.

The CHAIR: Can you elaborate on how they obstructed that process?

Mr R. BENKESSER: We would go to site and go through the process of gaining access to the site to investigate the breaches. Part of that process is that we have a suspicion of a suspected breach. John Holland would say that we do not believe there is a breach there. It is not whether we believe it or not, it is whether we believe there is a breach there or have a suspicion of a breach. They would bring industrial relations people out to deal with us. They would use security to keep us away until they had someone out and they would make us wait for long periods of time. They would just hinder us all the way. They never ever let us on site to investigate breaches unless it was something they had total control of.

Mr D. HEATH: Just to supplement what Bob is saying in respect to the identified asbestos on site, when the issue was first identified by workers on 12 July 2016, rather than dealing with the issue as a potential risk to workers, John Holland simply allowed the work to continue whilst they went and

tested the product for asbestos. That in itself is outrageous. For the Building Commission to suggest that John Holland acted in accordance with their legislative obligations and complied with their duty of care is fundamentally wrong. To my knowledge from talking to the workers that were exposed to asbestos on 12 July, they had no discussion with either Comcare, WorkSafe or the Building Commission. The Building Commission has drawn conclusions based on discussion with perhaps Comcare, perhaps Worksafe, but certainly not with workers that were actually involved with the work. After the asbestos was confirmed, John Holland then failed to clean up the asbestos in a way in which we would expect of a tier 1 builder. They had a contractor called L&M Painting, which engages workers through a labour hire firm, who are largely transient backpackers involved in the clean-up of asbestos that they were not trained to do. They were disposing of asbestos in a way in which it would appear to be completely at odds with the safe disposal of asbestos—they were putting it in bins, were not properly wrapping it and were not properly containing it. There was asbestos dust in the upper areas of the hospital project. There were concerns from lift operators and workers who were travelling up and down the lifts that they were exposed to asbestos dust. There was no communication of any merit by John Holland to the workers and no capacity for workers to have proper input into the process. The HSRs were not acting as HSRs normally would—the health and safety representatives. They did not have a genuine capacity to say to John Holland that what you are doing is wrong; we want you to go through a normal process to deal with asbestos. Instead, John Holland was more focused on the bad publicity that was being generated through their incompetence and their exposure of workers to a deadly disease than what they were about actually dealing with it properly. It is at the very least frustrating, but it is fundamentally wrong for the Building Commission to say that John Holland did everything aboveboard. It certainly was not aboveboard. We have a number of members who today, they and their families are concerned that they will, in 20 years' time, have asbestos-related diseases because they happened to work on a hospital that was constructed by a builder that had no proper regard for their health and safety. We have scaffolders, we have riggers, we have the guys who were actually working on the panels themselves who were all exposed. We had 500 workers who signed onto the asbestos register, not because they had to, but because they had a genuine concern that they may have contracted an asbestos disease through working on the children's hospital. None of those people were spoken to by the Building Commission to my knowledge. It is outrageous that they draw these conclusions without a proper investigation.

The CHAIR: I think you alluded to the fact that WorkSafe officials and, presumably, Comcare officials—we know the problem with the Comcare and state legislation crossover—how many workers were spoken to by WorkSafe officials?

Mr D. HEATH: We are not aware of any of the workers who were directly involved with finding asbestos actually being spoken to by a WorkSafe inspector.

The CHAIR: Did WorkSafe inspectors speak to the union?

Mr D. HEATH: No. If it helps the committee, I have brought along a draft affidavit that the union prepared on my behalf at the time that the union was denied right of entry to investigate the asbestos OHS breaches, and I brought some copies if I can.

The CHAIR: Is there legal proceedings on this?

Mr D. HEATH: No, the affidavit was prepared in anticipation of a union prosecution of John Holland for right-of-entry breaches in the Federal Court but because of jurisdictional difficulties in proceeding with that application, the application has since been discontinued. The affidavit was not sworn into evidence; it was only the draft and it was never tested.

The CHAIR: Are you wanting to submit it as a supplementary submission to your major submission?

Mr D. HEATH: If I could, please. Thank you.

The CHAIR: After we have a chance to examine it, we will determine whether we will publish it online. Are you happy for it to be published online?

Mr D. HEATH: Yes, I am.

