

# STANDING COMMITTEE ON PUBLIC ADMINISTRATION

## INQUIRY INTO WORKSAFE



TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
TUESDAY, 5 MARCH 2019

SESSION THREE

### Members

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

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**Hearing commenced at 1.00 pm****Ms REGAN BALLANTINE****Private citizen, affirmed and examined:**

**The ACTING CHAIR:** On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask that you take either the oath or the affirmation.

[Witness took the affirmation.]

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

**Ms Ballantine:** Yes, I have.

**The ACTING CHAIR:** These proceedings are being recorded by Hansard. 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 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, please request that your evidence be taken in closed session and we will move into a private hearing. 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 the 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.

On behalf of the committee, we really appreciate you coming in to speak today. We are looking forward to hearing your evidence. I invite you now, if you would like, to make an opening statement to the committee.

**Ms Ballantine:** Thank you. I am the mother of Wesley Ballantine. My 17-year-old son was killed whilst working on a construction site in January 2017 in the Perth CBD. Wesley was working for the subcontractor engaged to install a glass atrium ceiling in the Perth GPO building when he fell 12 metres to his death through an uncovered opening.

With respect to the terms of reference from the committee, I would like to address the need for WorkSafe to increase the training and entry requirements to work on a construction site; the need for a truly anonymous reporting portal to be implemented; the need for WorkSafe to have a greater presence, not only as “boots on the ground”, but for the average worker to actually have some visibility and actual understanding of the existence of WorkSafe. What good is a tip-off line if a worker is not even aware of it? There needs to be greater transparency and disclosure of information from WorkSafe when seeking information pertaining to a complaint or an investigation, greater efficiency in the time frames in bringing about a prosecution, and an increase in funding for WorkSafe so they are adequately resourced and can be more effective. And when there has been a fatality, there is a need for dual jurisdiction, enabling the police to investigate concurrently with WorkSafe. A person who dies at work deserves the same dignity, level of police investigation and opportunity for justice as any other person who is killed in Western Australia.

I am hopeful that the recent appointment of the new WorkSafe WA Commissioner, the recommendations from this inquiry and efforts towards harmonisation with the proposed

introduction of the model Work Health and Safety Act will bring about the much-needed changes to ensure the right of every worker to come home safely and to protect people like Wesley from senselessly losing their lives. I would like to thank the committee for the opportunity to be here and to contribute to the hearing today.

**The ACTING CHAIR:** Thank you very much for that opening statement. We may go over a few things and anywhere that you feel you need to expand on, please do not hesitate to.

**Ms Ballantine:** Sure.

**The ACTING CHAIR:** In your own time, can you please explain the circumstances of Wesley's death to the committee?

**Ms Ballantine:** Wesley was working on a night shift for the H&M fit-out in the Perth GPO. He was working for the subcontractor as a trades assistant. There was a glass atrium ceiling being installed inside the GPO, which was 12 metres above the ground. This glass atrium ceiling was heavy, toughened, industrial glass, which was also being used as a working platform, so people were walking on this glass atrium ceiling. If you can imagine a gridded ceiling, he was up there, walking along the ceiling and there were sections of the ceiling that were missing. It was all live edges; it was not covered; there were no handrails. Any reasonable person could see that it was a dangerous situation to be in. We are talking about a glass ceiling with big holes in it that people were just walking along. He fell to his death.

**The ACTING CHAIR:** How much experience did Wesley have?

**Ms Ballantine:** I have included as part of the annexures—I believe it is the last annexure, D—a photograph of my son, Wesley. The photograph is of him when he was 14 years old. That is the day that he came home from work experience in a steel factory. He needed to get his white card certification to do that work experience. And that was considered adequate enough training—a white card at 14—for him to go and work on a construction site. I have included that because it is really quite astounding that construction industry best practice considers you well enough trained and equipped to go on to any construction site with nothing more than a three-hour, online, white-card certification, which I will point out is not renewable.

**The ACTING CHAIR:** It is a one-time thing?

**Ms Ballantine:** One time. I have to get my senior first aid certification. It is a two-day, in-person course, which is renewable every couple of years, yet a 14-year-old kid can go and get a white card online. You or I could go and get this white card certification this afternoon and you will be deemed adequate enough to go and work on a construction site.

**The ACTING CHAIR:** So the employer did not pursue any other training prior to engaging him as a trade assistant; it was simply that the white card was enough.

**Ms Ballantine:** Yes, and he should not have been up there because anything above four metres, if I am correct, you need to have a working-at-heights certification. He did not have that either. To be honest with you, how do other people in a workplace actually have any type of visual recognition of who a rookie is or someone who is or is not qualified? A very simple solution to that is you placard them in the same way that you placard a learner driver or a P-plater. Placards for rookies, placards for untrained, unskilled labourers should be on their hats or their vests or something to alert people and other people on a worksite to the fact that they are unskilled labourers.

