

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO WORKSAFE



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 4 SEPTEMBER 2017**

Members

**Hon Adele Farina (Chair)
Hon Jacqui Boydell (Deputy Chair)
Hon Ken Baston
Hon Kyle McGinn
Hon Darren West**

Hearing commenced at 10.12 am

Mr LEX McCULLOCH

WorkSafe WA Commissioner, Department of Mines, Industry Regulation and Safety, sworn and examined:

Mr BILL MITCHELL

Acting Director, Policy and Education, WorkSafe WA, Department of Mines, Industry Regulation and Safety, sworn and examined:

Ms SALLY NORTH

Acting Director, Service Industries and Specialist Directorate, WorkSafe WA, Department of Mines, Industry Regulation and Safety, sworn and examined:

The CHAIR: On behalf of the committee, I welcome you to the meeting. I would like to introduce myself. I am Adele Farina, the chair of the committee. To my right is Hon Jacqui Boydell, the deputy chair of the committee, and Hon Ken Baston. To my left is the committee's legal adviser; Hon Kyle McGinn, who is a member of the committee; and Hon Darren West, who is also a member of the committee. Before we begin, I must ask that you take either the oath or the affirmation.

[Witnesses took the affirmation.]

The CHAIR: You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The WITNESSES: Yes.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones and try to talk into them. Ensure that you do not cover the microphones with papers or make noise near them. I also remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of any uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Do you have any questions in relation to any of those matters that we have covered so far?

The WITNESSES: No.

The CHAIR: Would you like to make an opening statement to the committee?

Mr McCULLOCH: Just a short one, chair. My view is that WorkSafe fights above its weight. There are 225 000 registered businesses in Western Australia. I do not know how many workplaces there are because a number of those business have more than one workplace. There are about 1.35 million workers, 1.2 million of whom are in the purview of our act and what we administer and regulate. We are a small agency, with 132 staff and 93 inspectors. We get out there and work away.

The CHAIR: Would you be able to provide the committee with the name and position title of every person employed by the WorkSafe division of the department?

Mr McCULLOCH: Would you like a copy of that?

The CHAIR: Yes.

Mr McCULLOCH: We can do that.

The CHAIR: I assume you will need to take that on notice.

Mr McCULLOCH: Absolutely.

The CHAIR: We will mark that as question on notice 1.

Does your role as acting deputy director general, safety, of the department involve duties beyond the activities of WorkSafe, and would you please detail these?

Mr McCULLOCH: It is interesting. It has come about as a result of the machinery of government changes. The deputy director general position is not a real position. The new director general, Mr Smith, decided he wanted an interim structure and he wanted the deputy director general there. At the moment I am the WorkSafe WA Commissioner. I am also looking after the administration of WorkSafe. I also have the executive director and the staff in EnergySafety, the executive director, Resources Safety, and the staff in Resources Safety reporting to me. It is an interim arrangement. Mr Smith is working through a process whereby he will settle on his structure.

The CHAIR: I note that you are going on leave soon and that you will be away during a key part of the committee's deliberations. I expect that the committee is likely to require further hearings with WorkSafe. Can you please let me know who will be acting in your position while you are away so that we know who to contact?

Mr McCULLOCH: Mr Simon Ridge will be acting in the position.

The CHAIR: We are going to try to go through your submission systematically with questions. I ask you to bear with us. In your submission to the committee on the first term of reference, you provided a number of charts and statistics. I would like to ask you a few questions in relation to those. The first one is on page 5, which relates to lost time, injuries and diseases. How was this data obtained?

Mr McCULLOCH: This data is obtained through WorkCover, through the workers' compensation system.

The CHAIR: Are companies and businesses required to provide that information to WorkCover?

Mr McCULLOCH: Yes, they provide information to WorkCover. WorkCover does the analysis of the information and they provide that to WorkSafe.

[10.20 am]

The CHAIR: Is any sort of criteria applied to the type of injury that needs to be reported, or is any injury reported?

Ms NORTH: The types of injuries that will be reported to WorkCover are the sorts where there is a workers' compensation claim. If it is minor enough that there is not a workers' compensation claim, it would not end up with WorkCover and, conversely, where it is significant enough to need a claim, they will have that data and that is what they report on.

Hon KYLE McGINN: If the employee does not apply for WorkCover, is there any other way to keep a record of their injuries?

Ms NORTH: There is some information we will get where it has not gone to WorkCover and that is where a report is made directly to WorkSafe of particular types of work-related injuries or diseases. We have regulations that require the employer to report to us, and in most cases they would also be covered by workers' compensation. But there is some potential that a claim has not been lodged for whatever reason, yet we are still informed through that other mechanism.

The CHAIR: Is the data that has been provided in the chart at number 3 a combination of the two?

Ms NORTH: It is the WorkCover. The WorkCover is the more holistic and complete information, so that is what we use for the injury statistics.

The CHAIR: Does WorkSafe have any capacity to verify that data or do you just take it as given when it is provided by WorkCover?

Ms NORTH: Because an insurance claim is involved, there is some verification done through that agency because there needs to be an assurance that it is appropriate that a claim is paid or not. Some quality assurance is done through there so we do not do that separately.

The CHAIR: Is WorkSafe aware of the practice of some businesses to return people to work even if they are just sitting in a corner doing nothing, so not to record a lost time injury, and how do you deal with that?

Ms NORTH: We hear that this happens. From the workers' compensation point of view, that is administered by WorkCover so it is not necessarily our role to work out whether that is appropriate in that context. For the purposes of our legislation, there are certain things that are reportable, including some matters around lost time. But it does not prevent an employer returning someone to work at an early stage if they feel that is appropriate. If anyone feels that that is inappropriate or that has been done in a way that is misusing the situation, it is open for anybody to ring us and report a concern or a breach in another way. They can report that concern to us. But it is not something that we pursue as a separate issue, if you like.

The CHAIR: Is WorkSafe aware of companies and businesses that pay their OSH officers commissions if there are no lost time injuries reported?

Mr McCULLOCH: No.

Ms NORTH: No.

The CHAIR: Would such a practice be an offence under the act?

Mr McCULLOCH: I do not think it would be an offence under the act.

The CHAIR: I note that there is a decrease in the lost time injuries shown in the graph over time, and I have to raise my concern that I have had reports of practices by companies and businesses to deliberately misreport lost time injuries. I wonder what WorkSafe is doing to address that issue. Do you see it as a concern, and have you employed any practices to try to get to the bottom of that and see how prevalent it is in the industry?

Ms NORTH: I do not think we have targeted that, if you like, but the other thing I would say is that there is information that early return to work, where appropriate, is good for the employee. It assists their recovery from the injury, so there is some benefit in returning people early where appropriate and where certain tasks are within their work capacity. There can certainly be some significant benefits in doing so in the right way.

Hon KYLE McGINN: Are you are referring to returning to light duties?

Ms NORTH: Yes, that is right.

Hon KYLE McGINN: With the graph showing the reduction in LTIs, in conjunction with the inspectors from regional areas coming out, do you think that has affected the reporting of lost time injuries by not having inspectors in the region?

Ms NORTH: I would not think so because it is based on the workers' compensation system. I would not think our arrangements would have a significant impact.

The CHAIR: I might just turn to page 7, work-related trauma injury fatalities. How is this information obtained?

Mr McCULLOCH: It is collected by us, but it picks up fatalities in the WorkSafe jurisdiction. There is the Australian Transport Safety Bureau, mines and petroleum and the Australian Maritime Safety Authority. We try to collect it for completeness, in relation to work-related fatalities. We keep track of the workplace fatalities and we collect that data.

The CHAIR: But that would not include any fatality arising as a result of a road traffic accident, even if that person was engaged in work at the time of that fatality?

Mr McCULLOCH: No; that is correct. For us, there has to be a nexus with work. We have some road traffic accidents counted. I can think of one where a truck rolled, up near Moora. I think it was loaded with pigs or something, and we counted that one because there were issues with the maintenance and brakes of the truck. It was not just a road accident; there was actually something that had not been done properly by the employer or the owner of the vehicle. That may not have happened if the vehicle had been maintained properly. We do not count every person—there are people driving all over the place to work every day who have road accidents that are not actually related to the work that they are doing.

The CHAIR: For example, if a paramedic driving an ambulance was involved in a car accident and died while driving the ambulance, would that be counted?

Mr McCULLOCH: Probably not, unless there were fatigue issues or maintenance issues with the vehicle and that contributed to the fatality.

The CHAIR: How do you assess that? Is there an arrangement between the police and WorkSafe to report all road traffic accidents where there is a fatality, where they believe that that person was engaged in employment at the time of the accident?

Mr McCULLOCH: They do their assessment, they do their tests on the vehicles and they will say to us, "Hey, we think there's something here you need to have a look at." We have that relationship with the police. "There was something else other than just an accident that you should look at." That is how it happens.

The CHAIR: How do the police assess fatigue, if fatigue has played a factor?

Ms NORTH: If they have any concerns, if they believe it is a worker or a work activity and if they have any doubts, they will just report it to us for us to follow that up. If they are not sure, they will let us know about it and we can make some inquiries to determine whether it meets this nexus with work for the purposes of counting it here or not.

[10.30 am]

The CHAIR: I note that there are a number of fatalities that fall outside the scope of the data collection. One of those is occupational diseases. I am just wondering why they are excluded.

Ms NORTH: One of the difficulties is the workers' compensation system and whether or not those diseases are actually all compensated. There are a number of ways of trying to work out what diseases are occupational and the extent or the percentage of a type of disease that is work related.

The research on that has shown that you would not expect all of those to end up in the workers' compensation system—they do not. If you get a disease like lung cancer that is common in the community and a person gets that, it goes through the medical system. It may not be considered as to whether there were any work factors. Those doctors might not ask those questions, so it never comes up. That is, "Okay, that is a lung cancer case", whereas if further questions are asked and they find out about certain work exposures, they then might potentially draw that connection, but it is thought that, for a lot of them, that might happen and the connection might not be drawn, so the data is not thought to be as robust.

Hon DARREN WEST: If I could hop back half a step, you touched on the ambulance and health services. I wanted to explore a little bit more other emergency services; for instance, police do not have a workers' compensation scheme at this stage. Are injuries at work suffered by police officers not included in that data that we would be given because there is no workers' compensation system in place for them? Is that the case?

Ms NORTH: It might be. I think we might need to double-check that one.

Mr McCULLOCH: We will double-check that.

Hon DARREN WEST: Okay; and also fire and emergency services. I wonder whether injuries in that public service field or emergency service field are included in that data and how relevant they are to this inquiry.

The CHAIR: I will take that as question on notice 2.

I also note that self-inflicted injuries are excluded and I wonder why they are excluded from the data, particularly given that they could be work related.

Ms NORTH: If they are thought to be work related, we would make some inquiries on them. Occasionally, those matters are reported to us where there is a possibility of, again, a bit of a nexus with work. It does not mean that we would not consider looking at them, and sometimes we have made those kinds of inquiries where there is the possibility of it being work related. But in terms of why it is not one of our criteria, I am not actually sure.

Mr McCULLOCH: Are you talking about suicide?

The CHAIR: Yes.

Mr McCULLOCH: As Sally said, unless you can prove a nexus with the work, it does not get counted.

The CHAIR: But who is required to undertake that examination about whether there is a nexus with work and who do you rely on to alert you to the possibility of a nexus with work?

Ms NORTH: I am aware of some cases where the police have alerted us of their concern that there is that work relatedness.

Mr McCULLOCH: Yes. Again, it is the police predominantly.

The CHAIR: What level of proof is needed for you to establish the nexus? I take, for example, the report about a year ago into St John Ambulance and the suicides within St John Ambulance. The report that came out indicated that while there was a connection with bullying and the toxic nature at St John Ambulance, they also identified problems in the person's personal life. The fact that those problems in their personal life may very well have been connected to their work was discounted. It seems to me that if the bar is too high, there are a whole lot of people who are being excluded from these figures.

Ms NORTH: Yes, it is a complex thing. All the mental health space is multifactorial so there are issues that relate to a person's work and their home life et cetera. On a particular matter we may not be

able to know conclusively whether or not the work was a significant factor, but what we also do in terms of mental health is we also do some proactive work. We can do things like mental health risk assessments and an assessment of systems in place around mental health at workplaces. We can do those and see what the system is like and whether there are any compliance issues with those systems. Those are things that might not necessarily relate to a particular matter but they relate to how that organisation is handling the matter overall.

Hon JACQUI BOYDELL: Can I just ask a question on the proactive approach to mental health issues, particularly in relation to FIFO? Has WorkSafe conducted any proactive work with organisations who predominantly run FIFO camps and the impacts of mental health?

Ms NORTH: I do not know that it has been specific with that, and of course with the FIFO there is a large group of workers falling more in the resources safety jurisdiction than in the WorkSafe jurisdiction. Obviously, there are some that fall in the WorkSafe jurisdiction, but with the proactive work, we run a number of educational workshops about harmonious workplaces that explain systems that can be put in place to manage and prevent psychosocial hazards at workplaces. Those are open. We have run them quarterly over the last number of years and they are open to all sorts of stakeholders. There may well have been people from those groups who have attended those sessions.

Hon JACQUI BOYDELL: Could I ask you to provide us with a copy of who has attended?

The CHAIR: Can you just clarify the question?

Hon JACQUI BOYDELL: Sally was talking about sessions that have been conducted by WorkSafe in the mental health space. Could we have a list of organisations who have attended?

The CHAIR: I will take that as question on notice 3.

Hon KYLE McGINN: Can I add to that the locations they were held?

The CHAIR: Okay. Would you be able to provide the locations and who attended? Do you want the nature of the course?

Hon JACQUI BOYDELL: Is it one type of information seminar you hold?

Ms NORTH: It is kind of a workshop. It runs for a few hours. I think there would be materials around that that we could provide as well, if that is what you are after.

Hon JACQUI BOYDELL: Thank you.

The CHAIR: Let me get clear: in the case of a road traffic accident where someone dies and that has taken place as part of their work—so, they are a police officer, an ambulance driver or even just a truck driver—WorkSafe is notified that there is a possible connection and WorkSafe will then undertake an investigation.

Ms NORTH: It is kind of like we make some inquiries to determine whether we need to do an investigation. We make some initial inquiries around the kinds of issues that we spoke about in terms of the vehicle maintenance and the hours that had been worked as to whether there was any fatigue likelihood. Whether or not we progress that will depend on how it is looking at that point.

Hon KYLE McGINN: I have a question for clarification. In the transport industry, if a truck driver, for example, who is going from a workplace to another workplace, obviously on roads, were to have an accident on the road on the way to the other workplace, is that deemed work related?

Ms NORTH: Again, it will depend on those factors. If there are not work-related specific factors, it does not fall into this —

Hon KYLE McGINN: If it happened inside the gate of the workplace prior to leaving —

Ms NORTH: Yes, then it is not a road traffic accident. It is an accident at a workplace, so we would pick it up.

Hon KYLE McGINN: As soon as they exit the workplace, it is different criteria?

Ms NORTH: Yes.

Mr McCULLOCH: Yes.

The CHAIR: In your submission you also indicate that some compensated deaths are not included in the data due to different data collection methods between WorkCover and WorkSafe. Could you please expand on that and explain what those different collection methods are and how that might be giving us distorted figures? This is on page 7.

Mr McCULLOCH: We will get some information for you on that, Chair.

The CHAIR: We will take that as question on notice 4.

Can I just go back to chart 4 on page 6 of your submission, which compares the frequency rates of lost-time injuries and diseases per million hours worked and concludes that the rate has been decreasing since 2006? The committee is concerned that there may be other reasons for the falling frequency rate; that is, the millions of hours worked have increased at a far higher rate, therefore resulting in what appears to be a lower rate of injury and disease. I would like you to comment on that initially and then just to indicate was any allowance made for the increase in hours worked to explain the falling frequency rate.

[10.40 am]

Ms NORTH: I suppose, this table, when it looks at per million hours—every hour that a person works arguably has some risk of injury, so when you do increase the working hours of the state, if the risk has not changed you would expect more hours and you would actually get more injuries if the risk rate has stayed the same. We do not feel that it needs adjustment, because of the way this table is done. It is per hour worked, and that is—I think you can compare year on year on that basis, so I think when it does come down, it does show that the risk of injury per hour has also come down, which is a valid comparison.

The CHAIR: I might just now turn to page 8 of your submission. It indicates that in 2014–15 and 2015–16 there were 22 work-related traumatic injury fatalities in each year. Are you able to provide the committee with a breakdown of the nature of those fatalities for each of the financial years?

Mr McCULLOCH: Yes.

The CHAIR: We will take that as question on notice 5.

I also note that the data relates to confirmed work-related traumatic injury fatalities notified to WorkSafe. What criteria needs to be satisfied for a work-related traumatic injury fatality to be confirmed?

Ms NORTH: I suppose, again, initial inquiries are made to confirm that it is work related, and that it is something in our jurisdiction and not in another jurisdiction and that it was indeed a fatality, because occasionally you get early information that is incorrect.

The CHAIR: Okay, so it could be possible that the information provided for 2016–17 is understated because fatalities that occurred are yet to be confirmed?

Mr McCULLOCH: No, I think that is the final figure for that year.

Ms NORTH: Occasionally we have had to update that number where we have had an accident—for example, a serious burn injury—and there has been some delay and it has turned into a fatality, but at this stage I am thinking that that is the number.

Mr McCULLOCH: That is the number, yes.

The CHAIR: Okay, so how is a fatality a confirmed work-related fatality?

Ms NORTH: If it meets these criteria; so it is a traumatic injury fatality in our jurisdiction.

The CHAIR: I note that there are significant fluctuations in these figures from year to year. Do you have any comment or explanation or reason for those fluctuations?

Ms NORTH: Statistically, I think small numbers do have more variability in them, and we are looking at fairly small numbers, so I think that is one factor.

The CHAIR: Do you think that is probably the only factor?

Mr McCULLOCH: It is very hard to say, chair. A number of years ago, there was a year when it was nine, and then it went up again, and last year it came down to 11. It is a bit difficult to look for a pattern in relation to some of those, but falls from heights are an issue, and being hit by moving plant is another issue that seems to be consistent across a number of industries, not just a particular industry. It is those types of things that lead to it.

The CHAIR: Do members have any questions on pages 9 and 10?

My next questions relate to investigations, and starts at page 11. The reference to 5.6—is that correct, because when I had a look at 5.6 in my file, there was no information about WISE provided. Can we just take that as question on notice 6 just to confirm that we have actually been provided with additional information on WISE?

Mr MITCHELL: On page 52, it talks about WISE—WorkSafe WA Information Systems Environment—at 5.6.

The CHAIR: Thank you very much.

This section talks about proactive and reactive investigations, and I was just wondering whether you would be able to provide, for each of the last five financial years, details of the industry project proactive investigations that have been undertaken by WorkSafe, identifying the industry, the purpose of the investigation or the category and the number of investigations undertaken over each of those industries or categories, so that we get a better understanding of the nature of the proactive investigations.

Mr McCULLOCH: Just so that I am clear, you want the industry projects that we have undertaken and how many investigations we have taken in those projects.

The CHAIR: Yes. That will be question on notice 7.

Mr MITCHELL: Can I just say, that that is voluminous. We have just done an answer to a parliamentary question, I think, for the last year, and that took a considerable amount of time, so to do it for five years would be quite demanding.

The CHAIR: Okay, but I would have thought that you would be keeping a record of this in your normal course of business, because you would need to identify what sort of industry projects need to be undertaken and you would need to do some evaluation to ascertain that, so you should be able to access that information reasonably easily.

Mr MITCHELL: The particular format has been a problem, getting it into those forms, so we can do it, but it will take some time.

Hon KYLE McGINN: I was just going to ask, as we are talking about proactive and reactive inspections —

The CHAIR: Is it on this point?

Hon KYLE McGINN: Mine is relevant to this point.

Hon DARREN WEST: I was just wondering if it is possible to get that information in an easier format. You mentioned the format might have been the issue.

The CHAIR: I think the issue is the number of investigations undertaken per industry project. Is that what the concern is?