Mr B. URBAN: I have three questions and they are all quite similar. The first one is: can you provide an insight into the supervision management issues on Perth Children's Hospital? Can you explain in some detail the safety concerns associated with the Perth Children's Hospital project? Do you think that the John Holland Group was proactive with safety? I think you sort of alluded to that, but I want you to expand on that. The other one is: what is wrong with the John Holland Group or the state government heavily relying on contract price to select subcontractors to work on the PCH, which is what Cam mentioned before? We will go into all the individual things so I just want to get those overriding ones asked first.

[9.40 am]

Mr D. HEATH: If I can defer those safety questions to Bob, but just in respect to further elaboration on the reliance on price as the primary way of determining which contractors come onto the project, there are massive problems in respect to that process. If we look at it simply from an industrial perspective, if it relies on price, it usually ends up with a result where contractors that do not have the expertise or the history or the experience of working on these major projects being successful in the tender process. I made reference to the company L&M that was involved in the disposal of asbestos from the contaminated area. They were a company that was engaged by John Holland to not only paint, but to install fire doors at one stage and to install the fire frames—the fire door frames—and to do some general carpentry work around the site. That company has a registered enterprise agreement with the Fair Work Commission. The agreement was approved by the commission based on statutory declarations that the company put into the commission as part of its application that were false. The enterprise agreement pays workers \$20 an hour at the trade level for every hour worked. You can work 80 hours a week or 100 hours a week and you still get paid \$20 an hour—no allowances and massively below the basic legal minimum award standard. That is prohibited under the Fair Work Act. You cannot have an enterprise agreement that sits below the award. There is a better off overall test that supposedly applies, but the commission, probably because it is under-resourced, relies on employers' statutory declarations to generally approve these agreements. I would like to, as a supplementary to the submission we put in, provide the committee with a copy of the enterprise agreement so we can see the basis for how these companies win these projects. They pay workers below the award rates based on the enterprise agreement that they submit to the commission. They then outsource their obligations to a labour hire firm, because the labour hire firms, again, almost remove L&M from any obligations to comply with their industrial obligations, and the labour hire firms generally engage backpackers and transient workers who, in the case of workers who are exposed to asbestos, are out of the country by the time they contract an asbestos-related disease. They are out of the country before we get an opportunity to prosecute for underpayment of wages. It is a very convenient form of employment for employers that operate at the bottom end of the industry. So we have a culture right from the outset of companies engaging workers based on the fact that they are cheap. We do not get the quality of workers going onto a major project like that where we have got second and third-tier companies operating because the more highly skilled workers will go to where the wages are more attractive. We have companies such as West Coast Formwork that won a substantial formwork package where they were paying way under industry standards. I mean, this is a company that subsequently went into receivership on the project. They use, again, a lot of transient workers—a

lot of backpackers and a lot of holidaymakers—that happened to be in Perth for the period of the construction of the hospital. We have companies such as that that win these projects and win these contracts. West Coast Formwork did not largely engage trade-qualified workers to do formwork. We have a lot of nonqualified persons engaged in that work. We have the firewalls and the walls and the ceilings that were built by three ceiling fixing companies, two of whom went into receivership either during or shortly after the construction of the project, and the other one that used an almost exclusively workers from a labour hire company to do the work. The union received a number of allegations from workers and from management working for John Holland that the firewalls at the children's hospital were not built to standard. They are allegations that we put to the Building Commission. We asked them to go and investigate. But it is inevitable that when you do not have trade-qualified workers doing trade work that you are going to get a substandard product. That is an inevitable outcome. When we have a price-driven mechanism to select subcontractors, we know for a start that the capacity to engage the best workers in the industry falls away pretty quickly. We then get subcontractors that generally do not have the financial capacity to see a project out, because the contracts that John Holland issued to subcontractors were so legalistic and so one-sided that any small subcontractor that has to sign a contract of the type that John Holland issue will be so tied up in the legal process that they are going to do what John Holland want. They cannot contest for instance the non-payment of variations in the court because they do not have a bank balance withstand the legal process that inevitably comes out of challenging non-payment of contract rates. We have significant problems in that regard.

The CHAIR: In respect to the Perth Children's Hospital project, do you have evidence that there was non-payment by John Holland?