**The ACTING CHAIR:** So there was no identification that he was a trainee as sorts on-site.

**Ms Ballantine:** None.

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**The ACTING CHAIR:** My experience in that space is that, in other areas I have seen, such as waterfront, they have a different colour hard hat that identifies them as a trainee, but there was nothing identifying that Wesley was inexperienced on the job.

**Ms Ballantine:** No, nothing at all.

**The ACTING CHAIR:** Can you describe to the committee what dealings you had with WorkSafe following Wesley's death? There are some specific questions on here, but feel free to just elaborate.

[1.10 pm]

**Ms Ballantine:** Sure. Well, I think I was contacted around three months after Wesley died.

**The ACTING CHAIR:** That was the first contact?

**Ms Ballantine:** I believe so. On or about two to three months after he died I was contacted by the director of WorkSafe at the time. I met with him in person—Chris Kirwin—had a conversation. He gave me a bit of a run-down of what to expect with regards to timing, and I never heard boo from him again in 18 months. So I picked up the email and contacted WorkSafe again to say, "Hey, what the go?" and I was advised that the department had merged and the case had been handed over to another director within the newly formed department. Then I started to engage with Joseph Lee at WorkSafe, who was managing the case. My dealings with WorkSafe to date, and because of the interactions I have had with other family members and people who have gone through this experience, I have understood that in order for a reasonable result or communication to come about, you effectively need to breathe down the back of their necks. So I think if you do not have that capacity it would be a really difficult process for people because they are not forthcoming in giving information whatsoever.

**The ACTING CHAIR:** Okay. So in regard to how many times WorkSafe have contacted you, you would say that that is once?

**Ms Ballantine:** In 18 months once, and with then recent interactions I am happy with the interactions that I am having with WorkSafe, but that is nothing short of my own volition and breathing down the back of their necks and being super-active in the pressure that I am applying, yes.

**The ACTING CHAIR:** In regard to people you spoke to, did you ever speak to an inspector that was performing the investigation?

**Ms Ballantine:** No, I have never spoken to an inspector, I have never been given the name of the lawyer who has been reviewing the case; no information. You deal with the director, but I understand that the case has now been under review, but you do not get any liaison with anyone at all other than the director.

**The ACTING CHAIR:** Okay. Joseph Lee you mentioned, a case manager. Has he been sort of handling you now?

**Ms Ballantine:** Yes.

**The ACTING CHAIR:** In regard to you seeking information from WorkSafe, have they ever advised you to seek an FOI—freedom of information?

**Ms Ballantine:** No, but I did just on my own accord.

**The ACTING CHAIR:** Okay, yes.

**Ms Ballantine:** So you will see that I have included that in annexure A. I submitted a freedom of information request to WorkSafe. Annexure A is a letter from WorkSafe letting me know that they

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may need to have an extension in order to retrieve the information. That is annexure A. Annexure B is, I think, a seven-page rationale of why that freedom of information request has been refused.

**The ACTING CHAIR:** Yes.

**Ms Ballantine:** And then we go into annexure C, where Hon Alison Xamon has put forward the exact same questions through putting WorkSafe on notice or the minister on notice through Parliament to extract the exact same information, and you will see that that information has been within two weeks reported back to Parliament.

**The ACTING CHAIR:** Yes.

**Ms Ballantine:** So I have a letter here saying “We may need more time”, and then a refusal around privacy and whatever other reasons are listed there, yet Alison Xamon has requested the exact same information and within two weeks that information has been reported on. Not only that, it is on the public record.

**The ACTING CHAIR:** Yes.

**Ms Ballantine:** So whilst I have been refused it on the grounds of it being not appropriate and private and on the grounds it is under an investigation, as the mother of a deceased person requesting not unreasonable information—really basic information—it has been refused, but then it is available on public record through the *Hansard*. So if that does not highlight to you the fact that WorkSafe are not forthcoming in how they actually disclose information to relevant parties, I really do not know that it could be clearer than that.

**The ACTING CHAIR:** Yes.

**Ms Ballantine:** Yes.

**The ACTING CHAIR:** So how did you discover the FOI was available to yourself?

**Ms Ballantine:** I did not ask anyone. I suppose —

**The ACTING CHAIR:** Internet?

**Ms Ballantine:** I think it is just commonly known for me that if I wanted to seek information from a government organisation, that is the way that you go about it.

**The ACTING CHAIR:** So you would have experience in that side of things. So if someone was not working in that space, do you think it is easy for them to understand that there is an FOI available?