Mr MITCHELL: Preparing it in a particular form—it does not necessarily come in that form. Over five years we would have to go back through various teams in terms of the reports. Sometimes they are not in the perfect format. They would be scattered across a number of different files and years, of course, and there is different reporting through each of the branches as well. As a result of their particular parliamentary question, we found a number of issues, if you like, in terms of the reporting that they are not quite as neat as you would expect.

The CHAIR: How do you then undertake an evaluation of whether the industry project proactive investigations were actually useful and delivered the intended result if you cannot easily identify which investigation is linked to a particular industry project?

Ms NORTH: What we do at the end of an industry project is do a project report, and that talks about the reasons it was done, the number of visits, the types of enforcement outcomes and the recommendations arising from that, and usually that also goes to WorkSafe's executive management committee for review and to see if there is agreement with the recommendations arising from that. Those are stored on our document management system, and usually there is a project file, so that is what we mean in terms of the collecting of the data in that way. The other form that we have the data in is through our own WISE software, our operational software, and so we basically try to make sure we have double-checked everything to crosscheck it against that to provide you with the information.

The CHAIR: Okay, so can I make it a little bit easier for you by modifying that question and asking for the reports that are completed at the end of each project for the projects undertaken in the last five financial years, and to provide it on a financial year basis?

Mr McCULLOCH: That will be easier.

The CHAIR: Thank you.

I note that your submission states that in the five-year period between 2007–08 and 2011–12 there was an average of 9 444 investigations carried out per year, and for the five-year period 2012–13 to 2016–17, there was an average of 8 306 investigations carried out per year, which indicates a significant decrease. What is the reason for the decrease?

[10.50 am]

Mr McCULLOCH: We actually tried to improve the quality of the inspections so we developed a document or a focus for inspectors about what we wanted them to do when they went to the workplace. The numbers have come down a bit but the number of notices being issued at the workplaces and the number of us looking at what we call priority inspection reports—there are eight or so things that we have a look at particularly, because falls from heights, electricity, plant movement are the things that tend to hurt and kill people at a workplace; we focus on those. We might have dropped the number of workplace visits a bit but the number of notices and the number of priority inspection reports has gone up in that period.

The CHAIR: I note that your submission states that the number of reactive investigations in 2007–08 was 5 430 compared to 3 007 in 2016–17. Again, that is a significant decrease. Can you put on the record your reasons for that decrease?

Ms NORTH: All the reactive work is assessed by the team manager as it comes in. Reactive work includes reported injuries and, basically, complaints about workplace safety and health. All those matters are considered individually by the team manager, and they need to make a decision about whether or not each one is investigated. There is a number of reasons that we have where we might decide that it does not need to be investigated. For example, there is jurisdictional issues, issues in terms of how serious it is, whether or not it has already been investigated or there has already been enforcement action taken, or we might refer the caller to use the consultative mechanisms at the workplace, like raise it with the safety committee safety and health rep. They are done on an individual basis. At the end of the day, though, the team manager also has to look at other priorities that are on hand. If the team is extremely busy with other matters, then it does increase the likelihood that that one might not get investigated, when in quieter times it might. Those are the decision-making elements around that.

The CHAIR: Would you be able to provide to the committee the number of complaints received in each 2007–08 and 2016–17 so that we can compare the complaints against the number of investigations undertaken? We will take that as question on notice 8.

Hon KYLE McGINN: You said there is a team that assesses whether they are reactive or not. Has that team reduced since 2007?

Ms NORTH: It is not a team; it is the team manager. The reactive work will go to an industry team. Let us say it is complete in relation to the manufacturing industry. It will go to the team that covers that industry, and that team manager makes the decision. It is individual team managers and we have not had any loss of those recently.

Hon KYLE McGINN: How do the WorkSafe inspectors determine what sites to inspect when they do the proactive inspections?

Ms NORTH: This is a business planning process. In the business plan, each team determines the types of proactive projects that the team is going to do. Within their proactive projects, they might be done by industry or by hazard, so that plan about how they are going to locate those ones for that project is part of that business planning process. In addition, the team makes estimates about reactive work and, obviously, those are as they come. It does depend a little bit with the proactive work. You might be looking at shopping centres and they will choose a range of shopping centres across the state, for example.

Hon DARREN WEST: Chair, just on that, if I may.

The CHAIR: Yes.

Hon DARREN WEST: Do the inspectors make any allowances for whether sites are unionised or not? Unionised sites have union safety inspectors as a rule and non-union sites obviously do not.

Ms NORTH: Not to my knowledge.

Mr McCULLOCH: No.

Hon DARREN WEST: They are all treated equally.

Mr McCULLOCH: Yes.

Hon DARREN WEST: Thank you.

Hon KYLE McGINN: I am just curious—is there a quota for the WorkSafe inspectors on proactive and reactive inspections?

Ms NORTH: The team aims to meet its business plan. Its business plan will put down how many it is expecting to do of each, and each team member contributes to that. There are numbers that come out of that at the end of the day.

The CHAIR: Are both proactive and reactive investigations recorded in WISE?

Ms NORTH: Yes.

The CHAIR: Does that mean that every single one is recorded in WISE?

Ms NORTH: That is the idea, yes. I hope they are.

The CHAIR: Are all complaints entered into WISE?

Ms NORTH: Yes.

The CHAIR: Are you able to provide the committee, for each of the last 10 financial years, the number of complaints received and entered into WISE and the number of complaints received and entered into WISE that were not investigated?

Ms NORTH: The numbers?

The CHAIR: Yes. That will be question on notice 9.

In relation to chart 8, the WorkSafe submission provides data on the number of reactive and proactive completed investigations and inspections but does not provide data on the number of active or incomplete investigations and inspections. Would WorkSafe be able to provide the committee with the raw data for the number of investigations not completed for the period from 2007–08 to 2016–17 and the number of currently active investigations as at 21 August, 2017.

Ms NORTH: Can you just explain it to me one more time? What we do have is that at any one point we have ones that are in progress and they are at a point in time. Do you want the ones that are currently in progress?

The CHAIR: As I understand it, the chart just deals with completed investigations, so you are only going to be able to provide the ones that are in progress for the current year.

Ms NORTH: Yes, exactly.

The CHAIR: That is right.

Ms NORTH: Is that what you are after? We can give you all the ones that are in progress at this time.

The CHAIR: I think I might retract that question, because the last information you have provided us is for 2016–17. There would be no incomplete investigations from that year?

Ms NORTH: I am not sure; there might be. Some things do take a while.

The CHAIR: Can you provide us the incomplete investigations where the incident occurred in each of those years as far back as you need to?

Mr McCULLOCH: Until we get to zero.

Ms NORTH: Yes; sure.

The CHAIR: Hopefully, it will not go further back than a couple of years.

Mr McCULLOCH: If that, hopefully.

Mr MITCHELL: What might complicate that would be whether or not we are prosecuting. Some of the investigations will be part of a prosecution process. There might well be some that are up to three years old.

Mr McCULLOCH: But we can highlight them.

Mr MITCHELL: We can highlight them.

The CHAIR: If an investigation is part of an prosecution process, is that classified as incomplete even though the investigation has been completed?

Ms NORTH: It may be complete from an operational point of view and it may be completed on the system, but it may be undergoing a legal review. We would still consider it to be in progress from a legal perspective.

Mr McCULLOCH: If there have been charges and they have been laid, then, from our perspective, the investigation is complete, and that is probably how we should count it, because we cannot control the legal. If we have done our bit and our lawyers said, "Yes, we'll charge", then I think we should chop it then and not run it on.

The CHAIR: Has that assessment been made in the chart that has been provided to us in chart 8?

Ms NORTH: That is the operational side. When the inspector has finished their part of it—this is based on our WISE database, and the inspector will complete it on WISE when they have done all the activities that they need to do. It might still be subject to legal review, so WorkSafe as a whole might still be doing some work on it, but the operational work on it is complete at that point and then it is picked up in this chart.

The CHAIR: Okay. Whether it is subject to a prosecution or not does not influence the result on this chart?

Ms NORTH: That is right. This is when the inspector has finished.

Mr McCULLOCH: Yes, that is right.

The CHAIR: Are there any other questions in relation to pages 11 and 12?

On page 13, your submission states that the number of workplace visits has decreased from 12 173 visits in 2007–08 to 7 536 visits in 2016–17, which you state is in line with the decrease in the number of investigations over the same 10-year period. My question arising from that is: why has the number of investigations decreased so significantly and why has the number of workplace visits decreased so significantly over that period of time?

[11.00 am]

Ms NORTH: Yes, it is similar to what Lex was mentioning before about the quality that is being implemented—the quality system. So we have asked inspectors to always look at certain things at workplaces, so we have increasing attention to the priority areas. We have also had an increase in the notices issued, which is probably in relation to that as well. And the other thing that has happened over time is that the extent of evidence required for some of our legal matters has increased, so the actual volume of evidence required has got larger and we have needed to spend a little bit more time on matters where we are considering prosecution in ensuring that we have the right degree of evidence, and the advice has been we have had to increase that over the years. So that is another factor.

The CHAIR: I suppose I am a bit startled by these figures which indicate an almost 50 per cent reduction in investigations. I think that even if you put the argument of having a greater weight to the quality of the investigations, I still am concerned about the almost 50 per cent reduction because

I would not have thought that either the investigations that were carried out before were extremely—or I do not think the argument of quality or improved investigations can account for that complete reduction—which is quite significant in that 10-year period.

Ms NORTH: And I do think that the prosecution element has been important in some teams. Some teams have had to devote significant resources to collecting evidence, and we have recently implemented some operational restructuring to try to streamline that evidence-gathering process and do that in a more timely way to free up the resources to do this work as well at a better rate. So we are aware that that is pretty resource-intensive and we are trying to streamline it a bit.

The CHAIR: In view of these figures, would it be fair to say that WorkSafe is struggling to meet the objects of the Occupational Safety and Health Act?

Ms NORTH: I would not say that, no. As Lex said at the beginning, I think we are actually doing a reasonable job and I think the outcomes that you see in this reflect that.

The CHAIR: I do not know that those figures that I have just read out reflect that at all. Would you say that it would be fair to say that WorkSafe is doing a better job of meeting the objects of the act in 2007–08 as compared with 2016–17, based on those figures?

Ms NORTH: I think the other thing it is important to remember in terms of the objects of the act is that we have a lot of stakeholders in our jurisdiction. A large majority of them do not see us in person. They are people that we get in touch with through education and communication and information. That is where we actually get in touch with most of our stakeholders. A lot of the improvements that happen in workplaces are through employers and safety and health reps and people at workplaces finding out what those duties are. They get information through our call centre, we get thousands of emails and calls every year, people finding out what they need to do and people implementing that at workplaces. So voluntary compliance is a huge part of what we do, and we are doing, I think, quite well in that space. For those that we do need to see, we have the program here of proactive and reactive work, and we target the proactive work to the industries that are having more issues so that we get value for money out of the inspections that we do.

The CHAIR: Okay. So you would agree that proactive and reactive investigations are a critical component of protecting workers against workplace hazards and in promoting the safety and health of people at work?

Ms NORTH: Yes.

The CHAIR: Yet nevertheless in a 10-year period they have reduced by almost half. Any questions by any other members? Okay. I might just turn now to page 15—prohibition notices. The submission shows that there has been a significant decrease in the number of prohibition notices issued from 676 in 2007–08, to 278 in 2016–17. Two suggested explanations are provided. Would you agree that the decrease in prohibition notices could relate to the decrease in investigations and workplace visits?

Ms NORTH: Yes, it could.

Mr McCULLOCH: Yes, it could.

The CHAIR: On page 16, regional investigations: the submission states that in addition to regional investigations conducted by inspectors based in regional offices in Bunbury, Geraldton and Albany, there are also planned and unplanned regional visits conducted by inspectors based in Perth. Would you be able to provide the committee for each of the last 10 financial years a breakdown of the number of regional investigations conducted by inspectors based in the metropolitan office,

indicating the number of planned visits per regional town and the number of unplanned visits per regional town by those metropolitan-based officers?

Ms NORTH: Just to clarify again, so we are after the plan as to what we wanted to do or the outcomes of what we did do, or both?

The CHAIR: This section refers to both planned and unplanned visits and there has been a reduction in regional inspectors. The submission indicates that a number of regional inspections are undertaken by metropolitan-based inspectors, so what I would really like to know is for each of the last 10 financial years—just looking at the metropolitan-based inspectors—how many planned visits did they undertake to regional towns, and if you can indicate which regional town, and how many unplanned visits they undertook, and if you can indicate the regional town. I am just trying to understand just how much of that work may have been transferred to the metropolitan-based inspectors as a result of the closure and cut in staff—reduced numbers of inspectors in regional areas.

Ms NORTH: I hope we can get that out, but it is not a standard search that our system provides. So we will have to have a look.

Mr MITCHELL: By town? The inspectors do not go to one town, they will go to a variety of places throughout the state on a drive. They might go through, obviously, Geraldton, the midwest, the south west; there will be any number of different locations. We can certainly provide the numbers of inspections that are done by regional inspectors. I am not sure about the ones in Perth that have gone to the regions. I do not know that we can do that.

Ms NORTH: We will see what we can do.

Mr MITCHELL: We will see what we can do.

The CHAIR: I will take that as question on notice 11.

The submission states that where a regional visit is not planned and the complainant consents, the inspector contacts the employer and discusses the issue with the employer. Are you able to provide us with statistics as to how frequently that has occurred for each of the last 10 financial years? Because that is potentially concerning because we are actually reducing the number of visits in regional areas, and I would like to get an understanding of the extent of that impact. So clearly if in a number of cases a decision is being made not to investigate and simply to conduct a discussion on the phone, is that recorded and are we able to get those stats?

Ms NORTH: It is recorded, but whether or not we can extract that I am not sure because it is on there along with the other thousands per that year, and it does not have any flag to say that this was a phone-only or anything like that. It is just another one of those ones, and I do not think we have a search capacity that would necessarily pull that out.

The CHAIR: Okay. Can we take that as question on notice 12, and you can get back to us and let us if you are able that information or not.

Mr McCULLOCH: We will see.

Ms NORTH: We can see.

Hon KYLE McGINN: Just a question in regards to the prohibition notices —

The CHAIR: Yes, that is fine.

Hon KYLE McGINN: So if I could go back a little bit. Obviously there is a big drop-off there, and we were just talking about inspectors being pulled out of the regions. Is it possible to get the data probably over the last five years on the PIN notices that have been issued in regional areas?

Ms NORTH: Okay, so how many in regional areas?

Mr MITCHELL: Provisional improvement notices, we are not advised of all those. Those are dealt with at the workplace. If there is a disagreement about the PIN, then it will come to WorkSafe.

Ms NORTH: I think this is the prohibitions.

Hon KYLE McGINN: Sorry, prohibitions.

Mr McCULLOCH: Yes, prohibitions.

The CHAIR: So just to be clear, the question on notice 12 is a request for—Kyle, can you just run through that?

Hon KYLE McGINN: For the figures on regional prohibition notices.

Mr McCULLOCH: Prohibition notices for five years.

Hon KYLE McGINN: When were they removed from regional areas, the inspectors?

[11.10 am]

Ms NORTH: We still have regional inspectors in Bunbury, Albany and Geraldton.

Mr MITCHELL: Karratha and Broome were removed in about 2015.

Hon KYLE McGINN: The notices have gone from 427 down to 278.

The CHAIR: Can the member please speak into the microphone and speak clearly and enunciate exactly what he is asking. Is the member asking for the last five financial years?

Hon KYLE McGINN: Yes.

The CHAIR: That was question on notice 13—sorry; I misquoted that earlier. That is for prohibition notices?

Hon KYLE McGINN: Yes.

The CHAIR: Just going back to regional visits, the submission states that where a complaint has been received and there is not a visit to that workplace and that inquiry is undertaken by a telephone conversation with the employer, the workplace may be visited on the next planned visit to the area. Again, I am surprised to see the word “may” in the submission rather than “is” or “must be” visited. Is there some reason why that would not be followed up with a visit to ensure that whatever the nature of the complaint was has been corrected?

Ms NORTH: It has largely been to do with the next visit and what the priorities were for that visit. If urgent matters were occurring, that might potentially take precedence. Also, sometimes a matter is resolved and the complainant advises us that it has been resolved. So sometimes we have information to suggest this is a lower priority, in other words, that might have arisen in the region.

The CHAIR: The submission goes on to state that if the complainant does not consent, the status of the request to visit is changed to “not to be investigated” with the reason of “remote locality”. That concerns me, because there could be some very legitimate reasons why the complainant does not want to give consent for the matter to be conducted by way of telephone conversation because they might think that that is inadequate, and also they might be concerned that that would identify the complainant. Yet WorkSafe’s response is to simply mark that complaint as “not to be investigated” with the reason of “remote locality” rather than undertaking some further assessment as to whether a visit does need to be scheduled to deal with the issue.

Ms NORTH: It is very difficult to make a further assessment if we cannot contact the workplace. We are not resourced to go to all of these places on an ad hoc basis. We are resourced only to do a

certain amount in terms of our budget. That is why we have done it in a planned time frame, so at the next planned visit for that region, it can be considered then. If it is alarming, the team manager who is making these decisions can consider if there is any other option or if there is any other way to verify that. For example, for some matters, the local government organisation might be able to give us some assistance if it is an area where they might have some capacity to do that. So, we do it where we can, but we are not able to just go everywhere and check everything with the budget that we have.

The CHAIR: I take it that that means that the number of visits in the Pilbara and Kimberley areas has been significantly reduced as a result of those offices being closed?

Ms NORTH: I do not think I have got data in front of me specific to these regions but we are certainly still proactively visiting these regions.

Hon JACQUI BOYDELL: I want to elaborate. The submission states that where WorkSafe might have an obvious requirement to react to a complaint but you have not been able to get hold of the complainant or they have not given consent, can you clarify whether it is the team manager who makes the call about whether WorkSafe will do any further investigative follow-up? At what level is a concern or a red flag raised to say our duty of care states that we need to further investigate whether we can get hold of the complainant or not?

Ms NORTH: Is this on a regional basis?

Hon JACQUI BOYDELL: Yes.

Ms NORTH: So the complainant has not given their contact details?

Hon JACQUI BOYDELL: Yes.

Ms NORTH: It makes it harder for us to verify and feel that we have quality information when a person does not leave any contact details. It does make it harder.

Hon JACQUI BOYDELL: What about in a case where they have not given consent but the issues that have been raised are serious enough for WorkSafe to consider further investigation? One, who makes that call, and, two, what is the follow-up practice that would be carried out?

Ms NORTH: That would be the team manager who makes the decision. As I said, if it does sound serious, they will explore if there are any other resources in the area that could assist. They will look up when the next visit is due to the area, how far away that is, whether it is appropriate to do it at that time—that kind of thing.

Hon JACQUI BOYDELL: So the procedure that the team manager would follow if there is a level of concern would be to flag considerable concern, I guess, by Worksafe?

Ms NORTH: That is the practice, yes.

The CHAIR: It seems to me that there could be quite a significant gap between the time that a complaint is received, which could be of a very serious nature, but because the complainant does not give consent because they may be concerned that they would be identified, and the time of the next planned visit to that particularly location—there could be a significant passage of time between those events—and during that time workers are placed at risk because that activity could continue to occur. It seems to me that this policy and practice of WorkSafe is actually indicating that the safety and health of workers in remote WA is less important than the safety and health of workers in the metropolitan area. Would you agree with that?

Mr McCULLOCH: I guess the reality for us is that we have the resources that we have in the places that we have them. If we were really concerned, we would get someone to have a look at it and get

someone out for that. But we need to be selective around that—I guess we will get to our resources in a little while in the next session—but we have what we have. We are not the only ones who provide services to regional Western Australia. We are not everywhere, but we are not the only ones who provide services in regional Western Australia from the metropolitan area.

The CHAIR: Yes, but you are the only ones who provide WorkSafe services to regional WA.

Mr McCULLOCH: In general industry, yes. In the mining industry, Resources Safety provides that. They have inspectors in Kalgoorlie —

The CHAIR: Let us just deal with within your jurisdiction.