Mr D. HEATH: Yes. The CFMEU was contacted by a number of subcontractors during the period of construction about the fact they had not been paid. A good example is Acrow Ceilings, which were a company that were speaking to us at the time that, unfortunately, there was the tragedy of the owner of Acrow Ceilings taking his life during construction of the children's hospital. We know that the company was under significant financial stress because John Holland had not paid them for work they said they had done and they were owed \$1.8 million. West Coast Formwork spoke to us—the owner of West Coast Formwork spoke to us—both during and after the construction of the hospital to say that they had not been paid for work done on the project. There were about half of dozen companies that we have referred to in our submission that were speaking to the union on a regular basis about not being paid for variations that they had done on the hospital project to a point where some of these companies went into administration and receivership.

Mr S.A. MILLMAN: That is amazing. You had companies with presumably workers who you would represent, and the companies were seeking your industrial assistance, vis-a-vis John Holland. Is that right?

Mr D. HEATH: That is correct. They were frustrated about the process to the extent they saw the union as the only organisation that was assisting them as best we could to recover contract payments that they were owed.

Mr S.A. MILLMAN: Am I right in saying—you just said that West Coast Formwork, underpaid wages. They paid below industry rates; is that right?

Mr D. HEATH: Correct.

Mr S.A. MILLMAN: Would you describe them as a union-friendly company?

Mr D. HEATH: They are a company who, I guess, had been forced to work on that project for a rate that did not allow them to pay an industry standard rate of pay. They were not, I would say,

unfriendly to the union, but they certainly did not have a longstanding relationship of agreements with the union.

Mr S.A. MILLMAN: What you are describing, Mr Heath—is this something that would be known in the construction industry? And a supplementary question: would it be known amongst regulatory authorities, like government, in the building industry as well? I mean, we are interested in the role that the government plays in this process.

Mr D. HEATH: It would be unbelievable, yes, to suggest that any government body that had an obligation to ensure that subcontractors were paid what they were owed by John Holland, that they would not be aware of the problems that subcontractors were faced with at the hospital. We did our best to generate some media publicity about the issue of non-payment of contract rates. We were working pretty hard to ensure that there was that exposure, because we did not have the confidence in the government to deal with it, so we were trying to obviously ensure there was that public awareness about the problem. For a regulatory body to be unaware of the issues, we just shake our heads and say, “It’s not possible.”

[9.50 am]

The CHAIR: Could I just take you back to asbestos for a minute? Are you able to provide the date and time that asbestos was first discovered at the Perth Children’s Hospital site and when the workers were subsequently ordered off the site? If you do not have that now, would you be able to provide it?

Mr D. HEATH: Yes.

The CHAIR: Is it in the submission?

Mr D. HEATH: I believe it is in the draft affidavit. It is 12 July 2016 that the issue was first identified on site.

The CHAIR: On page 7 of your submission, you confirm you have video footage of subcontracted workers from L&M Painting undertaking asbestos decontamination of work on 13 July. You argue that the footage contradicts the findings of the Building Commission’s interim report. Did you provide that footage to the Building Commission or WorkSafe; and, if so, what response did you receive?

Mr D. HEATH: We have not provided it to either body because WorkSafe had no dialogue with us at all in relation to the asbestos issues and Comcare did absolutely nothing—when we approached Comcare to gain access to the site to investigate—in terms of either facilitating our right of entry or communicating anything in respect of their own investigation. We had no effective dialogue with either organisation.

The CHAIR: On page 9 of your submission, under the 2.4 summary, you mention that you attempted to relay information to the task force, particularly Strategic Projects with respect to the safe disposal of asbestos, the potential harms to workers at the Perth Children’s Hospital project, but were dismissed. Can you tell us how the union attempted to relay this information and to who, within Strategic Projects, was this attempt made?

Mr D. HEATH: We would have to probably take that question on notice, if we can please, because Mr Buchan is not with us today.

The CHAIR: On page 9 of your submission, you claim that the processes to provide assurance around the removal of asbestos was not adequate. What would you consider to be an ideal assurance process?

Mr R. BENKESSE: As far as removal of asbestos, there is a code of practice that is a minimum standard that should be complied with. The first point to remember is that whether it has been confirmed that it is asbestos or not, it must be treated as such and then the controls must be implemented. First, the removal of the asbestos should be conducted by trained qualified people and a licensed asbestos removalist. The workers need to be trained. There need to be proper risk assessments and plans completed prior to the works commencing. We know that this process was not followed at the time to try to eradicate the problem, basically before it was highlighted. People were exposed to that hazard without any concern to protecting them from that exposure.