**Ms Ballantine:** No, but I think if you did request information from WorkSafe that is a pretty common answer, as I understand it.

**The ACTING CHAIR:** Do you recall them ever saying it to you?

**Ms Ballantine:** No, no.

**The ACTING CHAIR:** I suppose it was one conversation in 18 months.

**Ms Ballantine:** Yes.

**The ACTING CHAIR:** In your submission to the Senate committee you wrote of a four Ps strategy: procurement, publication, power and penalties. Please explain for the committee what you would like to see happen under this strategy in Western Australia?

**Ms Ballantine:** Well, procurement would be my big one, but I do not know that WorkSafe can do a whole lot about that. But I will tell you a story. My son was working for a subcontractor that was employed to do the H&M fit-out in the Perth CBD by a head contractor named Valmont. I work in the construction industry, so it has come to my attention almost two years later that H&M have

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gone to market and gone to open tender to look for a builder to do their fit-out at the Carousel store. So who do you think they have reappointed to do their fit-out, but Valmont. So I get that look all the time, of people just going “Wow; are you serious?” They have reappointed the same builder that was the head contractor responsible for the site that Wesley died on to do their fit-out for them in the Carousel city store; it’s crushing. But the reality of that story is that our government does that in day in, day out. Whether knowingly or unknowingly, they participate in practices where they re-award contracts to builders or subcontractors that have habitually poor performance with respect to fatalities or injuries in the workplace. So the logic around the procurement strategy is that we suspend builders from being able to be awarded government contracts if they are not in good standing with the ATO, right? You cannot get on a government contract if you are not up to date with the ATO. You are suspended if you are under investigation with the corruption commission, and you are suspended if you do not have all your invoices up to date under the new policy with all your subcontractors. What about we suspend people for killing people or seriously injuring people? That is the logic around the procurement policy, that those same sorts of values around monetary suspension need to be implemented with respect to safety. So it can be implemented in the same way; it can be aged out and it can be own convictions only, but essentially that is what I believe government needs to do to uphold the value of safety, and then you are turning safety into a source of competitive advantage. You take it away from being an obligation into a source of competitive advantage. I don’t know that you would get much objection from the good players out there; in fact they would probably be happy to have people who are weeded out, and it forces those people who are habitual poor performers to actually lift their game and do better because this is what gives you competitive advantage.

[1.20 pm]

**The ACTING CHAIR:** Are you aware of how they present themselves with safety now in those contracts and tenets?

**Ms Ballantine:** From what I understand, I have gone onto the Building Management and Works website. You can see policy around sustainability; you can see policy around good value for money. I do not see any specific policy there around safety. I know that it forms part of a 100-point checklist, as I understand it. But I have engaged with a lot of people, as I have come out as an advocate in this space, including people from government, who have told me of specific contracts—billion-dollar contracts. Last year, the state government spent \$24 billion on construction services. They are the biggest procurer of construction services in the country, in the state—big bucks. I have spoken to some people in government who have told me that there is a 100-point checklist. There is a specific example—I will not say where it is from—that five tenderers were submitted to be appointed for a huge billion-dollar government contract and the recommendation from that department had all of those five tenderers ranking 85 points and above. But what ended up happening was the builder that ranked 53 on that scorecard got appointed to carry out the works. One can assume it would have been because of cost. There is this initial narrow view, short-sighted view, of good value for money, but, at the end of the day, poor quality of work or problems with respect to safety actually end up costing the government more money and there are well-documented studies around that, including on the Safe Work website.

**The ACTING CHAIR:** Publication?

**Ms Ballantine:** Publication—if I am a client and I am looking to engage building services from somebody, I am relying on self-reporting for that contractor to let me know about their safety history or their safety practices or their safety policy. I do not believe that it is readily available anywhere for a person to check the track record and history of a contractor in the same way that

you could if, say, I were applying for a loan and I had to submit my credit rating. There is nowhere, I do not believe, where there is a record of prohibition notices. Possibly convictions, I believe, are available, but for some of the smaller notifications, you are actually relying on self-reporting. There needs to be more of a publicly—not publicly available, but a record in which a contractor could give permission for that information to be disclosed as part of a tendering process.