Mr McCULLOCH: Okay. In our jurisdiction, yes, that is right.

The CHAIR: Do you have a set of criteria or guidelines for those team managers, I think you referred to them as, so that we can have some assurance that they are making an assessment about the seriousness of the complaint, and if it hits a certain point, an investigation will be undertaken regardless of whether a visit is planned or not?

Ms NORTH: We do have some criteria about the seriousness of the information and we do have a response guideline depending on that rating, which we can provide to you.

The CHAIR: We will take that as question on notice 14. Do members have any further questions on this?

Hon KYLE McGINN: I notice the comments in regard to the resourcing of regional offices. How was the decision made, for example, that Geraldton still has an inspector but Karratha and Broome have not continued on with an inspector? How was that decision made? Were there any criteria as to why the Pilbara and the Kimberley do not have an inspector over Geraldton?

Mr McCULLOCH: From memory, it was because we can get people quite easily to the Pilbara on the planes to Newman and Karratha. But a big one for us was the cost of housing in Karratha and Broome.

The CHAIR: When were the inspectors removed from Broome and Karratha?

Mr McCULLOCH: I think it was 2015, or it might have been late 2014.

The CHAIR: That will be question on notice 15 and you can come back to us with the exact date when they were removed.

How many inspectors by head count and FTE were located at each of Broome and Karratha before they were removed?

Ms NORTH: One and one.

Mr McCULLOCH: One and two.

The CHAIR: So one at Broome and two at Karratha?

Mr McCULLOCH: Yes.

The CHAIR: By FTE?

Mr McCULLOCH: Yes.

[11.20 am]

Hon KYLE McGINN: Can you also show the increase in visits on proactive investigations once they were removed?

Mr McCULLOCH: Yes, we should be able to provide —

Hon KYLE McGINN: You were saying it is easier to fly in, so I am curious as to how that increased.

Mr McCULLOCH: We should be able to provide our level of activity in the Pilbara and Kimberley, prior and post.

The CHAIR: In terms of prior, how far back do you want to go—how many years?

Hon KYLE McGINN: I would say that most of the data goes back to 2006–07.

The CHAIR: Are you able to go back for the period 2006–07 to the date that they were removed, what was the activity, and post that?

Mr McCULLOCH: Yes.

Hon JACQUI BOYDELL: When the decision was made to close the office in Broome and Karratha because of the prohibitive cost of housing, particularly, as you said at that time, does that mean that WorkSafe determined to go to a more FIFO model of service delivery to the Pilbara and the Kimberley? So was your intent to still service those areas because you could still access them via easy air routes?

Mr McCULLOCH: Yes.

Hon JACQUI BOYDELL: With that in mind, the service delivery on the ground actually should still be fairly significant?

Mr McCULLOCH: I guess that was the question—and we will provide that data, because I think that is what the honourable member is trying to get at. My understanding is that we still get up there and get through those regions.

The CHAIR: Are you able to indicate the geographical area covered by each of the Broome and Karratha offices when they were in existence? Did they cover designed geographical areas?

Mr McCULLOCH: Yes. Broome did the whole the Kimberley and Karratha did the whole of the Pilbara, so it went out to Newman and Hedland.

The CHAIR: I think you may have already covered this, but just to go through it again, was the reason for removing the inspectors in Broome and Karratha just a financial cost-cutting decision?

Mr McCULLOCH: Yes. It was at a time when we were going to get significant cuts; yes.

The CHAIR: So the reason Broome and Karratha were selected is because of the commercial flights to those two locations

Mr McCULLOCH: Yes; we could get to them.

The CHAIR: So why Broome and Karratha and not Albany, because there are commercial flights to Albany?

Ms NORTH: I think the other factor was that we were paying for housing in those other locations—there was more expensive housing at that time—so it was a bigger saving.

Mr McCULLOCH: We do not pay for housing in Albany.

The CHAIR: Are you able to provide the committee with a breakdown of the number of work-related injuries and fatalities that occurred in regional WA between the period 2007–08 to 2016–17? In doing that, can you advise the committee how “regional area” is defined by WorkSafe? How many work-related injuries or fatalities occurred per 1 000 workers in regional areas over that period?

Mr MITCHELL: It would be in the WorkCover data.

Mr McCULLOCH: Yes, we should be able to do that.

The CHAIR: That will be question on notice 17.

Chart 16 shows a significant decrease in the number of completed total regional investigations, from 2 790 in 2007–08 to 1 949 in 2016–17, with decreases in both proactive and reactive investigations over that period. Would you be able to provide for each of the last 10 financial years a breakdown of the completed regional investigations, the proactive regional investigations, and the reactive regional investigations conducted by each regional office, and, separately, the metropolitan-based inspectors?

Mr MITCHELL: It is the same as in the answer earlier. I am not sure we are going to be able to give the metropolitan officers going into the regions. We will have to have a look at that.

The CHAIR: That will be question on notice 18.

Are you able to advise the committee of the number of inspectors at each of the existing regional offices by headcount and FTE?

Mr McCULLOCH: Albany has one, Geraldton has one, and Bunbury has seven.

The CHAIR: At page 18, I note the submission indicates that there has been a significant decrease in the number of prohibition notices issued in regional WA from 227 in 2006–07 to 66 in 2016–17. In view of the explanation for the decrease of regional inspections and prohibition notices being the closure of the Broome and Karratha offices, would it be reasonable to conclude that this decision should be reversed?

Mr McCULLOCH: Sorry—to reopen them?

The CHAIR: Yes.

Mr McCULLOCH: If we had the resources, we would reopen them.

The CHAIR: The submission states that the investigation of serious and fatal incidents has become more complex and time consuming, suggesting that this may explain the decrease in investigations completed. However, it also states that experts are often needed and if the use of experts has become more frequent, surely this would free up the time of WorkSafe inspectors and therefore enable them to undertake more inspections?

Ms NORTH: I think, to clarify, the role of the expert there is generally to assist the court at the end of the process. The inspectors are still expected to obtain all the evidence to put together a prima facie case, and that is often against multiple duty-holders—and that is what has increased quite a lot. We still need to do all of that. We also need to source the expert—find the appropriate expert—and inspectors may need to assist with finding an appropriate one. But, then, that person has a role more at the end of the process in the court, so they are not really assisting or reducing the time required to present a prima facie case.

The CHAIR: The last paragraph on page 19 contain a number of interesting statements. It says that since 2013 the number of priority inspection reports per investigation has increased. Can you provide to the committee the number of priority inspection reports completed in each of the years 2013, 2014, 2015, 2016 and 2017? That is at page 19. The last paragraph refers to the number of priority inspection reports per investigation having increased, but we are not actually provided with a breakdown of that data. What I am simply asking for is that the commission provide —

Ms NORTH: I think chart 11 has the priority inspection reports there—on page 14.

The CHAIR: Which chart?

Mr McCULLOCH: Chart 11.

The CHAIR: Is that provided per investigation?

Mr McCULLOCH: Yes. So it was 1.3 per investigation in 2007–08 and it was 2.5 in 2016–17.

The CHAIR: Am I looking at a different table?

Mr McCULLOCH: The paragraph just above the chart has that number. I think that is what you are asking for, Chair.

The CHAIR: But there is been a decrease between 2015–16 and 2016–17?

Mr McCULLOCH: Yes.

The CHAIR: So the general statement is that since 2013 there has been an increase?

Ms NORTH: Yes.

[11.30 am]

Hon KYLE McGINN: Does that statement “more targeted with increased enforcement activity” mean there has been an increase in prosecutions on the sites? Is that what you are saying?

Ms NORTH: We will probably come to the prosecution data shortly. That does vary quite a lot year to year.

Hon KYLE McGINN: But is that what that statement is saying?

Mr McCULLOCH: What I think it means, member, is more notices have been issued when we visit.

Hon KYLE McGINN: So it is not necessarily prosecutions but more notices?

Mr McCULLOCH: Yes. Enforcement can be notices and prosecutions.

The CHAIR: But notices have been dealt with in the first sentence of that paragraph.

Mr McCULLOCH: Sorry, which paragraph please?

The CHAIR: We are looking at the last paragraph on page 19 —

Since 2013, the number of Priority Inspection Reports per investigation has increased and so have the number of improvement notices issued per investigation.

That does away with improvement notices —

In addition, proactive industry projects in a variety of industries have been more targeted with increased enforcement activity and the development of Industry Checklists and OSH newsletters.

The question that the honourable member just put is that, clearly, this statement is saying there has been an increase in enforcement activity.

Ms NORTH: So the first part of the paragraph is general; it is across all of our investigations whether proactive or reactive. The comments there are that priority inspection reports and notices relate to all investigations. The second sentence relates just to the proactive work so that we are targeting the proactive work, effectively, to areas that can benefit from our intervention and notices, again, have been issued in relation to the proactive area specifically.

The CHAIR: Can you provide the committee with figures since 2013 of the number of improvement notices that have been issued for each of the subsequent years to the current year, because it makes the statement “since 2013”? Can you also provide, for each financial year since 2013, the number of enforcement activities that have been undertaken in each of those years so that we can get an understanding of what those figures actually are because these are general statements?

Ms NORTH: Do you mean just specifically to proactive work and the notices?

The CHAIR: Yes.

Ms NORTH: Okay.

The CHAIR: Does that address that?

Hon KYLE McGINN: Yes. I think the issue is I am sort of reading “enforcement” as “prosecution” but it does not seem that is what is intended in that statement.

Mr McCULLOCH: No; that is right.

Hon KYLE McGINN: How many proactive inspections lead to prosecutions? Do we have a figure on that?

Ms NORTH: I do not know that we have that. That might be one we need to take notice, again.

Mr McCULLOCH: Yes; we will take that on notice.

The CHAIR: Okay, so that is question on notice 20.

Turning to page 21, the first paragraph states that requests to attend are “generally recorded in WISE by the Customer Help Centre or is generated by WISE”. I have two questions here: what is the difference between recorded in WISE by the customer help centre and generated by WISE?

Ms NORTH: There are a couple of ways you can enter a request to attend. A person can ring up and the customer help centre can take their information down and lodge it directly in. Also, a person can go online and put the matter in online. Then it goes through a quality-checking process before it ends up in WISE. That is a couple of ways. The other things that come into us are notifications—so things like notifications from local government about work that might be occurring or notifications on forms that people put in about tilt-up construction work or notification of other particular types of high-risk work that come to us.

The CHAIR: Yes, but those notifications are not requests to attend, are they?

Ms NORTH: They are counted in the broad sense of reactive work in WISE. In our submission, we firstly talk on page 21 about the different types of things that can be encompassed by a request to attend. Then on page 22, we break that down into the ones that are a concern, like a complaint or an injury.

The CHAIR: Okay. My second question in relation to that first paragraph is about the word “generally”. It says that requests to attend are “generally recorded in WISE”. I would have thought they would all be recorded in WISE.

Ms NORTH: They are generally recorded in WISE by the customer help centre. Occasionally, it might come through directly to team manager. Let us say an out-of-hours matter comes in and a person is doing some out-of-hours work, so there is an operational manager doing that. They might put it on the system directly themselves rather than it going through the customer help centre in order to complete the workflow and commence the investigation on WISE because they are all tied together.

Hon KYLE McGINN: Is the customer help centre—sorry, the reporting on the phone—open 24/7? Are there people manning the hotline 24/7?

Ms NORTH: We have a service 24/7. It is not the same service. We have a service that is staffed from Cannington through business hours and in after-hours, we have an arrangement with another centre and they have processes in place to take our calls and to prioritise serious matters through to an on-call operational manager after hours.

Hon KYLE McGINN: Would you get the same service after-hours as you would during the day as, say, a regional person?

Ms NORTH: No. You do not get the non-urgent service after-hours that you get during business hours. If you just have a routine question about how to find a code of practice or some information, you will be advised to contact during work hours or to send an email which will be responded to

during working hours. But if you say you have a serious OSH issue or an accident that is serious that you want to tell us about, then that will get escalated in an appropriate way.

The CHAIR: Just about midway down page 21, the submission states —

Most RTAs that do not have the status completed have the status not to be investigated.
A not to be investigated RTA may have still been dealt with.

Could you explain that?

Ms NORTH: Sure. For example, we might assign something not be investigated if there is some confusion over its jurisdiction. People often come to us with something that is actually a resources safety matter or a Comcare matter and so it may have been dealt with through another avenue. It can also have been addressed because, for example, WorkSafe might have attended the site previously and there might be a notice that still has some time to be complied with and some work might be occurring at the workplace to address that matter. Or, it might be that there is some consultation occurring at the workplace over that matter and internal processes are in place. There are those kinds of things that might be happening.

The CHAIR: The WISE system records them as requests to attend. For each of the last 10 financial years, would you be able to provide the committee with how many RTAs were received; of those, how many were completed, and how many were marked not to be investigated; and how many were marked not to be investigated due to remote locality?

Ms NORTH: I think so. Some of that information is on page 22, but not with the regional breakdown that you are requesting.

The CHAIR: We will take that as question on notice 21.

I also note that the number of RTAs has decreased from 4 804 in 2007–08 to 3 966 in 2016–17. Do you have an explanation for why this might be the case?

Ms NORTH: I would imagine that the state economy is probably a factor there. I think when the economy is possibly a bit busier, we are likely to get more; there is more activity and I think there is probably a bit more job security. Those are factors that might lead to people lodging more RTAs.

[11.40 am]

The CHAIR: Okay. Turning to page 22, chart 22, the submission states that the data does not include notifications of injuries, diseases or deaths to the WorkSafe Commissioner by duty holders required under section 23 of the act. Is there a reason why that data is not included in this chart?

Ms NORTH: We are just focused here on basically the complaints that we are getting. There is also statutory reporting that I touched on earlier, where there are certain types of things that employers have to report to us. Because that data is only on certain types of injuries and diseases that need to be reported to WorkSafe, it is not considered necessarily to be the big picture of injury and disease in WA workplaces, and the WorkCover data is a better illustration of that, so we use the WorkCover data for that information and we use this in terms of what is concerning people in workplaces and what they want to contact us about.

The CHAIR: We might just move on to prosecutions and page 23. I did not find the way the information is provided very helpful, due to the lag time between a prosecution and the resolution of those prosecutions. They cross over a number of years. I am just wondering whether it would be possible to provide the information in a format that I would find easier to understand. For each of the last five years, how many prosecutions were issued in each of those years; and, of those prosecutions, how many resulted in a conviction, how many were dismissed and how many are still pending?

Mr McCULLOCH: So do not worry about the time?

The CHAIR: Yes, just relate it back to the year it was issued, so that I can get a better understanding of what is actually happening with those prosecutions.

Mr McCULLOCH: Yes.

The CHAIR: We will take that as question on notice 22.

Also, is it possible to get, for each of the last 10 financial years, what was the average time between the incident and the prosecution being issued; and what was the longest time between the incident and the prosecution? We will take that as question on notice 23.

Ms NORTH: Is that for charges to be laid, or for the outcome of the prosecution to be —

The CHAIR: No, for the charges to be laid. Also, for the last 10 financial years, can you give me the average time between the date that the charge was laid and the resolution of the court process, whether it was a conviction or no conviction.

Mr McCULLOCH: So you want both things, chair?

The CHAIR: Yes.

Mr McCULLOCH: Up to the charge?

The CHAIR: Yes, provided separately, and I want the average and also the longest length of time that we have been looking at. Do you keep records of how many convictions are appealed?

Mr McCULLOCH: Yes, we would have that.

The CHAIR: Okay, and how many convictions were overturned on appeal?

Mr McCULLOCH: Yes, we would have that.

The CHAIR: Okay, would you be able to provide the committee with that information over the last 10 financial years as well?

Mr McCULLOCH: Yes.

The CHAIR: I note in your submission you indicate that WorkSafe has a practice of issuing prosecutions for serious or fatal injuries only. I think it would be good to put on the record an explanation of why that policy has been adopted because you might have someone who is regularly breaching some regulation and despite having been issued a prohibition notice on a number of occasions, they still continue to offend in the same way. Is there some point at which you would actually consider prosecution in those circumstances?

Mr McCULLOCH: Yes, there is. We do some of those types of prosecutions with particular employers and we keep coming across the same issues. We have had a couple of those recently in the transport industry where we have basically said that's enough and laid charges, even though no-one has been injured or whatever. They are breaching the fatigue regulations, basically, so we have pursued those.

The CHAIR: Do members have any questions before we move on to FOIs?

Hon DARREN WEST: If I can just follow up on the point you just raised about the transport industry, I note that the federal government has removed the road safety remuneration tribunal. Has that changed your world at all in terms of safety issues within the transport industry, given that that is what it was set up to address?

Mr McCULLOCH: I do not think so. We just continue to administer our end.

Hon DARREN WEST: Have you noticed a change in reactive investigations as a result since that was abolished, I think, on 1 July last year?

Ms NORTH: Not that I am aware of, no.

Mr McCULLOCH: No.

Hon DARREN WEST: Okay, thanks.

Hon KYLE McGINN: I believe the penalties associated with the OHS act in WA are substantially less than in other states. Do you think that affects its effectiveness of being used as proactive with prosecutions?

Mr McCULLOCH: Sorry, could you repeat that?

Hon KYLE McGINN: I believe under the act, penalties in Western Australia are less than other states in Australia. Do you believe that has a reaction by employers, when they do get prosecuted, that it does not deter them?

Mr McCULLOCH: I cannot answer that. We do our job; we lodge the prosecutions and the courts make the decision. Sometimes the penalty that is given frustrates us, but we cannot control that.

Hon KYLE McGINN: I suppose from the comments before that it got to a point with the transport industry where you did prosecute before a fatality or an injury, how many complaints would it take for that reaction from WorkSafe to be proactive on prosecutions under the act?

Mr McCULLOCH: I do not know how many. Circumstances can be different, but in that case it was one company and we particularly went to that company and asked for their logs and their records. There were two companies, actually, so we probably got more proactive in that space than complaints coming to us.

The CHAIR: Before we move on to FOI, do members on this side have any questions?

Can we just go back to page 17; I have a query in relation to chart 16. Chart 16 refers to a total of 149 completed investigations for the period 2016–17, but the sum of proactive and reactive investigations for that period, according to the figures, is actually 1 946, so there seems to be a bit of a discrepancy between those two figures. Are you able to clarify whether the 1 949 figure is a typographical error in the chart?

Ms NORTH: Sorry, can you just run that past me one more time?

The CHAIR: We are looking at page 17, chart 16, which indicates that —

Hon DARREN WEST: I think it is 1 949 instead of 1 946.

The CHAIR: It indicates that there were 1 949 completed investigations, but when you take the sum of the proactive and reactive investigations, on our calculations it comes to 1 946, so I just wanted to check which one of those figures was correct, because it might just be the first one was a typographical error. We will take that as question on notice 25 for you to confirm it with the committee.

We will move on to FOI applications on page 24. The submission shows that there has been a massive increase in freedom of information requests, from 190 in 2008–09 to 438 in 2016–17, which is an increase of 131 per cent. Can you provide a reason to the committee for that increase?

[11.50 am]

Mr MITCHELL: We can do some research for you and find out.

The CHAIR: Would you accept that one of the explanations would be because when people lodge a complaint with WorkSafe and then they contact WorkSafe to find out where that is at, they are

actually told to lodge a freedom of information application if they want to get any information in relation to the investigation or the outcome of that investigation?

Mr MITCHELL: I would imagine that instruction has been around for a long time, so possibly but not necessarily.

Ms NORTH: The other thing is that when a person is working at a workplace and they have lodged an RTA, they would be aware of any enforcement outcomes such as notices because of the requirement to display those at the workplace, so they would have that information. Also, if there is a safety and health rep at the workplace, they would be able to talk to them about the visit so they do not always have to go through the FOI process if they work at that workplace. But if they do not work at the workplace, as we have said, it is an instruction that has been around for some time that that information about what we did there is not generally available to those who are not working there other than through FOI.

The CHAIR: WorkSafe has not undertaken any investigation as to that significant increase in the number of FOIs that have been lodged.

How many officers work at WorkSafe who have the responsibility of processing freedom of information applications?