Mr B. URBAN: On that, can you just provide further information, in respect to the allegations that the workers were required to work on site despite the discovery of the asbestos? That is the first part of it. Secondly—there are three parts to this—in your view, how did John Holland react to the discovery of asbestos particularly? Thirdly, because you have answered the other one which I have put in here, were there any issues with respect to the right of entry once you were notified of that? Because I saw in the submission that you tried, once it was reported to the CFMEU, particularly, to gain access to the site. That is my third question.

Mr R. BENKESSE: Firstly, the workers became aware of it because they saw the report about what had happened in Queensland where Yuanda had provided products containing asbestos. They knew they were using a Yuanda product, so they had concerns. They had been cutting into it and they had seen the dust and everything that was generated by it, so they raised their concerns. Holland's supervision at the time, when the boys raised it with them in the job situation where they were, had a look at the sample and said, "No, that's not asbestos, just keep going." The guys took it further and they got a sample to us. We had it assessed and there was sampling done on it and it came back as positive. All this time, those workers were still expected and basically made to work and continue to do the work, so they were exposed to it.

Mr B. URBAN: That was on 12 July. When did the union get a sample of the asbestos—I will call it asbestos—and then how long did it take for that test to happen until it became positive?

Mr D. HEATH: The union was provided a sample by one of the workers on site on 13 July 2016, on the Wednesday, so the day after workers were first exposed to the asbestos. We were aware that John Holland had done their own testing but we wanted to independently test, because we did not trust John Holland to be honest and frank about the testing outcomes.

Mr B. URBAN: When did you get the result back of that? I would not think you would get a result straightaway.

Mr D. HEATH: It was a couple of days, I think, in respect to that.

The CHAIR: In your submission, you do compare this project to the Midland hospital project. At the Midland hospital project, you mentioned that a qualified engineer had to check and sign off on all the work subcontractors undertook. To your knowledge, did this comparable assurance system occur at the Perth Children's Hospital project?

Mr C. McCULLOUGH: To the best of my knowledge, no it did not.

The CHAIR: Further to that, what did the union observe as being the differences between the two projects, Midland and the Perth Children's Hospital, in regard to the general assurance process?

Mr C. McCULLOUGH: At Midland hospital the process was a very consultative process with the workforce. Everybody had some input into the occupational health and safety. It was a very well functioned occupational health and safety committee. All those sorts of things were done in collaboration with the workforce. Those things were not done on the Perth Children's Hospital. It was very much an autocratic system at the Perth Children's Hospital where they were told what

they would do and how they would do it. But there was no input from the workers, there was no collaborative approach at all.

The CHAIR: On page 21 of your submission, under the heading “How Problems Were Dealt with on Midland Hospital Project” you state that John Holland interfered with quality assurance systems on the Perth Children’s Hospital project. Did you raise your concerns in regard to this with Strategic Projects or any other organisation within the government structure of the Perth Children’s Hospital project?

Mr D. HEATH: Mr Buchan, who is the branch secretary of the CFMEU, raised concerns about the lack of quality assurance with both the government and Strategic Projects very early in the piece.

The CHAIR: When you say the government, who in the government?

Mr D. HEATH: The relevant minister.

The CHAIR: Which was the Treasurer?

Mr D. HEATH: I believe so, yes.

The CHAIR: Are you able to confirm on notice?

Mr S.A. MILLMAN: If Mr Buchan is the person to give the answers, I think perhaps we should get the answer from Mr Buchan.

The CHAIR: But unfortunately we may not be able to do that, or on time.

Mr D. HEATH: I will take that on notice to perhaps provide some correspondence that goes to that point. In relation to, I suppose, how quality assurance was dealt with, the discussions that we had with not only our own members, but also some of the John Holland management on site was very much about everyone covering their ass, so to speak, as far as just hiding problems that they were aware of. It was simply about just getting the job done because of the autocratic management style that John Holland had in place, where there was a culture of fear. The management for John Holland had to all sign confidentiality contracts with John Holland, so they could not speak openly about any issue to do with the Perth Children’s Hospital or the operation of the hospital by John Holland.

[10.00 am]

Mr S.A. MILLMAN: Is that unusual?

Mr D. HEATH: It is certainly unusual that people would actually talk about it. I guess to the extent that because the management would be saying to us, “We’ve got all these issues, but we can’t talk openly about it.” I suppose that is unusual. I cannot comment whether it is unusual for these contracts to occur.

Mr S.A. MILLMAN: When you say management, are you talking about management of the subcontractors or management employed by John Holland?