**The ACTING CHAIR:** Do you think that role should be fulfilled by WorkSafe, if it was?

**Ms Ballantine:** Yes.

**The ACTING CHAIR:** Power and penalties?

**Ms Ballantine:** Power and penalties—we have all of this legislation and we have all of this regulation; however, if you do not have it being enforced, behaviours do not change. There has been a blitz on text messaging or talking on your mobile phones or what have you. There has been a big blitz by the police around that. You see a presence everywhere; there are police on the road. It is very, very clear that that is a priority of government to reduce those risks on the road. You see it by boots on the ground and you see it by the heavy penalties incurred as a result of those breaches. It is the same logic. You can have your rule book and your legislation but if there is nobody there actually enforcing it with penalties and boots on the ground, how do you drive behavioural change? How is it that a builder feels so free to have an open ceiling and people walking along there with absolutely no consciousness or fear of a penalty being put in place?

**The ACTING CHAIR:** In regard to that, are you aware of any notifications or alerts that were put out to the industry following the incident?

**Ms Ballantine:** Not that I am aware of. I do not know. I have requested under the freedom of information request, but I believe that was just in relation specifically to that site. I do not believe so. I do not know.

**The ACTING CHAIR:** I heard you mention you come from a construction area. To the best of your knowledge, are you aware of ever seeing publications from WorkSafe advertising safety alerts?

**Ms Ballantine:** I do not subscribe to their alerts; I could not tell you.

**The ACTING CHAIR:** Do you ever see them in workplaces?

**Ms Ballantine:** No.

**The ACTING CHAIR:** Are you aware of any workplaces that received any safety alerts or anything about this incident following —

**Ms Ballantine:** No.

**The ACTING CHAIR:** You also wrote about the implementation of the four Ss strategy: skills, speak up, supervision and support. Are you able to expand again on what this strategy is referring to?

**Ms Ballantine:** Skills is really just around how embarrassingly poor the construction industry's best practice model is to allow people to work on a construction site. You can come into this country with a holiday visa and go and get an online white card certification and go and work on a 30-storey building as an unskilled labourer. You would never be put underground at a mine; you would never be offshore on a rig with that level of certification. I strongly believe that government and the regulator, WorkSafe, are in breach of their duty of care to the public around that particular issue. It is not difficult to implement a staged, competency-based, time-on-the-job implementation for people to be able to access work on a construction site. My understanding is the white card certification got diluted as part of the mining boom and they were trying to churn through and get people and workers onto building sites more quickly, but part of that dilution has really lowered the

standard of the industry and allows for grossly unskilled workers to go onto hazardous construction sites.

**The ACTING CHAIR:** It is very concerning to the committee that you have said that you were unaware of the ability to contact WorkSafe after Wesley expressed his concerns to you about safety at the worksite. You recommended a responsive and anonymous tip-off line. Would you like to expand a little on that? Also, if you wanted to be able to tell us specifically what happened.

**Ms Ballantine:** Eight days before my son died, he came home and he was in the kitchen and said to me, “Oh, mum, someone’s going to get killed on that building site.” I said, “What?” He said, “Yes, they’re hell reckless. They’re hell reckless, mum; no-one wears a harness.” Obviously, the first thing I would want to do is ring up his boss but no mother of a teenage son is going to do that. I am certainly by no stretch of the imagination an ignorant person. I feel a little embarrassed that I did not before this experience know about WorkSafe because I do consider myself someone who is really aware of what is out there and in the Zeitgeist, but I actually had no awareness of WorkSafe at all. My son certainly had no awareness of WorkSafe. He was not a member of a union. I did not feel that I could call up a union, so I did the best that I could do to try to empower him to take responsibility for himself, also with the context of understanding that nowhere in my mind did I think that he was in a super high-risk situation. You have an issue where there is a regulator that has this telephone line where you can report and they also have the online form where you can report. But like I said in my opening statement: what good is a tip-off line if you do not even know that it exists? Some really simple implementations to rectify this, in my opinion, would be to have the WorkSafe phone number and website address on the back of all white cards or high-risk cards. I think that WorkSafe advertising needs to be placarded at all openings of major building sites.

It could be on all their noticeboards within major workplaces as well. Certainly, as part of on-boarding and induction for any new employee, especially holiday, itinerant or casual workers, or people who are not familiar with Australia, and young workers, they could have a WorkSafe pamphlet handed out to them in the same way that you get your superannuation and tax forms. I think all parents who have children under the age of 18 and should also be informed of WorkSafe as a regulator. They are really simple implementations.