Mr McCULLOCH: Two.

The CHAIR: Is that two FTEs?

Mr McCULLOCH: Yes.

The CHAIR: What is the average length of time for the processing of a freedom of information application?

Mr McCULLOCH: We will get that.

The CHAIR: That will be question on notice 26.

Hon KYLE McGINN: I am seeking just a bit of clarity as well with the process of the hotline for someone in a regional area without an office who makes a complaint through the hotline. They then call back in a couple of days. They quote the receipt number they were given. Is it true that if they want to know what is happening with that investigation, they have to apply through FOI?

Ms NORTH: They could normally find out from an inspector whether the matter has been investigated and whether that is still in progress or whether that is completed. As I mentioned, if they are a person who works at the workplace and there has been a visit, information should already be available at the workplace. If they are not at the workplace and they have lodged an RTA—they might be a relative or member of the public—they probably would be directed to FOI.

Hon KYLE McGINN: Are you saying that each complainant that goes through the hotline is contacted by an inspector?

Ms NORTH: No, not necessarily. An inspector will only contact the person if they need further information. Obviously, when they make the complaint, they usually provide quite a bit of information and an inspector will only get back to them if they need more.

Hon KYLE McGINN: If you provided enough information on a complaint and then you call back three or four days later to find out what has happened to that complaint as there has been no feedback from an inspector, is it expected that that person is to apply for an FOI?

Ms NORTH: They should be able to find out if it is completed or not completed at that point. If they work at the workplace, they should be able to find out more. If they do not work at the workplace, yes.

The CHAIR: Just for the record, I note that Hon Jacqui Boydell has had to leave the room, and she will be back shortly. The time is 11.55.

Hon KYLE McGINN: I am assuming the team management will close or keep open the investigation. Is that the team manager or the inspector?

Ms NORTH: It is generally the inspector. If there are any issues or concerns and they need guidance, it would be in conjunction with the team manager, but usually the inspector would judge when it is complete.

Hon KYLE McGINN: If it was somebody who rang up anonymously because of fear of their employer or retribution, are they able to get feedback from what WorkSafe is doing for the complaint rather than FOI or is it FOI?

Ms NORTH: Other than what is at the workplace. There should be information at the workplace about what happens. If they had a visit and there are safety and health issues, for example, that person would be informed of the outcomes. If there are outcomes in the form of notices, there is a requirement to display those at the workplace. In the absence of those things, yes.

Hon KYLE McGINN: I would assume from the data we have seen that there is a reduction in inspections et cetera. What I am assuming is that the increase in FOIs is because inspectors have not been going to the regional sites with the feedback from the hotline. I suppose my question is: if an inspector does not attend the site, is FOI the only way to get the feedback?

Ms NORTH: It is possible that some have come through in that way.

The CHAIR: I might just follow through on that line of questioning. If I understood you correctly, you indicated that a person who lodged the complaint could speak to an inspector. If they were to ring the call centre with the reference number, could they get put through to an inspector?

Ms NORTH: It is usually the other way because if inspectors are in the field and doing other work, the inspector is normally provided a message to call the person back.

The CHAIR: So that would be the only circumstance in which a person could actually have a conversation with an inspector, if they had a concern about the follow-up or the nature of the investigation or the outcome of the investigation?

Mr McCULLOCH: Yes, that is correct.

The CHAIR: There is a bit of Chinese whispers getting played here because the person does not get to speak to an inspector. The person who has made a complaint does not get the opportunity to speak directly to the inspector; they are speaking to someone at the call centre who possibly does not have the technical expertise to understand or communicate the nature of the issue.

Ms NORTH: In that case, sometimes what happens is that if a person speaks to the call centre and provides the information, they then say that they would like to speak to the inspector prior and that gets put onto the RTA as well. I would expect the inspectors would generally call a person if they put that request on there.

Hon KYLE McGINN: Is there any obligation for the inspector to call the complainant?

Ms NORTH: No.

Hon KYLE McGINN: Is there any obligation for WorkSafe to respond to the complainant with feedback or what they are doing with the investigation?

Ms NORTH: No, and when people make a complaint, we make it clear that they will only be contacted by the inspector if the inspector needs more information. It is also made clear that we would not necessarily get back to them with the outcome.

Hon KYLE McGINN: If someone was in the metropolitan area and walked into a WorkSafe building and requested to meet with an inspector to talk about a complaint that had been made, would they be given that opportunity?

Ms NORTH: Yes, they generally would. I know that that does happen. I have often been that one.

Hon KYLE McGINN: Would you say that there is a disadvantage in the regional areas to communications with inspectors?

The CHAIR: Before you answer that, just for the record, I note that Hon Jacqui Boydell has returned and it is 12 noon.

Ms NORTH: With the exceptions of those regional offices that we do have, there is a reduced capacity to find an office nearby for some of the regional people.

Hon KYLE McGINN: Could that result in a higher number of FOI applications in regional areas?

Ms NORTH: Possibly. It tends to be that when people walk in, it is not necessarily for outcome information; it is more to provide information on an initial concern, but it is possible.

The CHAIR: It appears to me that there is a policy at WorkSafe whereby a complainant does not get to speak to an inspector necessarily and there is no obligation on the inspector to speak to a complainant in undertaking an investigation. I am curious as to the reason for that policy. Is that just because you have limited inspectors and if they are spending all their time communicating those messages, they are not undertaking investigations?

Ms NORTH: That is a big part of it. Yes, that is right. We also get quite reasonable information from the complainants in the first instance, usually. If anything is not clear, we do get in touch with them. It may not always be the inspector who is doing it; it might be the team manager for the purposes of prioritising the work. They may need to know a little bit more about the complaint if there is anything that is not clear. Yes, to add more time in discussing the issues that we have already perhaps discussed with the call centre is not necessarily an effective use of their time.

The CHAIR: If the nature of the complaint was that the complainant believed that there was asbestos on site and that asbestos was now airborne as a result of some activity that occurred on site, would it not be reasonable for the inspector to contact the complainant to let them know whether or not they have been exposed to airborne asbestos?

[12 noon]

Ms NORTH: There is a duty on employers to let employees know if they have been exposed to airborne asbestos. If that is a matter that has been assigned to an inspector, then they would make sure the employer understands those duties about providing that information to anybody who has been exposed and on cessation of employment, providing that as well in a documentary form.

The CHAIR: Would that occur whenever there is a complaint about a possibility of airborne asbestos?

Ms NORTH: Again, it is all prioritised, but if it is a significant issue it sounds like it would fit the bill to be prioritised for a visit and that is what would likely occur, yes.

The CHAIR: I might just now turn to page 25, which deals with licences and registrations. Other members of the committee may be better informed on this issue than I am. Can you give me an indication of the sorts of licences and registrations that this chart is actually referring to?

Mr MITCHELL: Yes. In terms of the licences, generally it is going to be the high-risk work licences. There is also demolition, asbestos and high-risk work licences assessor registrations as well.

The CHAIR: In relation in the high-risk work licences, how did the determination for the five-year renewal date come about?

Mr MITCHELL: There was a national standard for licensing persons performing high-risk work. I think in 2007 it was agreed upon. It is a national agreement between all the jurisdictions. Five years was the figure that they landed on.

The CHAIR: But we have no idea why or what the reasoning was for five years?

Mr MITCHELL: No. That is right. It was a compromise, I suspect. It was agreed to before my time.

The CHAIR: What is the cost of a high-risk work licence?

Mr MITCHELL: I would say around \$80 per class, but I am not sure. We would have to get that for you.

Mr McCULLOCH: We can get you a table with the latest.

The CHAIR: We will take that as question on notice 27. Can you give us a cost for the licence and the cost for renewal, or is that the same?

Mr MITCHELL: No. With a high-risk work licence, you may have a number of classes. You might have one class or you might have a number of classes. Those classes can be accumulated over a number of years, but it is the licence that is renewed, not each class.

The CHAIR: Chart 29 shows a single line for assessor registrations—new and renewals. Is it possible to get a chart showing the new and renewals separated, as you have done for licences?

Mr MITCHELL: Yes.

The CHAIR: We will take that as question on notice 28.

Do you have a schedule of the cost for registration and renewal of registration and would you be able to provide that to the committee too?

Mr MITCHELL: Yes.

The CHAIR: That will be question on notice 29.

On page 27, the submission states that there has been an increase in the number of exemptions, and the reason for this related to old versions of the Australian Standards called up in the regulations. That surprised me and I would like an explanation for why we have situations in which old versions of the Australian Standards are called up in the regulations, given that amending the regulations is not really a very onerous process.

Mr MITCHELL: Around about 2010, the Joint Standing Committee on Delegated Legislation advised WorkSafe that it did not believe it had the ability to reference Australian Standards. As a result, that advice or opinion of the joint standing committee is not one that the department has, but one of the former Ministers for Commerce advised the committee that as result of the work health and safety laws being introduced, that particular problem would be fixed when the work health and safety laws commenced. However, as you are aware, the work health and safety laws have not commenced, so we have not been able to update the Australian Standards since 2010.

The CHAIR: Wow! Okay. That means anyone using the regulations to know what Australian Standards apply in a particular situation —

Mr MITCHELL: Current standard, that is right.

The CHAIR: —is getting wrong information or could be getting wrong information if that Australian Standard has since been updated?

Mr MITCHELL: That is right yes, it could be. I think the only important thing to note is that the Australian Standards do not change a great deal and rather than a reduction, it tends to be an improvement in the standards. By complying with the more recent standard, they generally cover more than the previous standard.

Mr McCULLOCH: They come in, chair, and ask me to be able to use the updated standard rather than the one that is in the regulations.

The CHAIR: Is it general that people in the particular industry would know that there is an updated Australian Standard?

Mr McCULLOCH: Generally, yes.

The CHAIR: But there could be circumstances in which they did not know that there was an updated Australian Standard and therefore they are just relying on the regulations to inform them of the Australian Standard to be applied, which could be of a lesser standard than the newer version?

Mr McCULLOCH: That is correct.

The CHAIR: That is a little bit alarming. How do you go about dealing with this problem, in terms of alerting people that a new version of the Australian Standard with a higher safety standard has been issued, but the regs have not been able to be updated? Do you provide this information on your website? Do you email relevant parties?

Mr MITCHELL: The Australian Standards are obviously developed by the appropriate committees, so they have extensive industry involvement. Generally, the industry will know about the Australian Standards as they come out. But we do not identify when a new Australian Standard has been applied.

Ms NORTH: Standards Australia also has its own mailing list. If people have an interest in a standard, they can subscribe to that and can be advised of any updates to the standard.

The CHAIR: I am sure that is fine for big operators, because they probably have those systems in place, but there would be a lot of really small operators that would not be able to get to that level and are completely uninformed.

Ms NORTH: The other thing to bear in mind is that we call up a very limited range of Australian Standards. We call up a few of them. There is a whole, much larger range, of Australian Standards on many other things. If we are looking to standards that are not part of the law to be used as industry guidance, then that is something they need to be aware of as part of their industry group or the industry that they work in—what standards are relevant to them and where they are at and what is the latest version of that standard. We only call up a very small number and what we do call up is the current law.

The CHAIR: Can you just explain that to me a little more? When you say, “We call up the very few”, what does that actually mean? Does it mean that you do not often reference Australian Standards?

Ms NORTH: I cannot recall how many, but there is basically a listing in the regulations of a few pages listing Australian Standards that are part of the legislation and there is a huge raft of Australian Standards on many other matters. Many of those are not called up in our legislation, so they can be considered by employers or others at workplaces in terms of standards that may assist them in meeting their OSH duties, but they are not forming part of the law. They might go talk to industry knowledge—state of knowledge—on a hazard, but to not comply with that standard is not in itself necessarily a breach of OSH law.

The CHAIR: Okay, can we just go back in time, at the time that the legislation became law. Why was a decision made to include Australian Standards within the law? Why was it considered necessary?

Because you are telling me they are not all referenced in the law. I would like to get an understanding as to why some are referenced and some are not.

Ms NORTH: I think in some cases it is because the standard contains a large amount of technical information on a matter, but information that is considered relevant to it. For example, there is a set of Australian Standards around noise and how you measure noise at workplaces. If you were to try to encompass that in your regulations, they would get very long very quickly. But it is important still to be measuring the noise accurately in order to do an accurate noise assessment. They wanted people to be doing it in that way, but they could not really devote the number of pages necessary to explain how to do that in the regulations. That is, I think, an example of why it was called up. There are others in terms of things like pressure vessels, quite detailed technical standards—we want the outcome in terms of the safe pressure vessels, but they are lengthy documents.

[12.10 pm]

The CHAIR: There could be a whole lot of practices that have developed since the enactment of that legislation where they are Australian Standards that are really important but they are simply not incorporated because the act has not been updated.

Mr MITCHELL: There is quite a concern about the referencing of Australian Standards in work health and safety laws. The work health and safety laws that we are looking to adopt now reference very few Australian Standards. I think it is probably two. The referencing of Australian standards is not something that is generally supported.

The CHAIR: If the new proposed laws are adopting that policy position, then why are two of the standards still going to be referenced in the new law? You are still going to run into that same problem, are you not?

Mr MITCHELL: I cannot remember the reasons, I am sorry, chair. I think there is a very small number. Two comes to mind, but it is not a dozen or anything like that. I would have to go back and see which ones they are.

The CHAIR: Can we take that as question on notice 30, because I would like to understand the reasoning why two, three or four are going to continue to be referenced in the new legislation, yet a decision has been made that there is no need to reference all the others? It seems to me that it would be a far more consistent approach to either reference none so we do not have to deal with the problem of the regulations no longer referencing the right version of the Australian Standards. An explanation as to the reasoning behind that would be appreciated.

Hon DARREN WEST: Much of what I was going to ask has already been covered on that, as to whether Australian Standards versus the act is your area. Do you consider it a role of yours to inform industry of its requirements or is that the role of businesses to fully understand their obligations under the act? Do you have the resources or people to actually inform business owners and industry groups as to what their roles and responsibilities are under the act or is that their —

Ms NORTH: To a certain extent we do provide that information. There is a lot of information on our website and we do presentations and talks to industry and that kind of thing. Where there are relevant standards, even if not mandatory, if not caught up under the act but they are still relevant to a matter, we will mention them. For example, we have got a publication on combustible dust. There is an Australian Standard about that as well and that is mentioned there as additional information that an employer might want to have a look at when they are looking at that hazard.

Hon KYLE McGINN: Have you had any stakeholders highlight this with WorkSafe and request any improvement in respect of the regulations versus Australian Standards?

The CHAIR: Sorry; I did not understand.

Hon KYLE McGINN: In respect of what we are talking about, the Australian Standards and the exemptions, have you had stakeholders raise this as a concern with WorkSafe?

Mr MITCHELL: I do not know whether we actually had a letter. I have spoken to people about it because of course they are having to write exemption requests and they cannot see the point of it. Inherent in those requests is a concern that they have to go through the process.

Hon KYLE McGINN: Is there a financial cost for them to go through that process?

Mr MITCHELL: Yes, there would be. Someone is going to have to write the letter and obviously make the case.

Mr McCULLOCH: They do not get charged for the exemption, if that is your question.

Hon KYLE McGINN: Okay; no charge on the exemption.

Mr McCULLOCH: No.

The CHAIR: What factors does WorkSafe take into consideration when exempting a person from compliance with the occupational safety and health regulations?

Mr MITCHELL: Regulations 2.12 and 2.13—if I can just make sure I have that right—exemption where there is substantial compliance and where compliance is unnecessary or impracticable. Those are the two conditions.

The CHAIR: At page 27, the submission refers to exemption decisions being published on WorkSafe's website, but the committee has been unable to find any publications other than general information and the form used to lodge a claim for exemption. Can you please clarify where the commissioner's exemption decisions are published and provide a link for this web page? Will we take that on notice?

Mr MITCHELL: That is right.

The CHAIR: That will be question on notice 31.

Moving along to page 28, the submission says there has been a reduction in the number of RTAs referred to the operational directorate in recent years. Would you be able to provide reasons for this?

Ms NORTH: As I touched on earlier, I think the rate of the economy is a factor. When the economy is stronger, there are more things going on and there can be more impetus for RTAs to be lodged at that time. I think also when people are more secure in their job, they may be more likely to lodge an RTA than if they feel less secure in their job. Those are possibly contributing factors.

The CHAIR: If a request to attend is lodged and a decision is made not to investigate, is there a capacity to appeal that decision if the complainant does not agree with that decision?

Ms NORTH: There are a few things they can do. They can come back to us and lodge another one with some more information. People do take that avenue sometimes. If there is still a decision not to investigate it, they can also ask to lodge a complaint either internally within WorkSafe. There is a system we have when people are not happy with the service they receive. They can lodge a complaint there. At the end of the day, if they are not happy with the service of the department overall, they can lodge a complaint with the Ombudsman.

The CHAIR: But there is no appeal provision?

Ms NORTH: It is not an appeal as such, but they can ask for it to be escalated internally for review, I suppose.

The CHAIR: With RTAs that are received by email, what is the response time? Is the response time identical to an RTA by telephone?

Mr MITCHELL: The same day. Obviously, I have looked at quite a few of them over the years and it seems to be that the email comes in and they are generally considered. There is obviously going to be a number of them, so they were allocated the work, but generally it is the same day or within 24 hours would be my expectation.

Hon KYLE McGINN: On your comments with permanency playing a factor in more RTAs, what steps have WorkSafe taken with precarious and casual workers to improve that statistic?

Ms NORTH: Sometimes for the type of work that you are talking about, we have done more proactive work in relation to that—for example, labour hire workers who might work across a variety of workplaces. We have been quite active over a number of years with that group because we had some concerns about injury rates with that group and we have been more proactive. We have also targeted some other groups that can have that type of work relationship, such as cleaners for example. We have done proactive work with that industry. We look at it more in terms of industries rather than by the nature of the employment, but sometimes there is an overlap.

Hon KYLE McGINN: I suppose more to the point is, as you said before, permanency plays a part. Do you believe that is because casual workers and labour hire workers are potentially more at risk for making a complaint or requesting an RTA?

Ms NORTH: I just feel that maybe they think they are. I do not know whether they are or they are not, but maybe they think they are and they have that concern. That is what was in my mind when I said that could be a factor. They might feel a bit less secure with their employment.

Hon KYLE McGINN: What is WorkSafe doing to try to assist these workers?

Ms NORTH: The thing we do for all workers is that we maintain confidentiality of the approach. Even to the extent of not saying when we go to a workplace that we have had a complaint or a concern lodged with us, but to say, “Look, here we are; we’ve come to do an inspection”, more than we have had a complaint. We are very sensitive around keeping that matter confidential for anybody of any employment nature that contacts us.

Hon KYLE McGINN: That would be regardless of location?

Ms NORTH: Yes.

Hon KYLE McGINN: You would treat that in the same way as far as an inspector going there to do an inspection on the site without identifying the employee?

Ms NORTH: The only exceptions are, firstly —

Hon KYLE McGINN: Sorry; I meant if someone made a complaint and did not want to say their name, who was in Karratha for example, you would then follow through with an inspector attending that site for a workplace inspection?

[12.20 pm]

Ms NORTH: We still want to get their name and their number. We might need further information so we still want to have it. But we are very careful with how we present at the workplace, about how that looks at the workplace. The only exceptions being, firstly, if they explicitly say, “Look, I don’t mind if you say I have raised this.” Some people say to their employer, “I’m going to raise this with WorkSafe.” Then they say to us, “They know I’m going to raise this with you; you can say how it came about.” If they specifically say that, we can treat it differently. The other type of issue that we need to sometimes treat differently—and again we get the explicit permission of the

complainant to do so—is with workplace behaviour issues, so if we have had a hazard raised in terms of someone saying they have been bullied at work or under stress at work for a particular reason, it is very hard to follow those up on a proactive basis, so we generally explain to the person of that difficulty and say to them, “Look, can we have your permission to do it in this way?” where they will know how it has come about, and if they agree to that, then we will do it in that way, but for the vast majority of them, they are just kept very confidential, which is hopefully helping that concern about job security.