Mr D. HEATH: Management employed by John Holland. Some of the management were employed through labour hire firms and some of them were employed directly by John Holland. But they knew that there were issues with the quality assurance on the job, but they also knew that if they spoke up about it, that they probably would not have a job. And particularly when you employ management through labour hire, where you have got workers, whether they are blue collar, white collar or grey collar, who are so insecure about their job, they are going to put their job on the line to raise problems with defects, and if they broach the subject and they realise that there is a level of resistance from senior management, that is probably as far as it is ever going to go.

Mr S.A. MILLMAN: That leads me to explore an issue that you raised earlier, Mr Heath. You talked about the HSRs, the health and safety reps, and about their reluctance to speak up. For the benefit

of the committee, can you just explain how the HSR reps were appointed or elected, who they were employed by and what control mechanisms were in place to make sure that they could discharge their statutory obligations? Mr Benkesser, if that question is more appropriately directed to you, then fine. In answering that question, can I ask you to have regard to the overall culture of the project and just compare the culture of the project on site at PCH to perhaps other significant government contracts that the union has been involved with?

Mr D. HEATH: I will talk, if I can, just more broadly about the HSRs who we spoke to at the Perth Children's Hospital. They had absolutely no confidence in their capacity to raise OHS concerns with management in a way in which was, I suppose, open dialogue, where their safety concerns would be acted upon by management. They believe that if they pushed too hard on safety issues, that they would be out of a job. There is a culture of fear that John Holland created on that hospital project. We have to be mindful that we have a large construction job where John Holland seemed to spend more money on systems to ensure no dialogue, no openness, no transparency, no union involvement and participation. They had security guards around the perimeter of the construction site, which is quite remarkable in itself—the number of security people they had on site. They had a constant presence outside the project to ensure that the union had, at best, an enormously difficult time getting on the project, just to have discussions with workers or in respect to OHS investigations. Generally speaking, no capacity at all to go on the job.

Mr S.A. MILLMAN: Can I interrupt you there? Just on the occupational health and safety, we have already had evidence from WorkSafe. My understanding is that John Holland is a Comcare licensee and that, accordingly, insofar as John Holland is concerned, and John Holland's employees are concerned, Comcare is the relevant occupational health and safety authority. You say blue collar, white collar, grey collar—how many construction workers were directly employed by John Holland? That is my first question, and I have a supplementary question. For workers who were employed by subcontractors, West Coast Formwork and L&M Painting, my understanding is they would all be covered under the state occupational health and safety regime, and so WorkSafe would be the relevant statutory authority. Did you have any problems accessing the site under 49I of the Industrial Relations Act with relation to what I would call state system employees? Sorry to interrupt you, Mr Heath.

Mr D. HEATH: No. Thank you. John Holland had less than 20 directly employed blue-collar workers. The subcontractors engaged well over a thousand blue-collar workers. The number of employees employed by John Holland was minuscule as a percentage of the total workforce. We understand, obviously, the relationship between Comcare and John Holland and Comcare's obligations in respect to how John Holland operates, but we believe that WorkSafe had an obligation and failed that obligation to get down to that project on a regular basis and do spot orders and checks, as they should have done, because most of the workers there were covered by legislation that they were the regulatory body that had the regulatory functions under. We believe that WorkSafe were absolutely lax in regard to proactively investigating OHS issues out at the Perth Children's Hospital, simply passing the buck to Comcare, even though most of the workers were actually covered by the system that they were in charge of. Sorry, what was the second part of the question that you had?

Mr S.A. MILLMAN: That is a sufficient answer. What we may do, if we have supplementary questions, is write to the union and just get your response in writing, if that is all right. I have another question just in respect of access to the site to investigate occupational safety and health breaches. Section 501 of the Fair Work Act says that a company is not to hinder or delay access to a site. This affidavit that you have provided, related to the asbestos issue. Can you give me some background into the context of just to how this affidavit came into existence? Were there any legal proceedings contemplated or instituted against John Holland?