[1.30 pm]

I get very frustrated because there seems to be a catchcry that WorkSafe is underfunded, but that catchcry is really not an excuse for this lack of really simple, easy and effective strategies that can help improve their effectiveness in the community. Part of my recommendation is that there is an anonymous reporting portal actually implemented. Obviously, it needs to be advertised in the ways that I have recommended. The current implementation is not anonymous. You can call up, but that number could be tracked or this or that. I think there has to be an understanding that if you have a concern in a workplace about a safety concern or an incident, you cannot escape the mantra of “don’t bite the hand that feeds you”. So when you have a reporting mechanism, which currently is in place, that requires you to report your safety concern or an incident to your site supervisor or boss, who could be the very person who employed you, there is no anonymity to protect a worker against any retribution that might be caused as being labelled a whistleblower. I think there needs to be an anonymous reporting portal put in place to offer that protection to vulnerable workers or people who do not want to be responsible for shutting down a site that is going to cost millions of dollars; be ridiculed because they are part of a really macho tribe mentality, which we know is the culture of construction worksites; or be responsible for their boss not meeting their KPIs around safety performance. These are all the things that actually stop people from reporting, and there is



no mechanism, and no safe mechanism, in my opinion, where a worker can safely report a safety concern.

I came out publicly on the anonymous reporting portal in August last year. I have been flooded with messages from people, because I have my Facebook Messenger set to open, so anyone can message me. I have been flooded with messages from the public reiterating those points around, “Gosh! Of course, no-one wants to be the person responsible for the boss not meeting their KPI performance bonuses.” Also, I have had young people reach out to me, concerned about their workplace, asking me to help them. They are reaching out to me. That is a real problem when you have really young vulnerable workers specifically who just do not feel like they have any opportunity or are empowered in any way to report their safety concerns.

**The ACTING CHAIR:** To give us an understanding, how big an issue that is? How many messages would you say you have received?

**Ms Ballantine:** Twenty to 30 messages.

**The ACTING CHAIR:** With the reporting mechanism at the moment, with WorkSafe, I believe we have heard evidence that you can make anonymous tips in respect of calling up, but you are saying that there is an issue with the fact that the phone number can be traced; is that what you said?

**Ms Ballantine:** It is not anonymous. If you ring Crime Stoppers, for example, or use their online portal, that particular system—well, the online portal—is totally anonymous. The way that they have set it up is it goes through the dark web and it pings all the different IP addresses through a mechanism which makes it completely and authentically anonymous. Crime Stoppers have got studies which show a direct correlation between a person’s perception of anonymity and how much they will actually report something. It is all documented and evidence-based. There is a white-label anonymous reporting portal available through Crime Stoppers now. They have pulled all the bells and whistles off the Crime Stoppers online portal and it is available to be implemented into government. They are looking at implementing it into the RSPCA. They are looking at implementing it into the prisons, potentially into aged care, to deal with those sorts of issues. So there is an implementation available and it is not expensive, but the key is that it has to be advertised. It has to be advertised, but what that is going to do, if that gets implemented, is it is also then going to help collate data which can inform inspectors of certain hotspots that actually require attention where those limited boots on the ground can actually go and draw their attention to that. In the same way that Crime Stoppers builds that data overnight, it goes to the local police and then they can do a blitz on—I do not know—bikes being stolen on a certain street, and they can address it. It is a two-way benefit. It benefits the community; it benefits WorkSafe in terms of resourcing and being able to focus their resources; but it also helps WorkSafe to become more accountable because that incoming information can be measured against a KPI very easily in terms of response times and what have you.

**The ACTING CHAIR:** So you believe it would increase the amount of calls that come into WorkSafe—the amount of reporting—if there was more anonymity to the reporting mechanism?

**Ms Ballantine:** Also the ease of use, because people are using their mobile phones and it is a really easy mechanism. There is safety around the fact that it is anonymous.

**The ACTING CHAIR:** In the current OH&S act it stipulates health and safety committees. Are you aware whether or not there was a health and safety committee on the site that Wesley was at?

**Ms Ballantine:** No, I am not aware.

**The ACTING CHAIR:** No worries—that is okay. You have also criticised WorkSafe in the past for failings in its role as industry watchdog as part of your four Ps strategy submission. You have also

said it was clear that WorkSafe was under-resourced. Would you like to explain to the committee what your criticisms of WorkSafe are? I know we have probably heard most of them, but are there any other ones you can think of, potentially?

**Ms Ballantine:** I point out to the committee that in construction the number one cause of death is from falling. That is according to Safe Work Australia: the number one cause of death is from falling. So when education and training is a key mandate of WorkSafe and it is incumbent upon them to build awareness around issues which carry a high risk, I would be really interested to know the last time that WorkSafe undertook an industry-wide campaign to build awareness around this issue. I would be interested to know what steps WorkSafe has taken to target this issue with building licence-holders to ensure that they are hyper-vigilant with respect to fall prevention risk management practices. That is a criticism for me because my son fell off a building site. It is known to be the most high-risk activity on a building site, and every construction worker in Australia should have an acute awareness of that fact. I know that texting whilst driving is dangerous. I know that smoking is going to kill me. I know that sitting in a chair for eight hours a day is no good for me. Every construction worker should have a very acute understanding that you are at risk—that is your number one cause of death on a construction site. It is in all of your inductions. It is on your white card training. But it is not drummed home. WorkSafe should be a household name. Everybody should know about WorkSafe.