Hon KYLE McGINN: Do you feel WorkSafe is doing enough in the space of vulnerable workers, and changing that culture perception?

Ms NORTH: I suppose when we plan our work, it is around where we are seeing the injuries and the issues coming up, and also we do not always have the information about the different employment contexts that are out there, so we look at that information about the outcomes, and then we are making our decision about where we are doing our proactive work, and sometimes it will overlap with vulnerable workers but we do not generally have that employment data up-front, if you know what I mean.

Hon KYLE McGINN: That data you are referring to would be the WorkCover data that a lot of vulnerable workers potentially are not using.

Ms NORTH: Potentially.

Hon KYLE McGINN: So, what is WorkSafe doing to counteract that and change the culture?

Ms NORTH: The other thing that we can do when we are planning our proactive work is we can look at what information the inspectorate provides, so if inspectors have been doing whether proactive or reactive work and they see issues in a particular sector, again, whether or not it relates to the type of employment, but if they are seeing issues in a particular sector, then we can use, I suppose, that internal intelligence to inform whether we are doing more work in a particular sector.

The CHAIR: In relation to the notifications of injury and disease, could you just run through what happens once a notification has been received? Is an assessment made about whether an investigation is needed, who makes that assessment, and what is the criteria for making an assessment as to whether or not to investigate?

Ms NORTH: Again, that will go to the team manager, and they will consider the issues around that injury, again from what we can see, and, if necessary, they can get in touch for further information, so they will look at the seriousness of it and the context of it. In some cases there might already be other work going on, so that might be a factor for deciding not to do it, so let us say we were doing some proactive work on that type of matter with that type of industry, they might decide that that specific one did not need to be looked at because we are looking at it at a systemic level. But at the end of the day, it is the seriousness and the nature of it, and a decision by the team manager.

The CHAIR: Any further questions on this section?

Noting the time, I think we might take a break now for lunch. I think the closest area for you to grab some lunch is just down the end of street, and given that we are right in the busiest time of the day for lunch, I think I might allow 45 minutes for lunch. We initially suggested 30 minutes, but by the time you walk down and get something, you will need to have some time to eat it as well, so can we be back here at 1.15 pm to continue the hearing? On that basis, the hearing is adjourned until 1.15 pm. Thank you.

Proceedings suspended from 12.24 to 1.20 pm

The CHAIR: Members, it is now 1.17 pm. We are resuming the hearing with the WorkSafe Commissioner. Prior to the lunch break we had got to page 30, “proactive campaigns”. I note that the submission says that every year WorkSafe completes a number of proactive campaigns aligning with the Australian Work Health and Safety Strategy 2012–2022, targeting high-risk industries. I ask: can you provide, for each of the last five financial years, a list of the proactive campaigns undertaken by WorkSafe? We will take that as a question on notice 32. Has there been any analysis undertaken of the success or otherwise of the ThinkSafe Small Business Assistance Program, which is identified at page 31?

Ms NORTH: I believe that there was some assessment done in terms of feedback from small businesses that had received that service. My recollection was that it was positive feedback from those businesses in general. However, as you can see, we have not actually run the program in recent years.

The CHAIR: Would you be able to provide a copy of any report that analyses the success or otherwise of the program or any feedback that was received? Can I take the opportunity, on the record, to ask you your views about the cancellation of that program and do you think you would like to see that program reinstated? Do you think it adds value?

Mr McCULLOCH: It was a really valuable program. In our space—I think you said it yourself—a lot of the large industries get right across and into the safety space. The challenge is the small industries. It was a nice soft way for them to get support around their occupational safety and health responsibilities.

The CHAIR: You also comment at page 31 that the number of events, seminars and presentations has decreased due to the budget cuts to WorkSafe. Have you been able to assess the impact that may have had?

Mr McCULLOCH: I am probably not able to assess the impact. We just cannot do as many. I think we have 2.2 positions that do that work but we have not assessed the impact of that. It is what it is for us; we do what we can do.

Hon KYLE McGINN: On page 30, the different phases of active campaign or team projects include stakeholder engagement, contact with stakeholders and development of internal and external guidance. Is that all stakeholders, unions included, or is that just businesses?

Ms NORTH: It generally does include the unions; that is right.

Hon KYLE McGINN: And what has taken place in stakeholder engagement? Is that what has taken place after it?

Ms NORTH: After the projects or at that stage?

Hon KYLE McGINN: Sorry. After the stakeholder engagement, contact with stakeholders development of internal and external guidance materials such as industry checklists and provision of information through newsletters and media statements—that is all that is happening in the space of stakeholder engagement?

Ms NORTH: There is often a letter and that kind of thing. Occasionally, at the end of the project there might be an information session or a forum of some sort but that is not necessarily for all of them. It depends on the specifics of the project.

Hon KYLE McGINN: In respect of WorkSafe as a whole, do you proactively engage with stakeholders on feedback on your systems like your hazard observation reporting and your hotlines?

Ms NORTH: Probably more in terms of the media statements with the proactive work. At the end of a major project we would say things like how many workplaces were visited and what were the outcomes and what were the major areas of non-compliance, if there were such.

Hon KYLE McGINN: If a stakeholder, a union, for example, had issues with the way a complaint was handled and they went to WorkSafe to engage on that complaint on how they had no feedback or they were not happy with the outcome, what type of engagement do you have with them?

Ms NORTH: That probably would not necessarily fit under here because this is more in our proactive work so it does not normally involve complaints. However, if someone is not happy with how a complaint has been handled, they can escalate that to an inspector's team manager or director. They can also lodge a complaint through the department's complaint system. If they are not happy with those responses, they can go externally to the ombudsman as well.

Mr McCULLOCH: Can I just add a couple of things? We do engage through the Construction Industry Safety Advisory Committee. There is union representation and industry representation on that and they give us feedback on our processes and what some of the priorities are. I meet with Master Builders and the CFMEU. We have an agriculture industry safety group, which is made up of predominantly industry people, to be honest—Farmsafe and WA Farmers. We engage with them about our work as well. We do try to get out there and get feedback.

Hon KYLE McGINN: It is probably more direct to your proactive campaigns; do they have input into what WorkSafe are going for in those campaigns or is that just WorkSafe's decision? Are you engaging on that level with team management et cetera?

Ms NORTH: It would probably go to industry knowledge, whether it comes through one of the committees that we have in place or through feedback to the inspectorate. The state of knowledge of the inspectorate is one of the things that we consider when we are determining the proactive work for the financial year. They can be from any of the stakeholders.

The CHAIR: I might move on to the WorkSafe Plan and the WorkSafe Plan certificates. I was a bit surprised at how low the numbers were for certificates. Perhaps you could just explain to the committee the process by which the certificates are issued and whether it is done by an application process?

Mr MITCHELL: It is done by an application process. There are auditors who conduct the assessments for WorkSafe and they go through set criteria. There is a booklet that they need to go through for the platinum, gold and silver awards. The businesses have to meet those criterion in each of those particular awards.

The CHAIR: Safe Work October—what funding is allocated in the budget for activities during Safe Work October?

Mr McCULLOCH: It costs us about \$10 000 a year.

The CHAIR: Ten thousand a year.

Mr McCULLOCH: A lot of it is self-funded. All the workshops—we have about 10 or 12 workshops—people pay to go to those and there is the award presentation ceremony. We allocate about 10 grand but it basically cancels each other out. The money we make from the workshops pays for that but we get some money from the award ceremony. For the last couple of years we have basically come square.

The CHAIR: What activities are planned for Safe Work October this year?

Ms NORTH: There is one on asbestos, I know. We do a number of workshops. There is that one.

The CHAIR: Did you want to take the question on notice?

Mr McCULLOCH: Yes, we will bring it back. There will bring the program back to you.

The CHAIR: We will take that as question on notice 34. My other question was: what activities are conducted in regional WA during Safe Work October? Do you want to incorporate that as two parts to the same question?

Mr McCULLOCH: I think there will be two events out in regional WA this year.

The CHAIR: I notice that at page 33 of the submission you indicate that budget cuts have resulted in limited resources being available to maintain the website and develop publications and videos et cetera. From the committee's point of view, we would be interested to know what additional resources would be needed by WorkSafe to maintain the website at an adequate standard and to develop the publications that you would like to be developing including covering SafetyLine Institute, SmartMove and fatigue management training.

[1.30 pm]

Mr McCULLOCH: We can provide that, but some of those positions have disappeared. They were there.

The CHAIR: Okay; all right. We will take that as question on notice 35. Any questions from other members?

Hon DARREN WEST: Just on matters financial and resourcing, can I just take you back to a response you gave us earlier, commissioner, about taking inspectors away from I think it was Broome and Karratha —

Mr McCULLOCH: Yes.

Hon DARREN WEST: — and you cited the cost of housing, the cost of which, on reflection, has reduced dramatically in recent years. I wonder if we could get some sort of comparator as to the current cost of housing versus—clearly, you are going to have a lot of airfares to pay for if you are going to fly people. Do you think if that was the rationale in late 2014—I presume that was your decision to —

Mr McCULLOCH: Yes.

Hon DARREN WEST: Perhaps would the changes in circumstances be such that you may reconsider putting those officers back in the Pilbara or are you still of the view that what you spend in airfares will be more than offset by what you would spend in accommodation costs?

Mr McCULLOCH: Probably we would need to check. You used the word “comparator”, so at the time we were paying \$100 000 a year for a house, and you can get a lot of airfares for 100 grand a year.

Hon DARREN WEST: You certainly can, but I would sort of put it to you now that you might pay a fraction of that.

Mr McCULLOCH: Yes. So we would need to look at that.

Hon DARREN WEST: Okay.

The CHAIR: We will take that as question on notice 36.

Mr McCULLOCH: So what did —

The CHAIR: If you could do a price comparison at the time that those two offices were closed—what was the cost of accommodation and airfares—and today, what would be the cost of accommodation and airfares if those offices were open?

Mr McCULLOCH: Yes.

Hon DARREN WEST: Yes. But I guess my question was: would that be something you would reconsider should those —

Mr McCULLOCH: Should it have swung the other way?

Hon DARREN WEST: That balance had shifted. From my perspective, certainly looking from the outside, having those officers on the ground in the region, as a regional MP, would be something that I would have a preference for.

Mr McCULLOCH: Yes.

The CHAIR: I just have some general questions. What educational initiatives has WorkSafe implemented regarding bullying and harassment since 2014?

Ms NORTH: Probably one of the main ones is the harmonious workplace workshops that we have been running for stakeholders. They have been fairly well subscribed, and we have been doing those quarterly and we are continuing to do those. We have also done a forum with public sector representatives, so we did what is called a forum with the public sector. We have developed some educational materials, so largely online—but things like risk assessments and other tools—to help people at workplaces assess and manage psychosocial hazards, so behaviour, stress and things like that. We also did one hard-copy publication, which is few and far between for us, and that was used at the public sector forums. I cannot recall if there have been Safe Work Australia ones as well—Safe Work October.

Mr McCULLOCH: On bullying?

Ms NORTH: Possibly.

Mr McCULLOCH: No, I cannot remember either.

Ms NORTH: No; I will have to check.

The CHAIR: Okay. If you receive a complaint or request to attend in relation to bullying and harassment, would you then suggest to that workplace that they participate in one of your seminars?

Ms NORTH: Yes; so that is an option. We prioritise the RTAs for that behaviour, as we do with other RTAs, and an option is that we do send an invitation to the workplace, particularly if we are not able to—or it does not meet the criteria for actually doing an investigation on it, we may send an invitation to the workplace to attend one of the sessions.

The CHAIR: What educational initiatives has WorkSafe implemented recently that can show to have had some effect in the workplace, and can you provide some examples?

Ms NORTH: We just recently did a review of the harmonious workplace workshops, and we did some surveys of people who attended before and after. While we probably would have liked to do a little bit more work on that assessment to add to that data, overall it did show that people learned more about how to manage those behaviours at workplaces or prevent them.

The CHAIR: Would you be able to provide us with that assessment that you did?

Mr McCULLOCH: Sure.

The CHAIR: We will take that as question on notice 37.

Just going back to the issue of keeping the public and the wider community informed about the work that WorkSafe does, would you consider that WorkSafe could provide updates and important findings to the public before completing an investigation or on the completion of an investigation?

Mr McCULLOCH: Into a fatality or a serious incident?

The CHAIR: Yes.

Mr McCULLOCH: We could do that, provided it is not going to impact on the potential of the prosecution. I think the most recent one we went out with something was where there was a double fatality, and we learnt about how to stack the panels. So we went out with something about that then just to let people know in that industry they should be cognisant of some things. We could do it and we would do it, provided our lawyers were happy with it.

The CHAIR: Any questions?

Hon KYLE McGINN: It is probably more on that exact issue. When there is an investigation undertaken—say something in a workplace; let us say it is the building industry—and it is clear cut, there are no prosecutions going forward, and it is just they have fixed the hazard, does WorkSafe proactively advertise that amongst the industry, that they have picked up on this breach under the OHS act? Do you proactively advertise to other builders or construction companies?

Ms NORTH: We do a range of safety alerts every year. Where there is an issue that is thought to be a new issue or an issue people might not be aware of, we will do a safety alert on that. Yes, but it is kind of where we think it is of interest and perhaps a bit novel. So if it is something that has come up many times before and we think industry is already aware of the issue, it would not necessarily be an alert unless there was something particularly interesting about it. But if it was new, then we would do that.

The CHAIR: Just let me clarify, because there has been a reasonable amount of publicity over recent fatalities in Western Australia, and there seems to be a long lag time between the time that we are notified of the fatality and ever getting any other information, if you are a member of the general public, you will probably never know what the outcome of or the cause of that fatality was. Do you not feel that it is WorkSafe's role to keep the public informed, because that serves as an educational tool by people being aware of what actually occurred in relation to a particular fatality and what could be avoided in future?

Ms NORTH: I suppose, again, where it is something that is unusual or new, then it is something to consider. Sadly, a lot of workplace fatalities are through, I guess, existing known hazards.

The CHAIR: Yes, but is there not an educational benefit by simply repeating even information that is known? One of the things we as members of Parliament learn, we get told, "Only when you are tired of hearing it is it beginning to sink through." Is the message beginning to sink through in the community? The fact that it is a known hazard is fine, but the fact that someone has just recently died as a result of that known hazard, does that not warrant further public discussion on the issue and raising public awareness?

Ms NORTH: Yes, possibly. Often they will get a fair bit of media in themselves.

Mr McCULLOCH: Yes, and I think the Chair is talking about something formally going out from WorkSafe.

Ms NORTH: Yes.

Mr McCULLOCH: Probably we should do more of that, Chair.

The CHAIR: And is the fact that you do not do it back to resourcing?

Mr McCULLOCH: I suspect it is probably a bit of anxiousness about the legal case. But I guess what I take your from comments is if there is stuff we can release earlier to let people be aware of a particular issue, we should do it, and we take that on.

The CHAIR: Any questions?

Hon KYLE McGINN: Just out of curiosity, if you applied for an FOI, would you be able to get that information in respect of what has happened on the investigation?

Ms NORTH: When something is under investigation, the FOI is not generally available, so until —

Hon KYLE McGINN: When it is completed, sorry?

Ms NORTH: Yes, so until it is completed, it would not be available.

The CHAIR: Can I just clarify, in a case where the investigation is completed but there is a prosecution pending, would you be able to access that information under FOI?

Mr McCULLOCH: No, I do not think so.

[1.40 pm]

The CHAIR: Okay. When you refuse access to an FOI application in those circumstances, do you inform the applicant of the reason for refusing access—that is, that a prosecution is pending—so that they have some idea that they can apply again at a future date to access that information?

Mr McCULLOCH: My understanding is that we do that, yes.

The CHAIR: That takes us to funding and resourcing of WorkSafe. I note from page 36 of your submission that income from fees and charges has declined since 2011–12. Would you like to put on the record the reasons why you believe there has been a decline in income raised from fees and charges?

Mr McCULLOCH: That is because of the decline in the economy, with not as many high-risk work licences being issued or renewed.

The CHAIR: At page 37 you list a number of measures that were taken to reduce WorkSafe's budget to meet the government's targeted savings. You had a reduction of 10 inspector positions. What was the total saving as a result of the reduction of 10 inspector positions?

Mr McCULLOCH: This is off the top of my head, but it was about \$1.1 million. That is my recollection.

The CHAIR: Are you happy to take that as a question on notice?

Mr McCULLOCH: Yes.

The CHAIR: That will be question on notice 38.

The next one is the withdrawing of inspectors from Broome and Karratha. I think we have covered that in quite a bit of detail. The next one is the restructure of the customer help centre. Could you provide the committee with some more information about what occurred there?

Mr McCULLOCH: Now?

The CHAIR: Yes, if you can.

Mr McCULLOCH: In those business support officer positions, there are five positions down the bottom. A couple of those were out of the customer support centre.

The CHAIR: Does that mean there are fewer people taking calls in the customer help centre?

Mr McCULLOCH: I think we kept the same number of people. It was the support people around them. I can come back to you on exactly what we did.

The CHAIR: Okay. We will take that as question on notice 39.

Hon KYLE McGINN: With the reduction in inspectors, and then obviously more reliance on the customer help centre, did their duties increase?

Mr McCULLOCH: No.

Hon KYLE McGINN: Their job description did not change at all?

Mr McCULLOCH: No, it stayed the same.

The CHAIR: The next measure that was implemented was a reduction in business service officer positions. I understand that was covered in the five who are identified below. Is that right?

Mr McCULLOCH: Yes, that is correct.

The CHAIR: Did they all come from the customer help centre?

Mr McCULLOCH: From the customer admin and support area, yes.

The CHAIR: The next item is the reduction in education policy positions. I understand that one position was cut. Is that right?

Mr McCULLOCH: Yes, that is correct.

The CHAIR: You have also cut one review officer. Could you explain to me what a review officer does?

Mr McCULLOCH: When people want a review of a notice—so, an inspector issues a notice—they can ask for normally an extension of time, or they want to have that notice reviewed and either amended or cancelled. That was the person who did the work to collect all the evidence around that for my consideration.

The CHAIR: How many review officers do you have left after cutting one?

Mr MITCHELL: One.

The CHAIR: The next one is a reduction in the number of inspectors being paid an on-call allowance after hours. Can you explain what that means and also what impact it may have had on doing business?

Mr McCULLOCH: We used to have people on call for each team.

Ms NORTH: We had one on call in the region, one on call for construction and one on call for non-construction industries, and one on-call director, so a total of four. Now we have just the one on-call director and one other who is on call, so just the two.

The CHAIR: If there was a fatality up north somewhere and you do not have any inspectors on the ground there and it is after hours, they would phone and an inspector from Perth would have to fly up, and that could take a day or so?

Mr McCULLOCH: That is correct.

The CHAIR: How has that impacted the capacity of WorkSafe to do business—the reduction from four people on call to one?

Ms NORTH: To two.

Mr McCULLOCH: I do not think it has impacted us that much, maybe a bit in the country, to answer your question, particularly because normally it was an inspector in the south west who was on call, but in the metropolitan area, not at all, because the director and the inspector go to the incident.

The CHAIR: The next item is renegotiation of the medical specialist contract. Can you tell me what that entailed?

Ms NORTH: We have some contract occupational physician time, and we reduced the time to save some of that money there, so we employed them for a smaller number of hours.

Hon KYLE McGINN: Just on these reduction measures, a lot of them are taking people away from access for people. What consultation and stakeholder meetings did you have prior to implementing these reductions?

Mr McCULLOCH: Externally, none, because it was a direction from government that we had to do it. Internally, we had a process, because WorkSafe is part of the Department of Commerce, so there were much bigger numbers in the broader Department of Commerce, so we had to go out to staff and say the things that we wanted to do to achieve those savings, and we got feedback from them.

Hon KYLE McGINN: So with the measures on page 37—the reduction in inspectors and so on—was that decision made by yourself, commissioner, and by the minister?

Mr McCULLOCH: No; by myself.

Hon KYLE McGINN: There was no engagement prior to the reductions with external parties?

Mr McCULLOCH: No.