Mr D. HEATH: When we were denied on multiple occasions—and when I say “we”, there were a number of CFMEU officials—Mr Benkesser, myself and Mr Kennedy—were denied on numerous occasions the entry to site to investigate the asbestos issues and also a whole range of other OHS concerns that we had. The standard line from John Holland, apart from saying, “No, you can’t come on”, was that there are no safety breaches and, “We don’t believe that you have a right to come on to investigate anything because we’ve done everything right and the breaches don’t exist.” The CFMEU made a decision that it would initiate proceedings in the Federal Court against John Holland for a breach of the WA OHS act in respect to the asbestos issues. We, I guess, got to the first hurdle when we were advised that we did not have a jurisdictional capacity to prosecute John Holland under that system because Comcare was the only body that had authority under the act to prosecute John Holland for a breach of right of entry. It seemed that Comcare had no real interest in talking to the union or our members and to get them to then step up to the plate and prosecute John Holland for breaching the act was going to be a step too far, so the CFMEU withdrew the application on that basis. We had numerous occasions throughout the construction of the hospital where we were denied right of entry. The expense that the union has to incur in prosecuting employees for right-of-entry breaches is significant. In an ideal world, we would simply prosecute John Holland every time that they breached the act and denied us right of entry, but we have a limited capacity to do that financially, and we believe that John Holland again got away with breaching the legislation simply because they were a big entity with deep pockets and they probably got off scot-free in terms of their obstruction of right of entry.

[10.10 am]

Mr S.A. MILLMAN: How many of the 20 blue-collar John Holland’s direct employees would have been exposed to asbestos?

Mr D. HEATH: We had complaints from lift operators working for John Holland that they were working in areas that they believed had asbestos dust. They had not encapsulated the areas. There were at least three John Holland workers who spoke to us about their potential exposure.

Mr S.A. MILLMAN: Do you know if they spoke to Comcare?

Mr D. HEATH: I do not believe any of those workers spoke to Comcare.

Mr R. BENKESSER: Just supplementary to Doug about right of entry, we approached Comcare to assist on ruling on our right to enter the site under the Comcare legislation. We spoke to Comcare inspectors for about 10 minutes and explained the situation to them. The entry to the site is a row of turnstiles right next to a coffee shop. They said, “We have heard what you have got to say and we will go and see John Holland, and we will meet you back out here when we have spoken to them.” So we said we will wait in the coffee shop, which is right at the turnstiles. They went in, and they spent maybe an hour, an hour and 10 minutes, with John Holland. The next minute, we got a text saying, “Tried to contact you”, blah, blah, blah. So I rang them back and said, “Look, we were just sitting outside in the coffee shop, just outside the turnstiles; can we talk to you?”, and they said “No, we have already left the site.” I said to them, “What is the situation?”, and their response to that was they had spoken to John Holland and they agreed with John Holland that we do not have a right to access the site under our belief of a suspected breach.

Mr S.A. MILLMAN: That was the response you received from Comcare?

Mr R. BENKESSER: Yes.

The CHAIR: This might be onerous, but is it possible for you to provide us with correspondence that the union has sent to the minister and any organisation with regard to concerns you have had about the Perth Children’s Hospital and the responses, if any, that you have received?

Mr C. McCULLOUGH: We will be happy to do that, yes.

The CHAIR: Thank you very much.

Mr S.A. MILLMAN: Sorry, Barry; I just have to finish. After the asbestos unitised roof panels were discovered, they were to be remediated; is that right?

Mr R. BENKESSE: Yes.

Mr S.A. MILLMAN: And be either replaced or reversed engineered so that the asbestos sheeting within the panels was removed?

Mr R. BENKESSE: That is correct.

Mr S.A. MILLMAN: In determining the safest and best way of remediating the asbestos in the children's hospital, what input did the union or any of the workers have into what the best remediation was?

Mr R. BENKESSE: To go back a step from that, we spoke to John Holland about being involved in the development of that remediation process and the risk assessment associated with it —

Mr S.A. MILLMAN: So you requested to be involved?

Mr R. BENKESSE: Yes. They were not really clear about whether we could or not. The next thing we heard from them—I would have to verify the timeframe that was—they asked us to meet at one of the companies that was involved later on in the assessment of the situation in regard to asbestos. We met at their premises, and John Holland presented a remediation risk assessment and process that they had developed without the involvement of us, and they asked that we accept that. We basically said to them, "Look, we haven't been involved. We asked to be involved. You didn't give us that courtesy." When we looked at the process, it involved having a number of units set up to do that remediation process. We did not disagree with the process that they had in place other than to say that it should be just one unit at a time, and our understanding was that that was what they were going to do. When it developed, there were some five or six units being done at a time.

Mr S.A. MILLMAN: What was the consequence of doing multiple units at a time?

Mr R. BENKESSE: We had water ingress into the ceiling and part of the ceiling collapsed.