I know I can report food poisoning to the Health Department. I know I can call Main Roads and report a fallen tree. Every Western Australian worker should know who the regulator is that is there to enforce those sorts of issues in their workplace. It needs to be a household name. I have some criticisms around basic awareness. And I am really quite disgusted by the way they treated my freedom of information request.

[1.40 pm]

**The ACTING CHAIR:** Just on the freedom of information—and sorry, we only just got that one today—can you walk us through that? You got this response; where did you go from there, and what did you feel when you got that response?

**Ms Ballantine:** I was not surprised. There are certain things that are worth putting your energy into and certain things that are not, so I thought I would throw a net out and if I caught something, great, but I did not, so I left it.

**The ACTING CHAIR:** Was this because you were not getting any information, you did not understand what was going on and no-one was guiding you?

**Ms Ballantine:** I really wanted to get an understanding of whether or not WorkSafe had actually been on this building site and what prohibition notices had been issued, because that information was not available to me.

**The ACTING CHAIR:** Have you ever been sent or handed a document from WorkSafe called, “When your partner or relative dies in a work-related accident”?

**Ms Ballantine:** No, I have not.

**The ACTING CHAIR:** You have not received that by email or anything like that?

**Ms Ballantine:** No, I have not.

**The ACTING CHAIR:** Okay. So due to your experience, you knew that there was an option of FOI. You then found yourself in the position of getting seven pages in response, saying that you cannot get any information.

**Ms Ballantine:** Yes.

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**The ACTING CHAIR:** What did you do next?

**Ms Ballantine:** I sought out some support through my networks in Parliament, and Alison was able to put them on notice to have those questions answered.

**The ACTING CHAIR:** Just for the purposes of time lines, how long after you received — 26 October and then 7 November. So it happened very quickly once it went into Parliament House?

**Ms Ballantine:** Yes, it did.

**Hon DARREN WEST:** Sorry Chair, the application was lodged on 21 September.

**The ACTING CHAIR:** I was referring to the response from WorkSafe on 26 October.

**Hon DARREN WEST:** Yes, and the question was not answered until 29 November. It was lodged on the seventh and answered on the twenty-ninth.

**The ACTING CHAIR:** In October.

**Hon DARREN WEST:** Yes.

**Ms Ballantine:** I will note that there was an initial phone call from WorkSafe, letting me know that they were not able to provide me with any of the information because it was so comprehensive that they could not get it out of their system.

**The ACTING CHAIR:** So, prior to this letter from WorkSafe you received a phone call?

**Ms Ballantine:** A personal phone call, letting me know that because of the amount of information, it was going to take a really, really long time.

**Hon DARREN WEST:** I think it is also worth noting that FOIs from WorkSafe go directly to the Parliament. The question in Parliament goes to the minister, and then goes to the department, so that is sometimes why that information is suddenly available.

**Ms Ballantine:** Okay.

**The ACTING CHAIR:** Just a question: do you know who called you that day about —

**Ms Ballantine:** Yes, Craig Morrison.

**The ACTING CHAIR:** What was his role at WorkSafe?

**Ms Ballantine:** He is nominated here as, I think, a freedom of information officer.

**Hon DARREN WEST:** Freedom of information coordinator.

**Ms Ballantine:** Coordinator, yes.

**The ACTING CHAIR:** Okay. So just to sum up, your experience of FOI with WorkSafe—how would you sum that up?

**Ms Ballantine:** Disrespectful to people who are in my position.

**The ACTING CHAIR:** Absolutely. You have also criticised the lack of support for grieving families, both emotionally and financially—part of your four Ss strategy submission. Could you tell the committee what, if any, support you have been given from any government agency?

**Ms Ballantine:** The coroner's office gives you quite a comprehensive pamphlet and access to psychology, I believe. But in terms of this whole process, which is a very strange experience and a very unusual situation to be in, when you experience a loss, a level of handholding around the process and what is involved would be really good. Part of my submission there is around financial support, because in Australia there are no punitive or what they call "exemplary" damages, which offer compensation for loss of consortium, loss of a loved one, stress and all that sort of thing. There

is no access to damages or compensation in Australia for that type of thing, so you rely on compensation through WorkCover and what have you. In my particular circumstances, because there was no financial dependency on Wesley, I am entitled to \$9 400 compensation. We are two years into this process and I am looking at potentially 10 years, which I will explain to you in a minute, that time frame, during which I not only want, but need to get some psychological support through that process, and that support costs me \$200 a fortnight. I do not think that is very fair. I think that with the new penalties that are in place, the amendment on penalties, it would be really, really good—if I have not made that clear—for some of the proceeds of that fine to actually be redirected to families and not just go back into state revenue.