The CHAIR: Table 4 indicates that there has been a reduction in staffing levels at WorkSafe of, by my calculation, 22.7 FTEs. The cuts to FTEs is listed further down that page, but it amounts to 17 FTEs. Would you be able to identify where the balance of the FTEs were cut?

Mr McCULLOCH: They were cut over previous years. Every year, we had to reduce. Do you want those positions? Is that your question?

The CHAIR: I would like to get an indication of where those cuts have occurred. You can take that on notice if you like. That will be question on notice 40.

Mr McCULLOCH: It was in the policy and admin area.

The CHAIR: Table 5 at page 38 indicates that in 2012–13, you had available FTE or inspector positions of 103 but only 90 FTE positions were actually staffed. That occurred in almost similar numbers in the following two years. Can you explain why there was such a discrepancy in the allocation of FTE funding that you had, and the number of positions that you were able to fill?

[1.50 pm]

Mr McCULLOCH: So for 2012–13, even though we had 103 positions, we only had salary for about 93 at that time. In the 2014–15 midyear review, we went up, and at that time our revenue was holding up, I think, and we asked if we could, you know, convert that state revenue to salary and we were given that permission. Then we heard there was going to be the agency expenditure review and some other savings measures so we did not progress to fill those positions because we knew there was a good chance we were going to have to find significant savings.

The CHAIR: Let me understand this clearly: even though you had an FTE allocation of 103, you were not funded for 103 FTE?

Mr McCULLOCH: No, we did not have the salary to pay for 103.

The CHAIR: How does that work? I thought if you had the FTE, there was a salary attached?

Mr McCULLOCH: No. You have the positions, but when you do your salary and you allocate your salary, we did not have the salary to pay all the positions.

The CHAIR: Is that a budgeting issue?

Mr McCULLOCH: It is just the size of the budget.

The CHAIR: Who approves the FTEs allocated to WorkSafe?

Mr McCULLOCH: There are in the budget.

The CHAIR: They are in the budget; therefore, the budget contains an allocation to pay those FTEs. Was the money spent on something other than paying those FTEs?

Mr McCULLOCH: No, it was not. Sorry, can I go back a step? The 103 is set by the agency.

The CHAIR: But it is set by the agency in the budget, which gives the clear impression to the public that those 103 FTEs are funded within the budget because it is contained in the budget papers. Are you telling me that is not the case?

Mr McCULLOCH: All I can say is that we did not have the money to pay the full 103 people at that time.

Ms NORTH: At some point, and I cannot remember the exact year, we had a specific salary cap put on how much we could spend on salary. I am not quite sure what year that came in, but we were being told what we could spend on salary.

The CHAIR: Can you take that as question on notice 41—to advise the committee the year the salary cap was introduced.

Does that mean that none of the FTE figures that we see in a budget are figures that we can rely on; is that what you are saying? If you did not have the funding to staff the 103 inspector FTEs that were identified in the budget, this could have been replicated throughout other sections of WorkSafe as well where you provided FTE numbers that were then not funded?

Mr McCULLOCH: Sorry, you said WorkSafe?

The CHAIR: I am just concerned that you are telling me that despite the fact that the budget papers contain the fact that you had 103 FTE inspector positions, you were not actually funded to pay the salaries for 103 inspector FTEs. That just worries me when we look at the overall numbers of staff in WorkSafe. In table 4, for example, on the previous page you indicate that actual staffing in 2012–13 was 155.4; what was your FTE allocation for staff in that year, overall?

Mr McCULLOCH: I cannot remember. I think it was about 163.

Hon KYLE McGINN: I am struggling to understand this as well. Is the allocation of 103 just allocated to WorkSafe and then you do your own budget on where the funds go, or is it allocated as an FTE and it has to go towards an FTE?

Mr McCULLOCH: Sorry—what gets allocated?

Hon JACQUI BOYDELL: In a one-line budget, is that what you are talking about?

Hon KYLE McGINN: Yes. Is WorkSafe given the money and you then have allocated it to 90 positions instead of 103?

Mr McCULLOCH: Yes; we are given money, and to run our organisation we did not have the money to run to 103.

The CHAIR: That is not quite right, because the budget actually breaks down how the budget is allocated; that is approved. The budget papers that come out every year break down how the money allocated to your agency is actually to be broken down and spent, because government would have priorities and policies and things like that. So, surely, if it is stated in the budget paper that you have inspector FTEs of 103 positions, that you got income to cover the salary for 103 inspectors?

Mr McCULLOCH: Can I check that?

The CHAIR: Sure. We will take that as question on notice 42.

Hon DARREN WEST: My question is similar. If there is allocation for 103 FTE, which I presume you have a monetary amount put to each one in the budget process, is it possible that 93 FTEs were

being paid other allowances, such as district allowances or large amounts of overtime was available to them so that might have chewed up that extra 10 FTE allocation? I am just looking for a set of circumstances that may make those two things align.

Mr McCULLOCH: I am not sure that would be the answer.

The CHAIR: Going back to table 5, in 2015–16 there is a clear drop of available FTEs for inspector positions from 103 to 93. Who made that decision and how was it made?

Mr McCULLOCH: Ultimately it was the executive at Commerce, and, to your question earlier, I think ultimately, yes, it did go to the minister for sign-off on what our savings were going to be, when I reflect on it.

Hon KYLE McGINN: The minister made that decision?

Mr McCULLOCH: He had to agree that was how we were going to achieve our savings.

The CHAIR: So there was a decision by the minister to cut the inspector FTEs from 103 to 93, which I then understand meant you would have then received sufficient funds in the budget to cover the salaries for 93 inspectors. However, you had actual staffing levels of only 85.2 FTEs. Again, why is there such a big discrepancy between the actual FTE staffing levels and the FTE available to fill?

Mr McCULLOCH: So, first off, back from our previous, I guarantee you that the money is there for the 93 now. The reason for that is we do one or two recruitment processes a year and we have people leave. The reason we do one or two recruitment processes each year is because we put them through—it is in the papers here—a rigorous training, learning program. That is why it takes time. In the interim people leave and then you have to go again. But I can guarantee absolutely there is the money there now for 93 inspectors.

Hon JACQUI BOYDELL: But there was not previously, going back to 2012–13?

Mr McCULLOCH: The 103—yes.

Hon JACQUI BOYDELL: In 2012–13, although you had 103 available inspector positions in FTE and you only had actual staffing of 90, there was not the funding then, but there is now?

Mr McCULLOCH: There is now, because we have come back down to—that is what we can afford to have.

The CHAIR: This is getting very confusing for me. If the reason you have 93 available inspector positions in FTEs in 2015–16 and 2016–17 is because that is what you have been approved to have and because that is the amount of money you have been allocated, why is it that in the previous three years when you had 103 available inspector positions you were not funded to fill 103 inspector positions?

Mr McCULLOCH: We will come back and answer that, Chair.

[2.00 pm]

The CHAIR: Just in terms of the comparison of resources right across Australia at table 6, I note that the last figures are 2013–14. Do you not have figures for 2014–15 and 2015–16?

Mr MITCHELL: Not for the comparisons across Australia. What we have is the CPM 17 —

The CHAIR: Just tell me what CPM 17 is?

Mr MITCHELL: The source of this data is from the comparative performance monitor report, which is prepared by Safe Work Australia. It is based on workers' compensation information, so there is a delay, often of around about 18 months. The CPM 17, on which this information is based, has recently been replaced by the CPM 18. The CPM 18 was delayed because there was a mistake in it

that Safe Work Australia identified. So we have only just received the CPM 18 in the last week or two.

The CHAIR: Does that have figures for 2014–15 and 2015–16?

Ms NORTH: It is just up to 2014–15.

The CHAIR: Would you be able to provide those to the committee? You can take that as question on notice 43 so that you can provide it to the committee at a later time.

Hon KYLE McGINN: I just want to go back to something the commissioner said in regards to people leaving and training. Do you have the figures from 2012 onwards to now on how many people left and how many were trained—a comparison?

Mr McCULLOCH: I would certainly have on trained and will chase up on who left.

The CHAIR: That will be question on notice 44. That is the number, for each of those financial years, the number of inspectors who left the organisation and the number of inspectors who were trained.

Mr McCULLOCH: Yes, how many left and how many new ones came on.

Hon KYLE McGINN: To replace.

Mr McCULLOCH: Yes.

Hon KYLE McGINN: Also just while I am on that one, commissioner, a question would be: when you were at 90, was there intentions of having more FTEs that you had in training courses at the time?

Mr McCULLOCH: Back in 2012–13?

Hon KYLE McGINN: Yes.

Mr McCULLOCH: My recollection is that we probably had salary for about 93, so we could have gone to 93.

Hon KYLE McGINN: Is that salary within WorkSafe's budget not within what is allocated?

Mr McCULLOCH: Yes. That is within WorkSafe's budget.

The CHAIR: Now, I have some questions which might require us to go back a couple of pages and I apologise for that. The first questions are: Has the recent creation of the Department of Mines, Industry Regulation and Safety had an impact on the operation of WorkSafe, and on its vision and mission? Has there been an impact on staffing and funding; and, if so, has that impact been positive or negative? Or is it too early to tell?

Mr McCULLOCH: There has been no impact on staffing and budget. In terms of what is going to happen longer term, it is a little bit early to tell because the machinery-of-government process—obviously a safety division has been created and work is happening at the moment as to what that safety division will look like going forward. But right now, basically the three bits are just operating the way they were with the resources that they had.

The CHAIR: Does WorkSafe consider that additional funding is needed for more inspectors to be employed?

Mr McCULLOCH: Um —

The CHAIR: Obviously, additional funding is needed if you are going to employ more inspectors, so I suppose the question really should be: is there a need for more inspectors?

Mr McCULLOCH: The way I would answer that is, if you look at the comparison report, we do have the lowest ratio per 100 workers, I think it is, in Australia. That's the way it is. Obviously, every senior

public servant would say they want more resources but we have what we have, and we do our best with what we have.

The CHAIR: At page 36 of your submission, you refer to \$6 million of corporate support. What is the \$6 million used for; who is it received from; and why is this amount not included in the agency's annual budget?

Mr McCULLOCH: Our annual budget is around \$26 million. About \$6 million of that goes to the corporate support area to provide human resources, finance, IT and rent. So that goes off to corporate support. We have around \$20 million—I think this financial year it is just under; it is about \$19 million—to actually run our day-to-day operations with.

The CHAIR: Will the number of staff allocated to the investigations directorate be reviewed in the future? Is there any expectation that that might be increased?

Mr McCULLOCH: What we said to staff when we made the restructure, which started last week, with the three new teams and the investigation directorate, was we would review it in a year and see how it was going.

The CHAIR: I note that in your submission, you indicate that WorkSafe uses an online system for people to make complaints and provide notifications to WorkSafe. The committee would like a response on whether WorkSafe could use the same online system to notify people about the status of their complaint or notification in order to conserve funding and make it more manageable, and to ensure that there is some feedback on investigations that are clearly in the public arena because of media coverage?

Ms NORTH: I think when they lodge online, we do ask for contact details so we could go back through the contact details, but that would basically end up being through the phone or an email response back. So I would say it is possible. It obviously would take some resources and we would have to, you know, consider where we take that from.

The CHAIR: At page 36 of the submission, you indicate that approximately \$1 million is paid to Safe Work Australia. Would you please explain to the committee how this amount is paid to Safe Work Australia; what the funding arrangements are; and what the legal basis is for the payment?

Mr McCULLOCH: There is an intergovernmental agreement, which is the legal basis—start there. It is basically Safe Work Australia do the high-level policy work in terms of safety across Australia. They also do codes of practice. They also do research. And feed to us all. We get four bills a year, so that comes quarterly, and we pay the \$1 million dollars. We are on Safe Work Australia—there is an advisory body; a board—called Safe Work Australia, which sets the agenda and the program for the officers. I think Safe Work Australia has the staff of about 100, who are doing all sorts of things. They are not a regulator; we are the regulator.

The CHAIR: I assume all the states are making a similar contribution. Do you know the basis on which the size of that contribution has been calculated?

Mr McCULLOCH: Yes. It is pro rata, per head.

The CHAIR: Of population?

Mr McCULLOCH: Yes; that's right.

The CHAIR: Just looking at page 39 about alternative funding models for WorkSafe, I note that the submission indicates that a number of other safety and health regulators in Western Australia, and other Australian jurisdictions, are funded by the industries that they regulate and that WorkSafe has made a similar case to government, and it has not been progressed by government. Would you like to provide the committee with an indication of what that business case contained in terms of how

you were proposing such a system could be established for WorkSafe? Also, would it be possible to table the business case with the committee?

[2.10 pm]

Mr MITCHELL: I assume you can table it. There are a couple of options, if you like. One of them is in relation to a workers' compensation levy, which has been considered. With all of these proposals, there are some significant problems in terms of resources and actually making sure the money is collected. Another one would be a direct levy by WorkSafe on individual businesses. Those are the options. In terms of workers' compensation, there are, as I say, some particular difficulties. The labour force survey gives us numbers in terms of people who are covered by workers' compensation. It is a survey; they take a sample of about 26 000 people around Australia, so you cannot use that survey to identify individual payments from individual employers, so there are those sorts of difficulties. If you look at WorkSafe levying individual businesses, we would have to identify those individual businesses to ask them to pay. There are 220 000 registered businesses, whether they be workplace, a number of employees et cetera. So we do not actually have that list and to the best of our knowledge nobody has that list of registered businesses around Australia. You then have various entities or various individuals who may be moving in and out of WorkSafe's jurisdiction, so for example you might have a person who comes across from the eastern states to do some work in Western Australia because they are not a business registered in Western Australia because they are not workers' compensation, they would not be paying any of the levy on WorkSafe. We also have, our estimate is probably around 16 per cent of the labour force in Western Australia is not actually within WorkSafe's jurisdiction, so these will be mines, commonwealth employees et cetera. Then there is also a group in terms of the workers' compensation who are self-employed. They do not actually pay any workers' compensation. So if they do not pay workers' compensation, clearly they will not be paying the WorkSafe levy. There are also some inequities in terms of the system. For example, if you look at the way WorkSafe is structured, we very much focus on construction, manufacturing—the high-risk groups. When you look at the difference between the premiums that might be paid by the different types of businesses, I think the most you will get is around nine per cent between the highest premium and the lowest premium. So there are those sorts of issues.

The CHAIR: Has there been any stakeholder consultation on this issue?

Mr MITCHELL: Yes, there has been some consultation. I think probably 10 years ago, when Nina Lyn was here, there was some discussion with key industry stakeholders about the proposal, and that is part of the journey we have been on with this process, but in recent times, not with industry, no. We have had some discussions with WorkCover and RSD as well.

The CHAIR: Can we take as question on notice 45 the supply of the business case that has been provided to governments?

Mr McCULLOCH: Yes. There might have been a couple of cabinet submissions in there, so you will not get access to those, but what you are after is a concept of what we are thinking about, so we will look at that.

The CHAIR: Any questions from members on that?

Just going back to the closure of the Broome and Karratha offices, what sort of time delay can be expected if there is a fatality up north to get an inspector up north to undertake the investigation, as a result of not having anyone on the ground?

Ms NORTH: We would basically be looking to be on the next flights that are available from the metropolitan area.

Mr McCULLOCH: Yes, and we have a close relationship with the police, so we will say to the police, “Can you secure the site and make sure that no-one moves it?” We will ring the employer and say, “You’re not to move anything.” We can even fax them a note—well, not fax; god, that is old! Send a notice that they are not to disturb it. Often, the police have someone stay at the site overnight to make sure it is not disturbed. We have to rely on that and we just get inspectors or an inspector on the way the next day.

Hon KYLE McGINN: I know that in Karratha there was an incident during the building of The Quarter building, with regard to a concrete fabrication. A crane toppled over the top of the building. I drove past and saw the police there as well. You are saying that the police cordoned off the area. Does that prevent employees or management of that company doing something on site, like putting barricades up that were not there before the incident? How are you, as WorkSafe, assured that the area is not tampered with prior to the inspection?

Mr McCULLOCH: We get them to take photos, so we get the police to take photos and send us the photos. That is one way we can do it. We just need to use our powers to say to people, “You’re not to tamper with it”, and if they do —

Hon KYLE McGINN: So for example, in that incident, the boom of the crane was hanging off the side of the building, and that was on a Saturday, to my recollection. Are you able to assure me that that an inspector was on that site before the boom was removed?

Mr McCULLOCH: I cannot answer that right now. There are a lot of incidents that happen, member, but we can see what we can find out about that.

Hon KYLE McGINN: I suppose it is more specific to, how do you know what happens in that space and time, and how can you ensure that the crime scene is not being tampered with? I do not fully understand how you can ensure that.

Ms NORTH: It is complex in any workplace accident because you are never there at the time and there is always a delay. It is the same argument you would have in the metropolitan area, but with more time attached to it, basically, so really, at the end of the day it is all of the evidence that comes to the matter. There are photographs taken by different parties early in the day, there are statements from all the people and witnesses who were there. There is a whole suite of evidence that goes to it, and that is the same in a regional area, just with a longer delay. As the commissioner explained, we look at what we can to fill that gap with the police at the scene.

Hon KYLE McGINN: Does WorkSafe actively promote HSR representatives at workplaces and OHS committees? If so, do you have any records of what you have done in that space?

Ms NORTH: We do. Some of the educational events we put on target safety and health representatives. The other thing we do is that when we receive calls into our call centre, one of the things that all the callers are asked is whether they have safety and health reps and whether the matter has been raised with a safety and health rep, because in the first instance we want people to use the consultative mechanisms in place in their workplace before they bring the issue to the regulator.

Hon KYLE McGINN: Do you have anything that has gone out to employers or stakeholders in respect of HSR—proactively advertising HSRs to be on site?

Mr McCULLOCH: We will have a look at that and come back.

The CHAIR: We will take that as question on notice 46. Can you just clarify the question?

Hon KYLE McGINN: The question is if WorkSafe actively promotes employers, companies, having HSRs on site; and, if so, what evidence of that do you have?

Another question was just back on inspections. Prior to an inspection on a site, does WorkSafe give any notice to the employer that they are coming on site for an inspection; and, if yes, why?

Ms NORTH: Not usually. It would need to be something unusual where there might be access issues or something like that. In most cases, no—it is an unannounced visit.

Mr MITCHELL: There are occasions where we do have particular campaigns where we think it is of benefit to do that, and WorkSafe has engaged with stakeholders and advised them that we are going to be there, but it is part of a particular campaign. Normally when we do that sort of thing, if we engage the media, it is not just so much the workplace; we want to try to make sure the rest of the community knows what we are doing so that partners, family et cetera can say to the people going into these places, going to workplaces, “We understand WorkSafe is looking at your particular workplace today; make sure you operate safely.”

[2.20 pm]

Hon KYLE McGINN: I suppose my question is more directed as an inspector notifying an employer that they are coming on site prior to arrival.

Mr McCULLOCH: No. That would be very rare. That is our strong guidance to them. I remember when I first got to WorkSafe, we had this debate because some inspectors were and some were not and now the position is that you do not unless there is an absolutely good reason. You have the person’s permission to contact them and they know you are coming or if we are going out to Hyden or somewhere from Bunbury, you want to try to make sure that there will be someone at the workplace. That would be about it.

Hon KYLE McGINN: I know that WorkSafe has the power to stop work on site during the circumstances of a breach. Can you inform us how many times that has happened in the last five years, where a WorkSafe inspector has ceased work on a job under the act?

Ms NORTH: Normally, this is by way of a prohibition notice. Pretty much that data on the prohibition notice is reflective of where we require an activity to cease. That is specific to the activity that presents the serious and imminent risk. It does not necessarily mean that the entire work at a workplace must cease. The data on the prohibition notice is relevant to that.

The CHAIR: Does WorkSafe speak with the OSH representative at a workplace during an investigation; and, if so, how is this arranged and when does it occur?

Ms NORTH: Yes, we do. Generally, it is asked at the introductory point whether there is a safety and health representative. Where there is, sometimes they are involved at an earlier point. Sometimes, it occurs as you go around, and they say, “Let’s see the rep when we get to the area where they work and speak to them then.” Generally, at the conclusion, we feed back any outcomes to the safety and health rep.