Mr S.A. MILLMAN: I come back to the question that was asked earlier about the company that was responsible for removing the asbestos at the time. The cutting of the asbestos had taken place at the beginning of July. I would have to look up the act, but is a requirement merely that the employer is a licensed asbestos removalist or is it also a requirement that the workers who are employed by that employer have gone through the requisite training and received certification?

Mr R. BENKESSE: It is a requirement that the workers must be trained in asbestos awareness, yes.

Mr B. URBAN: I want to go back to the role of the Building Commission and also Strategic Projects. Did you actually contact them in any of their capacities, and what was the role that you had with both the Building Commission and Strategic Projects; and, if you cannot answer that, as Dr Buti has said, could you provide details of your correspondence with them?

Mr D. HEATH: I can certainly make comment about the discussion with the Building Commission. That was in respect to allegations the CFMEU has been provided with about the construction of firewalls at the children's hospital. We wrote to Mr Peter Gow, and I can provide the correspondence today to the committee —

The CHAIR: That was the letter of 10 April, was it?

Mr D. HEATH: Correct, yes.

The CHAIR: We have got that.

Mr D. HEATH: The Building Commission, in terms of the time frame for responding, came back to us on 20 April and advised that they could meet with us on 26 April. When we met with them on 26 April, they had taken absolutely no steps whatsoever to investigate the alleged noncompliance in the construction of the firewalls. It was clear that they had no intention of carrying out an investigation. We then made them aware that we had a supervisor from John Holland who was prepared to provide some more detail around the allegations, but we wanted the comments that he made to be treated with absolute confidentiality because he was worried about not only being black-banned from working on the John Holland site again, but also being black-banned from working on major projects in Perth. We met with the Building Commission on 1 May and we provided specific details around some of the areas based on floor plan numbers and room plan numbers where there was identified noncompliance with the construction of firewalls. I understand the Building Commission went out to the children's hospital on 3 May —

Mr B. URBAN: This year?

Mr D. HEATH: Yes, this year.

The CHAIR: Can I let you know that Vince Catania, the member for North West Central, has just arrived.

Mr D. HEATH: Since the Building Commission went out to the children's hospital on 3 May, certainly we have written to the Building Commission on three occasions asking for some feedback in relation to their investigation and we have not had any feedback whatsoever. The first two responses were simply that "we are still investigating". The last response was by Sandy Randall, saying that "my principal role at the moment is overseeing the statewide cladding audit. I am aware the investigation of firewalls is finalised and that a report is close to completion. I will make some inquiries regarding your question and get back to you early next week."

The CHAIR: What was the date of that?

Mr D. HEATH: That was on 25 August this year. It is disappointing that the union makes the Building Commission aware that something is seriously wrong with the hospital—if the firewalls have not been constructed in accordance with the Australian Standards and the manufacture's specifications of the products that were used in the construction of the firewalls, then for the Building Commission to then continue its investigation or start an investigation and not have any dialogue with the union during that investigation, or with the person who has made the allegations or any of our other members who were involved in the construction, who would have been happy to speak with the Building Commission—the Building Commission has finalised its investigation without actually talking to anybody who could have assisted on our side. At the first meeting we had with the Building Commission, they were reliant upon the information they had from John Holland, which was, "We have done everything right. Yes, we had some issues along the way but we identified all of those issues. We fixed every one of those issues and there are no problems." That was enough for the Building Commission to say, "Well, the firewalls at the children's hospital were all built to standard and there are no problems with the firewalls."

[10.20 am]

Mr B. URBAN: Have you got any documentary evidence to say that there are problems with the firewalls and also the doors?

Mr D. HEATH: We certainly had a three-page report that was written for the union that we provided to the Building Commission.

Mr B. URBAN: Have we got that? Can you submit that as well?

Mr D. HEATH: We are happy to submit that as well.

Mr R. BENKESSER: With regard to Strategic Projects, we were invited by Strategic Projects to attend site on the seventeenth. That invite was to show that there was support being provided to everyone on site, that tests had been undertaken and to talk about the results of the test, that ongoing monitoring and tests would continue and to talk about remediation and other actions. During that visit —

Mr S.A. MILLMAN: Sorry Mr Benkesser, you are talking about 17 July in response to the asbestos?