**Hon DARREN WEST:** We have had witnesses earlier in the day, of whom one lady had suffered the loss of her husband at work and drew our attention to a document provided to her by WorkSafe called, “When your partner or relative dies in a work-related accident”. Did you get such a publication at all?

**Ms Ballantine:** No, I did not.

**Hon DARREN WEST:** Nothing of this kind?

**Ms Ballantine:** No.

**Hon DARREN WEST:** Thank you.

**The ACTING CHAIR:** I am still a little in shock there. I think what you have said about the redirecting of the fines is quite interesting. Have you ever seen that anywhere else?

**Ms Ballantine:** Not that I am aware of, but the lady who was in earlier, Debbie, who lost her husband, she gets a couple of hundred thousand dollars’ compensation, but she is now living without the main breadwinner, quite late in life to be re-employed. The cascade of trauma is devastating beyond losing a person; your whole life is completely affected beyond just normal grieving and loss. So some ability to rebuild your life with some financial security or support to certainly help fund medical expenses or psychological support I think is reasonable.

**The ACTING CHAIR:** Yes. You have said on a number of occasions that you would favour some sort of industrial manslaughter laws. Is this still your view? Please delve into how you think it should be legislated or anything like that.

**Ms Ballantine:** Yes, I do believe in industrial manslaughter, but I just want to make a very clear distinction between that and a workplace accident. An accident is not foreseeable; it is outside normal calculations. That is one thing. People who are in the vicinity of a workplace accident or hold some sort of duty and it is an accident, do not deserve to be prosecuted for manslaughter. My belief around industrial manslaughter is when there is a wilful disregard for the safety of your workforce and a very clear breach of duty of care. That is the distinction. When you have a manslaughter provision, I can tell you personally from my interactions that just the increased penalties alone under the current act have already made senior people or directors become hyper-alert with respect to what their responsibilities are.

[1.50 pm]

**The ACTING CHAIR:** Is that in regard to the laws that were passed in October?

**Ms Ballantine:** Yes, because of the new penalties. There is an, “Ooph, things are getting serious. We really need to stand up and pay attention to this.” If you or I were negligent and wilfully hopped in a car, recklessly drove our vehicles, were drink-driving and you kill someone, you are held to major account. There are major penalties over that. But if a person is killed on a building site that experiences negligence as a result of decisions made by people who hold a duty of care, they are

not held to the same account at all. I wanted to explain something as well. I am not sure if you are familiar with how process works with respect to a fatality on site, and it does help answer this question. Currently what happens is that if there is a fatality, both the police and WorkSafe attend. In the case of my son, police and WorkSafe attended. Because there is no specific provision in the Criminal Code to state industrial manslaughter, my understanding is that there is no canvas or visibility for the police to look for that specific provision for a breach on a building site. The police would come in and assess the site for obvious criminality. When that obvious criminality is not found, the site gets handed over to WorkSafe, who hold the jurisdiction. WorkSafe then goes and investigates and prosecutes under their powers under the occupational health and safety act, and the police are out of the game. The Premier is saying and the minister's office is saying that there is currently adequate provision for manslaughter. That may well be so in the Criminal Code. The problem is the practice. Police come in, they assess it for two days and they are out. They do not make a full and comprehensive assessment of a breach of, I guess, corporate duty as a duty holder in the context of a workplace. There needs to be a very, very distinct provision for industrial manslaughter, so that investigators have their eyes peeled for those breaches. At the moment, Wesley, two years later, no prosecution. WorkSafe have got three years to bring about a formal prosecution, after which I have been advised it will be around 18 months through a trial and appeals process. Now we are clocking into four and a half years after the death, after which the coroner will conduct her inquiry, because they do not conduct an inquiry while there is an active WorkSafe investigation. That could take another two and a half years, so now we are six and a half years later, all the while I have \$9 400 to help support me through this. I just want to finally say that the coroner can actually refer to have the case relooked at under the Criminal Code if she or he believes there are grounds for a criminal prosecution, which could then have this whole process carry on for up to 10 years after the death. This is why I am a huge advocate for dual jurisdiction, so that there are much tighter time frames and to ensure that there is no major breach of duty of care.

**The ACTING CHAIR:** Currently under the OH&S act, it does stipulate that there is the ability to prosecute somebody for gross negligence, which comes with a maximum fine of \$550 000 and can have imprisonment for five years. Do you know any reason why we have not seen that used or prosecuted in Western Australia?