Hon KYLE McGINN: If WorkSafe has done some action on a breach, would they then notify the employer and the HSR, not just the employer?

Ms NORTH: Yes.

Hon KYLE McGINN: How is that done? Is that done by letter, email or verbally? Is there any evidence that shows that has been done recently?

Ms NORTH: It is generally done in person when the rep is there. Sometimes you have a rep who is not present for one reason or another—not working on that shift or something. If the rep is there, it is done in person.

The CHAIR: The committee has had a number of submissions that indicate that WorkSafe inspectors are not communicating with the OSH representatives at a workplace. You have now indicated that it is your understanding that they do. What sort of checks and balances are in place? I appreciate that it is your policy that they do that. Is there any way of checking that it is actually happening?

Ms NORTH: It is an interesting one. You could look at the notes from the inspector's visits and see whether they discussed the safety and health rep and mentioned that they have talked with them and that kind of thing. That would be one way of checking. That is probably the main one that occurs to me.

Hon KYLE McGINN: Just for clarity, is there no record of email or memo to HSRs about action taken by WorkSafe?

Ms NORTH: No, because we do not give memos et cetera to the employer about either outcomes of an inspection or an investigation. If there is a breach, we provide any notices in writing, and that is it from the point of view of providing things in writing with a routine investigation. Other than that, the outcome is verbal.

Hon KYLE McGINN: Do you rely on the employer to relay the action to the employees?

Ms NORTH: To the employees and the safety and health rep, where there is one, as well.

Hon KYLE McGINN: But the HSR does not get a letter; they get told verbally.

Ms NORTH: The employer does not get a letter either.

Hon KYLE McGINN: Did you just say before that you give them a written letter?

The CHAIR: No; they give them a notice of a breach.

Mr McCULLOCH: It is a notice. They have to stick the notice up. They have to display the notice at the workplace or near the bit of equipment or whatever it is so that everyone can see that we have been and there has been a notice. We do get calls occasionally whereby people ring in and say, "They pulled the notice down and it is still not fixed", so we will go out again and re-visit it. We will check on it and tell them to put the notice up.

Hon KYLE McGINN: Do all actions by WorkSafe pervade employer prohibitions?

Ms NORTH: We have two types of notice. We have the improvement notice that does not prohibit a person conducting an activity, but it highlights to them that the inspector believes that they are in breach of the legislation. It provides them some time to comply. That is an improvement notice. The majority of our notices are of that type. The prohibition notice is where there is a serious and imminent risk associated with an activity at a workplace, and the activity must cease. Again, it is the opinion of the inspector that it involves that kind of risk. That is a smaller number of notices. We also have a verbal direction. That is when an inspector observes something that is a breach but it is able to be corrected at that time while the inspector is there, so it is corrected at that time without paperwork.

Hon KYLE McGINN: I suppose that is where the HSR is told verbally that that action cannot take place. Is that what you are saying?

Ms NORTH: Let us say you have an unsecured gas cylinder or something like that, so that is secured at the time of the visit. The feedback can be to the safety and health rep at the end of the day that there was a verbal direction in relation to that and there was an improvement notice in relation to something else, which is up on the wall somewhere. Those are the outcomes.

Hon KYLE McGINN: Let us take away the improvement notice in that scenario. Then the WorkSafe inspectors leave the site and there has been no official memo or anything that the HSR can take

back to their work group which says, “WorkSafe have said this.” They do not physically have something to say to their employees, do they?

Ms NORTH: They do not.

Hon KYLE McGINN: When the inspector leaves again, what is stopping that action from happening again? What has been put in place to stop that from happening again?

Ms NORTH: It is still an enforcement action. It is a function of the inspector under the act. We record that on our database. We advise the employer that it is a direction and that it is something that we will record. If there is continued noncompliance, it is something that we look to resolve in another way if we need to if they are not amenable to improving.

The CHAIR: So there is no actual check that the employer has communicated the problem to the employees so that they are aware that they were doing this activity incorrectly and they proved to have a safety risk and therefore they need to do it a different way. The inspector communicates that to the employer. Then it is left on trust for the employer to communicate that to the employees.

Ms NORTH: The employer has a duty to implement a safe system of work. That would include taking ongoing actions for any improvements they need to make following the visit.

The CHAIR: Would it not be perhaps a safer precaution for WorkSafe not to issue a direction in writing that can then be put up on the wall for all the employees to see?

Ms NORTH: The inspector will consider that option in the context of the visit. If they feel, as I said with the gas cylinder, that it is not just an isolated incident—let us say you have a whole heap of them and you have one that is not secured—it might be that in general they have a system here, but they have missed one. They do a verbal direction. If they have a heap and half of them are not done, they will probably form the view that this lot needs an improvement notice, and they will issue one. There is an element of judgement.

Hon KYLE McGINN: I just have concerns with the comments made earlier that working at heights is a big issue et cetera. These things are not a visible hazard but they are part of the working operation, like transporting stuff upstairs et cetera. If it is spotted on site, as you said, and the inspector notices it and says, “No, that has to stop”, from what I am hearing, nothing physical is put in place that notifies all the workforce of that not happening again. It seems that the next day the same operation can take place and an employee once again has to raise that with WorkSafe, continually from what you said, until it is acted on.

Ms NORTH: We would become aware of that obviously if there were continued reports of the same thing occurring, and we would need to take different approaches. Again, the duty is on the employer. It is on our records. We have an expectation of them that they are going to resolve this properly; and, if they do not, we will need to look at further action. As long as it is communicated to them that it is their duty to put in place a safe system, not just to fix it on the one occurrence, they have an obligation to do so.

[2.30 pm]

Hon KYLE McGINN: At what point does WorkSafe prosecute the breach under the act?

Ms NORTH: We have a prosecution policy and part of that says that when we are not getting anywhere with notices then prosecution is an option. The commissioner provided examples earlier where we have done that.

Hon JACQUI BOYDELL: Can I just elaborate a little, maybe on what the member is saying? For me, I see the gap is potentially for the employees at the end of the day because they are the people continually—potentially—carrying out a high-risk task but may not be aware of it. I understand from

what you were saying that your inspector may note the activity that is occurring that may be a breach and they will inform the employer. I completely understand it is the employer's obligation to ensure a safe workplace, and I concur entirely. However, the reality I think is what the honourable member was getting at—correct me if I am wrong—is that if that does not occur because no physical notice is given, the employee, who might be new to a worksite, given we are all working with 457 visa holders and people new to the industry—they are the people falling through the gap, literally—how do they get notice of that if the employer does not carry out their responsibility? That is the reality, I think.

Ms NORTH: To me that would be a problem on behalf of the employer. If the employer has advised that an activity that is occurring is in breach and is unsafe and they are to improve on that, they are going to need to make sure that everybody is informed and is aware. That is part of their duty.

Hon JACQUI BOYDELL: Yes, I understand that. But given that we are all noting the problem and all aware of it, is not a physical indication of the problem a better way to go for the employee at the end of the day?

Ms NORTH: I guess in many cases there are improvement notices issued—we issue thousands of them every year—but this gives the inspector some flexibility where there are things that appear to be—as I said, there is a system largely in place, but if they see isolated noncompliance, it allows them the option to use a verbal direction, and that is part of the act. That was put in place in the act and presumably with the intention that it is a tool an inspector can use.

The CHAIR: Does WorkSafe record any complaints received from OSH representatives in relation to a lack of consultation by the inspector, discussion or contact with an inspector or if there has been a bad interaction between the OSH representative and the inspector and a complaints received? Do you have a means of recording and retrieving that data?

Ms NORTH: I am not aware of any.

Mr McCULLOCH: No.

Mr MITCHELL: If it is a complaint, it will go perhaps to the commissioner or to the manager, so there is a record of it, but it is not a separate category in our reporting system for that type of complaint.

Hon DARREN WEST: Just now, listening to the last passage of the hearing, clearly there are going to be a lot of reports that come through you that turn out not to be breaches and not to be problems. Can you give us an idea of roughly how much, how many and what sort of percentage they would be and roughly how much of your time is spent chasing up non-breaches of the act and such? Why might there be such a number?

Ms NORTH: What we probably can do is get some data on enforcement actions taken at reactive work jobs and that will give you an idea whether we have either issued notices or given verbal directions about the kind of routine reactive work kind that is involved.

The CHAIR: I will take that as question on notice 47.

Hon DARREN WEST: I am just trying to get an idea of how big an issue that is to you, because if you have got finite resources, which we have established, and if those resources are regularly being allocated to areas where there is no breach or no issue, it is clearly taking them away from areas that there are. I would be really curious to know what sort of procedures can be put in place to help prevent that, whether it be education programs for employees or what.

Mr MITCHELL: It is not quite as easy as that sometimes because what might happen is that if we receive a complaint today from a workplace, by the time the inspector gets there today or tomorrow or the next week or whenever it is, the problem may well be fixed. We will not actually know

whether the complaint was real or not at that time. Anyway, Sally can give you some detail but I guess I am just offering some caution in looking at the numbers and coming to a particular conclusion, because often there are lots of other reasons why an inspector goes to a workplace and does not necessarily find that particular complaint. Or else a complainant might make a complaint about one particular issue and while their description is wrong, it might relate to another matter.

Hon DARREN WEST: I am also thinking of vexatious claims where people have an axe to grind with someone and may spend a lot of their time reporting matters that may or may not need reporting.

Ms NORTH: It does happen.

Mr MITCHELL: We do not have a separate category for vexatious or anything like that.

Proceedings suspended from 2.35 to 2.55 pm

The CHAIR: I note from the submission that you offer a number of training programs for your inspectors, which is great to see. Can you give me an indication whether those training programs are a day's training or do they run over a number of days, or do they vary depending on the particular program?

Ms NORTH: They do vary. The extent of detail on a matter is quite variable, so they are different.

The CHAIR: Are they usually offered during work hours?

Ms NORTH: Yes.

The CHAIR: I note that in regional WA you offer a regional conference on a yearly basis, which is a five-day conference, and that all of the training is done during that five-day conference; is that correct?

Ms NORTH: Yes.

The CHAIR: Is that comparable to what is being offered to the metropolitan inspectors?

Ms NORTH: I think it is done consultatively. There is some discussion with the regional group as to what they would most benefit from and what they are after.

The CHAIR: Who delivers the certificate IV in government investigations?

Ms NORTH: An external contractor. I cannot think of the name offhand, I am sorry. It is an external provider.

The CHAIR: And also the diploma of government workplace inspection?

Ms NORTH: That one we have got to map into our internal tasks. It is actually through work-related tasks that they develop that. Then we have an assessment system in place with that, with an external person as well.

The CHAIR: I understand that you provide career progression for inspectors and they can progress from one level to another. Can you just run through the number of levels that you have and whether there is a requirement to complete a certain number of years of service before you can go to the next level?

Ms NORTH: There is career progression available between a level 4 to 5 to 6 inspector and also a specified callings level 1 to 2 to 3 inspector. I think the first one there is some time component to, and after that they are basically task related.

The CHAIR: Can you explain to me what "specified calling" means?

Ms NORTH: Sure. Specified callings is where the JDF requires a particular qualification for that job role. In general, those are specialist inspector positions. The person comes in with that degree

qualification. Their JDF specifies that they are a specified calling and, because they have a technical element to their role, their career progression has a technical element to it as well.

The CHAIR: Any questions from members on the training section?

Hon KYLE McGINN: Just one in respect of the inspectors who are selected. Are they selected with industry knowledge in certain parts? Do you employ inspectors for the construction industry, farming, transport et cetera? Is there a prerequisite of industry knowledge?

Ms NORTH: The JDF for an inspector does discuss the relevant industry experience. Yes, if the construction team is recruiting, they will be looking for relevant industry experience to that industry. Yes, it is part of the JDF.

Mr McCULLOCH: It is really important to us because, obviously, if you go on a construction site and you do not know what you are looking at, people realise really quickly you do not know what you are looking at. That is not good for us.

Hon KYLE McGINN: Would you be confident to say that all your inspectors know the industry that they are inspecting?

Mr McCULLOCH: In the construction side, they have all come out of construction.

Hon KYLE McGINN: They have all come out of construction?

Mr McCULLOCH: Yes.

The CHAIR: We might move on to page 48, which is “Adequacy of administrative processes”. About halfway down that page, the submission states —

A WorkSafe inspector will not contact the complainant with the results of their investigation.

Could you put on the record the reasons why you have that policy in place?

[3.00 pm]

Ms NORTH: WorkSafe investigates for the purposes of the occupational safety and health legislation and to check compliance with that legislation. We are not an agent of the complainant, so we are doing this to check the compliance at that workplace. If they are a workplace participant, like an employee at the workplace, they will have that information, as we discussed earlier, in terms of any outcomes at the workplace. If they are not a party to the workplace, then we refer them to the FOI process to get outcome information.

Hon KYLE McGINN: That is including a stakeholder like a union, for example?

Ms NORTH: Yes.

The CHAIR: Are there no circumstances in which you might think it is appropriate for the inspector to contact the complainant? I think I raised earlier the issue of airborne asbestos. Clearly, a person on a worksite may believe that there is airborne asbestos. Surely, there should be some obligation on WorkSafe to inform that employee if their health is at risk.

Ms NORTH: I am a bit unclear, because it sounds like they have informed us that they believe there is airborne asbestos. Is this after we get further information?

The CHAIR: No. This is a complaint from someone who was working on a worksite. They believe that there was airborne asbestos. A WorkSafe officer came and investigated, brought no equipment to be able to monitor if there was any airborne asbestos, and the person continued to work, and there clearly was.

Ms NORTH: With that, there are a few things. Often with an asbestos issue, generally asbestos will only be releasing fibres into the air when it is being disturbed. An inspector will be able to observe

if asbestos has been disturbed in general. It is something they would be able to see if anyone is cutting it or digging around with it in the ground or whatever they are doing. They would be able to make some observations about that. If they are not doing that, then there is really no point doing air monitoring, because if it has not been disturbed the air monitoring will not be getting any readings. The other thing is, if there has been an incident—it might have happened that before the inspector came to the site there was an incident, and they would make inquiries to ascertain that—if there was an incident and it is likely that that incident did result in airborne asbestos, then the duty is on the employer to figure out who was potentially exposed, and to advise those people of that. There is a duty in the legislation requiring them to do that.

The CHAIR: And if they have not done that?

Ms NORTH: That can be a breach, if they have not done that, and they need to do that, so we can get them to do that.

The CHAIR: Okay, so how is the worker able to ascertain that it was asbestos and, if there has been a breach, to report it to WorkSafe—to say, “Well the employer has not notified us as they are required to”—if the inspector does not provide any feedback to the complainant?

Ms NORTH: I am still a bit unclear. The employee can ask the employer about a hazard that they have reported, so if they believe there is a hazard, they can put in a hazard report to the employer and they can ask for the outcome of that. The employer has a duty to investigate that and to provide a response to that, so they can get that information in that way.

The CHAIR: Okay. In the particular case that I am referring to, it was a situation at a worksite in Busselton. A contract fencer was putting up a fence, and other people were working on site. One was working with a Bobcat and it damaged an old asbestos pipe. All the piping in Busselton was asbestos when it was initially put in. They then proceeded to smash up that asbestos piping that got crushed as they broke into it, and distributed it across the site, because they were levelling out the site, so it became mixed in different sized particles with the sand. The worker lodged a complaint with the City of Busselton, WorkSafe and me, and it took, I think, 24 hours for WorkSafe to get to that site to investigate, even though you have got offices in Bunbury, and by that stage the employer had, I think, watered down the area, and they had removed some of the larger sized particles and put a layer of clean sand over the top of it. By the time the inspector came, that is what he saw. However, there was clearly a period of time there where the worker was exposed to asbestos particles. The company employed someone to have a look at it, and they referred to it as asbestos-like material. They did not even acknowledge that it was asbestos, and the notes that were made by the WorkSafe inspector also referred to asbestos-like material, even though the City of Busselton will tell you that it was definitely asbestos. To this day, this worker has not been able to get someone to say, “Yes, it was asbestos and, yes, you were exposed.”

Ms NORTH: It sounds like there are a few issues there, and there are a few different ways it could potentially be handled. The other thing I would say to a person who believes that they have had an exposure at a workplace—because the thing is that that incident, having occurred in the past, nobody was measuring it, I am presuming, at that time in terms of the airborne level, so the airborne level will not be known. It can be estimated through other works, but what a person can do if they have got any concerns about their exposure from an incident is they can lodge their exposure with the national asbestos exposure register, which is administrated by the Asbestos Safety and Eradication Agency. They can put in the date and their notes about what happened and so forth, so that it is held as a record by a government agency in that way, but if there is a significant asbestos exposure, then employers also have a duty to let people know.

The CHAIR: But in that instance it took 24 hours for the WorkSafe inspector to get on site, even though the time between Bunbury and Busselton is about a half-hour drive. By the time the inspector arrived, measures were taken to deal with the problem, but at the time the incident was happening, and for the rest of that day and the following morning, no effort was made to protect people on the site in terms of giving them masks or any other measure. A copy of the report that was commissioned by the employer was not obtained by WorkSafe, so I cannot access it to see what it actually says. The notes by the WorkSafe inspector refer to asbestos-like material. I just find the whole thing really unsatisfactory. I mean, if someone lodged a complaint about the likelihood of airborne asbestos, you would think that a WorkSafe inspector would get out there as quickly as possible and would have equipment on them to monitor whether there is any airborne asbestos, yet that did not occur, and I would have thought that that would have been a no-brainer.

Ms NORTH: From what you have described, I do not think they would have picked any up, because if you have come back at the point in time when it is covered in clean sand you are not going to be finding anything detectable in the air above the background level.

The CHAIR: But the inspector would not necessarily have known that when he arrived.

Ms NORTH: Yes, he would have had to have got there while it was being disturbed, in which case the thing to do would have been to stop it being disturbed immediately, which would again mean that if you were then to monitor, you will be picking up very little, because you have already asked them to stop. If you see that it is happening, the first thing to do is stop it happening, rather than to measure it.

The CHAIR: Yes, but you would also want to measure it to understand the level of exposure that may have occurred.

Ms NORTH: You could, but the air outdoors would take away a lot of the fibre if you stop the activity occurring, so you are already on a quickly declining level of what you can actually pick up in the air.

The CHAIR: So what is required for WorkSafe to acknowledge that it was an asbestos incident, and not an asbestos-like incident?

Ms NORTH: From our point of view, the law actually allows a person that is dealing with asbestos to either treat it as if it is asbestos—to presume it is asbestos and handle it like asbestos—or otherwise to assure themselves that it is not asbestos. The thing and inspector would do is to say, “Is this then presumed to be asbestos?” in which case it has got to be treated exactly like confirmed asbestos.

The CHAIR: Okay. You mentioned earlier that there is an obligation then on the employer to notify the employees that they have been exposed to asbestos. That did not occur, because the inspector’s report marked it down as asbestos-like material, so there was never any follow-through in terms of the investigation to ascertain whether it was asbestos. We know that the old pipes in Busselton were all asbestos, so everyone is very confident it was asbestos. What level of protection is being provided by WorkSafe in that incident?

[3.10 pm]

Ms NORTH: Employees can ask for information and they can also refuse to do work if they feel there is a serious and imminent risk. There is a right to say, “I’m not doing that task” in that circumstance where there is a serious and imminent risk, so there are those couple of things. WorkSafe provides training on asbestos for inspectors on a regular basis, and, again, a lot of them have quite some years of experience in dealing with asbestos, particularly at construction sites.

The CHAIR: Sure. But you can understand that from that complainant's point of view, the whole process was entirely unsatisfactory.

Ms NORTH: Yes, it was. There was an incident and there was a potential exposure, and that is the issue.

The CHAIR: There is no acknowledgement by WorkSafe that there was an exposure. There is no acknowledgement by the employer that there was an exposure. But I know that it was an asbestos pipe.

Ms NORTH: It sounds like some work was done and they had a consultant do a report. Again, a person can say to the employer, "I believe there was a hazard at the workplace" and the employer can respond to that and provide them further information when they have that further information through the consultant's report.