Mr R. BENKESSER: Yes. During that visit, or prior to that visit, Holland made it very clear that this was not a right of entry but an invite by the state. During that visit, our view of it was that it was a show that everything had been done properly. They had areas enclosed, they had workers wearing PPE and everything. This was well after the event; this was the seventeenth. Prior to that, we were never allowed to access the site under our legal rights because I believe they did not have processes on site. I believe they exposed people all that time. When we did go and have a look at it, we still found evidence of dust all over the atrium area and it was suggested by us that the area be evacuated until proper remedial action could be taken to eliminate any potential exposure to workers. That was refused. Instead, they agreed to bring in an independent company to do monitoring over and above what had been done—an assessment. That company came in and actually took over control of the risk assessment and ongoing procedural requirements for the removal of the asbestos. To me, that justifies that all along, until the seventeenth, they had not complied with their duty of care to provide a safe work environment for those people.

Mr S.A. MILLMAN: Was the whole site quarantined while they removed the asbestos or were only parts of the site quarantined?

Mr R. BENKESSER: It was only parts of the site up around the seventh and eighth levels.

Mr S.A. MILLMAN: But the asbestos was in an atrium, was it not, that goes all the way down to the ground?

Mr R. BENKESSER: That is my point; that there was evidence of fibres or dust. We are not chemists. We are not qualified assessment people, but the potential was there and I just believe that that is pure evidence that they had not controlled the situation properly. As Doug was talking about HSRs and that, HSRs would ring us and advise us as things went along, as they progressed, and they would always say to us that confidentiality is essential or we will be off there tomorrow. There was a real thing of fear on that project, and that was generated from Holland down through the contractors that were hiring labour hire and 457 visa workers who were not going to speak up. To us the whole job was planned that way to be able to have control of the job.

The CHAIR: We are running out of time but we have just got a couple of quick, final questions. You mentioned in regard to Mr Urban's question, that you were not having any luck with the Building Commission with regard to the firewalls. Did you relay your concerns to Strategic Projects or anyone else?

Mr D. HEATH: Not that I am aware of.

The CHAIR: One final question from me. Going back to the tier 1 projects that you mentioned before, on page 16 of your submission, you mentioned that the usual practice on tier 1 projects is for subcontractors to be vetted by both the principal contractor and the client, and you claim that this assessment did not occur on the Perth Children's Hospital project. For clarity, in your submission

are you claiming that neither John Holland or any party within government as their client, conducted such an assessment?

Mr D. HEATH: If it helps the committee, a good example of how there could not have been any rigorous assessment of subcontractors is the engagement of NRG Pty Ltd, which is a steel-fixing contractor that worked on that project. That company was GST registered in early 2012. It worked on the project in 2012. It had no track record of working on any projects of any significance in the industry. It is absolutely impossible that companies that were paying workers on enterprise agreements that paid less than the award rate of pay, would have passed any rigorous assessment by anybody, whether it be John Holland or Strategic Projects, because it would be impossible for them to pass those necessary tests—if they had those tests in place—to say that they had the industrial capacity to do the work. There was no assessment by the client or John Holland to see whether workers that were working on the project were properly qualified or if they had trade qualifications. When you have firewalls being constructed by a ceiling-fixing contractor that has outsourced their work to a labour hire firm, who then engages primarily backpackers, workers on holiday visas, to come in and do the work, you can see straightaway that there is no rigorous analysis of the subcontractor. There was no rigorous analysis in our view of the builder who was awarded the contract. The problems that we have with the hospital come right back to the procurement process where we engage a builder that has killed more construction workers than any other builder in this country to work on this project and a builder that has no relevant recent experience working on these types of jobs in Western Australia. Then, when the builder then says, “Well, I’ll just take the cheapest contractors and I don’t care whether they get paid less than the award rate. I don’t care whether they use labour hire. I don’t care whether they use non-trade qualified people”, we are inevitably going to end up with the sorts of problems that we ended up with at the hospital. I would say that if they had criteria in place to go off and do proper audits, and these should be audits that cover off all the work that these companies do, whether it be in the private sector or the public sector, but when they go and work on a major project, there should be that auditing process in place. I do not believe there was any auditing process undertaken of any note.

The CHAIR: Thank you. We have come to the end of our time. We do have some further questions, which we will put in a letter to you, plus we will confirm already the request that we made that you have agreed to comply with. Thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for corrections of minor errors. Please make these corrections and return the transcript within 10 working days of receipt. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be introduced by these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee’s consideration when you return your corrected transcript of evidence. Thank you once again for your time.

Hearing concluded at 10.28 am