**Ms Ballantine:** Gross negligence for breach of your duty under the occupational health and safety act, as opposed to a breach of your common duty as a person, just as a regular citizen, under the Criminal Code.

**The ACTING CHAIR:** So your stance on industrial manslaughter would be for it to be in the Criminal Code rather than into the act?

**Ms Ballantine:** I am no lawyer.

**The ACTING CHAIR:** Of course, and I am not trying to say you are.

**Ms Ballantine:** Yes, I am just prefacing that. I am no lawyer, but from what I understand, it would be better to be implemented under the Criminal Code on the grounds that the burden of proof might be a little bit less—I am not sure.

**The ACTING CHAIR:** I am also picking up that the police having the ability to prosecute and investigate should be part of that.

**Ms Ballantine:** Without a doubt. This is why if you have dual jurisdiction in these situations, you get cross-pollination of knowledge. You have seasoned investigators passing on their knowledge and their level of expertise to WorkSafe investigators, and WorkSafe being able to cross-pollinate their

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understanding of occupational health and safety breaches. Therefore, the two can merge to make a greater whole.

**The ACTING CHAIR:** Do you have a view on the amalgamation that has happened with DMIRS and WorkSafe now being a bigger department? Do you think that will be better for the crossover?

**Ms Ballantine:** I would not have a comment to make.

**The ACTING CHAIR:** That is okay. Do you have any other suggestions for the committee other than those you have already outlined—things that might be an improvement into the future or anything you would like us to take on board?

**Ms Ballantine:** I would really like to see the anonymous reporting portal implemented, as I mentioned earlier. I would really like to see some amendments around the procurement policy of government. I would really like to see a greater presence of WorkSafe just being a household name, and seeing more campaigns around the risks associated with working on construction sites—we see that level of campaigning around our road traffic issues—and some really basic implementations, like I have suggested with respect to placarding of white cards and noticeboards et cetera with respect to WorkSafe being a regulator. I would really like to see the whip cracked with respect to the time frames around prosecutions, because it can be done more effectively and it can be done quicker—there is no doubt about that. I have experienced the lag that is created, because it is such a long time for a family to have to have such an open wound and not be able to get full closure on the matter. I would really like to see WorkSafe conduct emergency audits of contractors where there has been a fatality, to ensure that they have had an epiphany with regard to their safety practices. I have asked WorkSafe whether or not they have conducted an audit or any type of coaching or education or gone in in any way to the subcontractor and head contractor—to Wesley's employer and Valmont, who were the head contractor. Valmont are a huge player. They are a major player in Sydney as well. I have asked WorkSafe, "Have you done anything to see if they've had an epiphany with regard to their safety practices and just seen that they've cleaned up their act?" The response was no. I asked, "Why not?" Their response was, "We can't appear to be targeting them." To which my response was, "Aren't you the regulator? Aren't you the watchdog?"

**The ACTING CHAIR:** Sorry—"We can't appear to be targeting"?

**Ms Ballantine:** Correct. That is what was said to me by the director of WorkSafe—"We can't appear to be targeting them."

**The ACTING CHAIR:** Sorry, which director, because we have had a change?

**Ms Ballantine:** Joseph Lee said that to me directly when I asked him about that.

It is pretty frightening because the body is there in the interests of public safety.

[2.00 pm]

**The ACTING CHAIR:** It is quite concerning, actually, to hear that being said to someone who has lost their son at work.

**Ms Ballantine:** Just generally, it is concerning for the workers that are onsite at the moment with these builders—it is a public safety issue.

**The ACTING CHAIR:** Would I be right in saying you do not believe that the workers have that regulator there with them at all; they do not know where it is and how to access it?

**Ms Ballantine:** Absolutely.

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**The ACTING CHAIR:** I know you have said with government's agencies that only the coroner has helped you out. Were there any non-government organisations that were good, that supported you or anything through this?

**Ms Ballantine:** No.

**The ACTING CHAIR:** There were not many resources around it?

**Ms Ballantine:** Not at all. The coroner came over to my house and took an interview from me. Like I said, I was contacted by WorkSafe several months later. We are clocking on two years and I am only just getting my statement finalised with WorkSafe for submission into the prosecution.

**The ACTING CHAIR:** Wow. Regan, thank you for very much for coming to the committee today. Your evidence has been astounding.

On behalf of the committee, I would like to thank you for your attendance today. The committee will forward a transcript of evidence to you, along with additional requests for information. I cannot thank you enough. To hear the direct experience and your suggestions that you put to this committee have been very, very vital. Thank you very much for coming today.

**Hearing concluded at 2.01 pm**

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