The CHAIR: Yes, but what happens if the employer declines to provide that report and the WorkSafe inspector saw the report, effectively ticked off on the report but did not retain a copy of the report so it was, therefore, accessed through freedom of information?

Ms NORTH: The inspector needs to basically form an opinion of whether or not they believe there is a breach occurring at the time. They look at the material and look at what is available to them on the day. They may or may not take copies of reports that they see. If they can form their opinion on what they have seen on the day, they are not compelled to take copies of all of the relevant documents simply for the purposes of putting them on a file.

The CHAIR: Should there not be a requirement to do that? If this person has been exposed to asbestos and develops an asbestos disease in the future, he needs to show a causal connection. How does he do that when there is no evidence and WorkSafe has not collected any evidence?

Ms NORTH: It sounds like, from what you are telling me, that there is something on our system about the incident already. There is also the option that they can create a record of their concern through the other mechanism as well. So it does sound like there is something on the record, but my understanding is that in asbestos disease cases there is not a strong reliance on that kind of document anyway, because, historically, it has not always been available and there are certain accepted protocols around getting that information.

The CHAIR: Just because it has not been available historically, do you not think that part of WorkSafe's responsibility should be to assist with the collection of that information so that if this person develops an asbestos-related disease in the future, they have actually got somewhere that they can access the evidence that is needed to support any compensation claim they might be wanting to make?

Ms NORTH: As I said, it sounds like there would be something about the incident on our system.

The CHAIR: The only thing that is on your system is "asbestos like material". WorkSafe did not even test the material.

Ms NORTH: Again, we would generally only do that when there were doubts and concerns and so forth. Then there is the option to test it, but it is not necessarily done as a standard because employers can choose to presume that a material is asbestos and handle it exactly like asbestos. If you have a fence of a certain age, you might choose to presume that it is an asbestos fence for the purposes of removing it and treat it like asbestos rather than test it first and then remove it as asbestos and treat it like asbestos. That is an option that people have in dealing with it.

The CHAIR: Yes, but in this case it was asbestos. It was initially dealt with very poorly and took some time for the employer to put some measures in place to deal with it. By the time the WorkSafe

inspector arrived, obviously those measures had been put in place, but that does not mean that the person was not exposed to asbestos air particles for a period of time. Yet there is nothing in the WorkSafe records to indicate that that was likely to have occurred, and WorkSafe are not in a position to be able to provide that complainant with any supporting evidence that it was asbestos. What is the point of going and doing a site inspection 24 hours after the event when you have an issue of airborne asbestos?

Ms NORTH: I guess I do not know what other jobs the inspector had on and what priority the other jobs had and whether there were injuries or other things that inspector was looking at; I do not know that. Secondly, there is always a point, of course, of going to have a look at the situation to make sure that there are no further exposures occurring, which is obviously really important. But I take your point that you think it would be useful to have more evidence collected for the benefit of the worker in the long term.

The CHAIR: Also, in that incident there was no fine or any action taken against the employer for not handling the asbestos properly in the initial stages. That is standard practice, is it?

Ms NORTH: Again, you come back to the prosecution policy and whether or not those criteria were met, so looking at, I suppose, the seriousness of it, the kind of intent of it, or the systems that they had in place around asbestos management and whether there had been any past breaches or issues that have been occurring with that duty holder.

The CHAIR: That is all a bit unsatisfactory.

Hon KYLE McGINN: On the complaints process, I want to get a bit of an understanding. I see the mission of WorkSafe is to engage with all partners et cetera. We spoke briefly before about permanency and casualisation. I wonder, when unions make complaints on behalf of employees, for whatever reason that may be—potentially, employees may feel that it is not their position to make a complaint because they may be threatened by an employer et cetera—what is the process in regards to feedback from a WorkSafe inspector to the union on that complaint?

Ms NORTH: Again, this is where we have basically been inspecting for the purposes of OSH compliance. If the union member is in touch with someone at the workplace, they may be able to get some information through them because the person at the workplace should be aware of the outcomes and they may be able to get it in that way. Failing that, we can advise at the time that the investigation is complete; if the person gets in touch with the inspector, they can be advised that it is complete, but that is the level of detail. The information that we get under the OSH act during our investigation, we have acquired it for the purposes of the OSH act. That is the only purpose for which we have acquired that information. We are advised that that is the only purpose we can use it for so we cannot be giving it to other people. Some of the information that we pick up during our investigations is quite sensitive in one way or another, whether that is through issues like workplace behaviours and those kind of things, which can be quite sensitive, or whether that is things that are commercially in confidence with processes. So it is not really appropriate that an inspector is basically applying the judgement as to what should be released to an external party when we have people who are trained in the provisions of the FOI act, and really they are the people that need to be applying the judgement as to what we can release as an agency. That is how it is done.

Hon KYLE McGINN: So there would be no feedback on what action is taken on that complaint?

Ms NORTH: Not to an external party.

Hon KYLE McGINN: Even though the complaint is done by that party on the basis that there was a breach of the act, there is no obligation, you feel, for WorkSafe to give feedback to the complainant?

Ms NORTH: No.

Hon KYLE McGINN: Okay.

The CHAIR: I find that position very interesting because the object of the act is to protect workers in their work environment in terms of providing improved safety and reduced hazards, yet you do not communicate to the person who has lodged the complaint to tell them, "Look, you know, you're right. There was a problem. We've taken these measures to address the issue. We're ensuring that the supervisor—whoever—understands the nature of the hazard, so it's been corrected. We don't expect it will re-occur again" or, "We're prosecuting because this is the twentieth time that they've actually had this breach." It just seems to me really bizarre that you do not offer any feedback to the complainant, who obviously is phoning because he or she believes that his or her or other colleagues' safety is at risk. I would have thought that would be a pretty important public interest test applied that would necessitate some feedback to the complainant.

[3.20 pm]

Ms NORTH: We are using the advice that we have been provided about the provisions of the OSH act and the provisions of the FOI act and our role as a regulator and the appropriateness, and that is the advice that we have been given.

Hon KYLE McGINN: So I just wonder with the vision and the mission and the way WorkSafe is approaching things through partnership, education and enforcement, I just struggle to understand how feedback to a complainant ticks those boxes. I would feel, as a worker, workers would feel more confident with feedback and knowing that their safety issues are being heard. It does not seem, from what we have heard today, that there is feedback definitely getting to the employees. It seems subject to the employer. If the employer gets the feedback, why would a stakeholder like a union not get the feedback?

The CHAIR: Particularly if the stakeholder —

Hon KYLE McGINN: Particularly if they made the complaint.

The CHAIR: — made the complaint, yes.

Ms NORTH: Certainly, the employees, if they are at that workplace, have the avenue of both the employer and the safety and health rep, and the information that might be posted on a wall if there is a noncompliance and it is addressed in the form of a notice. So there is the information for people at a workplace, and for people not at a workplace, the advice we have had is that the information we have is just for the purposes of the OSH act, not to be used in that way and shared with external people other than going through those checks of the FOI, which basically make sure that we are not releasing anything that is sensitive and that we should not be releasing.

Hon KYLE McGINN: Can I ask what part of the act you are referring to that stops you from giving feedback to stakeholders?

Ms NORTH: Yes. I think it is in relation to the information being for the purposes of the OSH act. I think it is in the powers of inspectors and the part about it being for the purposes of the OSH act.

The CHAIR: And the purposes of the OSH act are to educate.

Hon KYLE McGINN: Yes.

Ms NORTH: And we do certainly educate in the form of if we have done some proactive work —

Mr McCULLOCH: Programs, yes.

Ms NORTH: — in an area, we do put out information on what those noncompliances are, but on specific workplace issues. that is the advice that we have had about using that information.

The CHAIR: Can you please tell me who has provided that advice, and can you provide the committee with a copy of that advice?

Mr McCULLOCH: Well, it is our legal people, and I guess we need to have a talk them about whether we are able to provide it.

The CHAIR: Okay. I will take that as question on notice 48, for the provision of the nature of the legal advice and for a copy of the legal advice, and who supplied it.

Hon JACQUI BOYDELL: Chair, I have one question that is slightly deviating from that.

The CHAIR: Are you okay? Have you finished?

Hon KYLE McGINN: I am okay, yes.

Hon JACQUI BOYDELL: I just wanted to ask what is WorkSafe's role, if there is one, in terms of if there is a publicly known issue going on—I am going to refer to the dust issue in Port Hedland from the iron ore stockpile on the west end. Where there has been a health survey conducted and the results show conclusively that there probably is an OH and S issue with the dust to workers on site, does WorkSafe have a role, so you then proactively go to that worksite and engage with the employer or the employees and ensure that that company is enforcing any dust mitigation issues et cetera?

Ms NORTH: Ports can be a little bit tricky with the jurisdiction, particularly when it is a mining product. When there is a mineral product going to a port, sometimes it is resources safety jurisdiction rather than WorkSafe jurisdiction when the dust is there.

Hon JACQUI BOYDELL: That is why I was wondering whether you do have a role.

Ms NORTH: Yes.

Hon JACQUI BOYDELL: What is it?

The CHAIR: Sorry; can I just clarify? You said "sometimes". Can you tell us when it would be a WorkSafe jurisdiction and when it would not be a WorkSafe jurisdiction?

Ms NORTH: My understanding with ports is that let us say you have a port and sometimes it exports minerals, and that may well be a resources safety thing, and then maybe the same port would also export grains and there would be grain dust as an alternate product. Not being a resources product, then that potentially could be a WorkSafe matter at that stage.

The CHAIR: So if the dust is associated to minerals, then it is not your jurisdiction?

Ms NORTH: I think it is one that I like to look at case-by-case with ports to make sure we have that right, because there are some quite specific boundaries around the different ports and what they are doing.

Hon JACQUI BOYDELL: Because there is nothing else exported from that port—well, except for live export now.

Hon KYLE McGINN: Chair, I will just add to that. For example, in Port Hedland—because I also have a bit of knowledge of that—there is a port that is run by Qube, I believe, that does not export iron ore but it is surrounded by iron ore trans-shippers in that port. That is under WorkSafe's jurisdiction on that port for Qube and the Pilbara Ports Authority.

Ms NORTH: Yes.

Hon KYLE McGINN: So, in that case, where there is iron ore dust coming across from the other mine sites, would you say WorkSafe has the jurisdiction because it is affecting people in the workplace that is covered by WorkSafe?

Ms NORTH: Where a dust is produced at one workplace and affects people at a second workplace, that is a matter more covered with the Department of Water and Environmental Regulation, with advice from the Department of Health. So they typically are the ones that would look at it where it is an offsite exposure, yes. Where it is an exposure that is generated at the same workplace, and the workplace was under our jurisdiction, that would be more where it was us. So if there is a dust generated at the workplace and it is our jurisdiction workplace, we can look at the exposure there to those workers, and where the dust ends up somewhere else, then that is more of an issue for DWER is my understanding of that.

Hon JACQUI BOYDELL: Further to that, where it is quite a big localised issue and that may have come across your desk, is there a role that WorkSafe has to proactively find out whether that is in your jurisdiction or not, and do you have resources to be able to do that?

Ms NORTH: Potentially that is something we could look at, yes.

Hon JACQUI BOYDELL: And you are resourced to do that?

Ms NORTH: To some extent, I suppose, yes.

Hon JACQUI BOYDELL: Okay. Thank you.

The CHAIR: Just looking at page 50, page 50 provides, at the top of the page, a list of things that the inspector can do when conducting an investigation. Included in that list is “examine and take copies of documents”. Is that reliant on a provision in the legislation; and, if so, can you just identify it for me?

Ms NORTH: We are in the Occupational Safety and Health Act, section 43, “Powers of inspectors”.

The CHAIR: Therefore, the inspector who attended that Busselton site did have a legal jurisdiction to examine and take a copy of the consultant’s report?

Ms NORTH: Yes, the inspector would have had the power to do so.

The CHAIR: But just chose not to?

Ms NORTH: Yes.

The CHAIR: Are there any other questions in relation to this investigation section that members would like to raise? Just to recap on WISE, WISE is a completely electronic-based system, and all complaints are registered in WISE and then the action that is taken in relation to that complaint will be registered in WISE?

Ms NORTH: Yes.

Hon KYLE McGINN: I suppose this is just a question around how long an investigation takes. I think there is a connection with you have to wait for the investigation to the next stage. I know, for example, there are some cases where it has taken up to 22 months for an investigation to be finished. Is there any reason why an investigation would take 22 months?

Mr McCULLOCH: It would depend on the complexity of it, the numbers of duty holders, the numbers of people who would be interviewed, whether we have to get in experts to look at particular aspects of the case for us. Those types of things do stretch the time out. Our aim is to get them done within 12 months. That is what we set ourselves, but some, just through circumstances —

Hon KYLE McGINN: Would you have data that shows how many have taken longer than 12 months?

Mr McCULLOCH: I think one of the questions earlier might address that.

The CHAIR: Yes, but we might just put it on the record again at this point in time. Question on notice 49, for the last 10 financial years?

Hon KYLE McGINN: Ten financial years, yes.

The CHAIR: For each financial year, the average length of time to complete an investigation arising from an incident that occurred in that financial year, and the longest period of time that it took for an investigation from an incident that occurred in that financial year. Would that cover it?

Mr McCULLOCH: Yes.

[3.30 pm]

The CHAIR: I cannot locate the page at the moment, but I note that in the submission mention is made that it is sometimes difficult to get experts to assist WorkSafe because they do not want to provide evidence that could be contrary to a colleague working in the same industry. How do you manage that? Do you have sufficient budget to get experts from interstate in those circumstances?

Mr McCULLOCH: Yes. The way we manage it is to try to get someone who is not captured and not going to be impacted by here. We actually have an investigation going at the moment where we have used an interstate expert—we flew them in and flew them back.

The CHAIR: Would a legislative change that provided you with the power to compel an expert to provide evidence be of any value?

Mr McCULLOCH: I would have to think about what the implications are around compelling. My understanding of compelling—we can compel people to have an interview now, but we cannot use it against them.

Ms NORTH: That is right. We can compel people who we found at a workplace et cetera, and we cannot use that against that individual although we might be able to use it in other proceedings. However, I do not know that we could compel an expert at the moment because we have not located them in a workplace of interest. I think that might be something we would have to look into. The other thing I would be a bit concerned about is whether there is a risk of introducing some kind of bias into their approach. I know that they would need to advise the court, but there are different angles that they could look at things from.

The CHAIR: I note also that in the submission you refer to using the assistance of WAPOL in terms of computer expertise when that is required in an investigation. Obviously they give priority to the matters that they are investigating, and as a result that can create quite a delay while you are waiting for WAPOL to have the time to assist with one of your investigations. Do you have the capacity to use the Australian Federal Police to assist with that, because I understand that their expertise in this field is even better than ours?

Mr McCULLOCH: We have not been down that path, chair.

The CHAIR: But there is nothing in the legislation that would prevent you from doing that?

Mr McCULLOCH: I would not think so, no.

Mr MITCHELL: It is up to them to tell us, I think. We could ask, and they might have priority issues.

The CHAIR: I understand that WorkSafe inspectors prepare the legal brief that goes to the legal section. What training do those inspectors receive in the preparation of a legal brief?

Ms NORTH: Through their initial training, there is a certificate in statutory investigation that covers some of those elements. There is also the coaching and working with more experienced people to get that on-the-job experience. There are also a number of sessions provided by WorkSafe lawyers internally about the legislation and how that can be applied and some practical ways in which that should be applied during investigations.

The CHAIR: Who undertakes that training?

Ms NORTH: The certificate IV is an external one, and then there is the coaching and the working with experienced people that we do internally, and then someone from our WorkSafe legal area usually does certain aspects of the legal training internally.

Hon KYLE McGINN: Is there an allocation of funds for prosecutions under the budget for WorkSafe yearly?

Mr McCULLOCH: We have a budget for our legal services; so, yes, we do.

Hon KYLE McGINN: In big cases and long prosecutions, 22 months, for example, would that affect minor prosecutions from being fulfilled because of the funds?

Mr McCULLOCH: No. One of the things I am really strong on is we are not going to let the cost of experts or anything like that get in the way of making sure we do the best investigation that we can.

Hon KYLE McGINN: I suppose to reframe that question, does spending the funds on a bigger case affect the smaller cases of prosecution for breaches?

Mr McCULLOCH: No.

The CHAIR: Is a prosecution undertaken by in-house solicitors or does it go out to the State Solicitor's Office and they handle the court appearances?

Mr McCULLOCH: The bulk of them are done by our lawyers. We have three lawyers, and they do the bulk of them. There will occasionally be big ones, which are going to be big and probably go into other places with appeals and that, and we make a decision quite early that we are going to use the State Solicitor's Office, but they are few and far between. They are all done now. Mr Ward was one, and Paspaley was another. They are very few and far between given the numbers that we do.

The CHAIR: Before you issue a prosecution, are you required to consult with the State Solicitor's Office to get an independent view about whether there is sufficient evidence to initiate a prosecution?

Mr McCULLOCH: We do not do that, no. Our lawyers do it, and we have a lot of success. We win most of our cases.

The CHAIR: So there is a provision in the legislation that enables WorkSafe to undertake its own prosecutions?

Mr McCULLOCH: Yes.

The CHAIR: Which provision is that?

Mr McCULLOCH: We will find it for you, but we can undertake our own prosecutions.

The CHAIR: I will take that as question on notice 50. Are most of the cases heard in the Magistrates Court?

Mr McCULLOCH: Yes, all of them.

The CHAIR: All of them, regardless of —

Mr McCULLOCH: Regardless of size, severity, whatever.

The CHAIR: Okay. That is really interesting. So there is no capacity to have a superior court handle the matter?

Mr McCULLOCH: No, there is not.

The CHAIR: Is counselling support provided to inspectors who are investigating cases involving traumatic injuries or fatalities; and, if so, can you detail what is in place?

Ms NORTH: We have as an organisation an employee assistance program, and if an inspector has attended certainly a fatality or other potentially traumatic workplace incident, we require them to get in touch with the employee assistance provider and see if they need to do any further counselling. We do require them to get in touch with them and discuss that incident.

Mr McCULLOCH: That is not negotiable—they must get in touch, and the directors and the managers make sure they get in touch.

The CHAIR: Sometimes these things can manifest themselves much later after the incident. What sort of follow-up support is provided in the event that you have some later onset of an impact?

Ms NORTH: It is a program that is always available to inspectors, not just for this type of incident but other things they might be finding stressful. They can certainly get in touch with that service at any time. If the team manager or another person close to them is aware that they are having some issues later on, then they can certainly refer them back to that service or to their own doctor.

The CHAIR: Just to clarify, that is an external service separate to WorkSafe, so it requires the inspector to make that approach to the counselling service, and there is no obligation on that counselling service or on management to do any follow up?

Ms NORTH: It is a confidential service, so although we check that the inspector has been in touch in the first instance, it is confidential after that as to whether they feel they need another appointment or anything.

[3.40 pm]

The CHAIR: Noting the time, because we were scheduled to finish at 3.45, we have some other business that we need to deal with because we did not get through as much business as we would have liked this morning ahead of this hearing. So, if it is okay with members, I will move to finalise the hearing at this point, and the staff will be in contact with you to reschedule another hearing at a later time to go through the rest of the questions that we have, and then I expect we will need to call you in again after we have heard submissions from other witnesses.

On behalf the committee, thank you, because you have been very patient and helpful today. It has been a very long hearing; our hearings are not usually that long. I have some formalities to go through at the closure. I thank you for attending today and remind you that a transcript of the hearing will be forwarded to you for correction. If you believe there are any corrections that should be made because of typographical or transcription errors, please indicate those corrections on the transcript and notify us of the corrections that need to be made. The committee will provide you with notification of the questions that were taken on notice, and it will be available in the transcript in any event. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript of evidence. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence to the committee when you return your corrected transcript of evidence. Do you have any questions that you would like to put to the committee at this point in time?

Mr McCULLOCH: No, fine.

The CHAIR: Thank you very much.

Hearing concluded at 3.41 pm
