

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO WORKSAFE



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 13 NOVEMBER 2017**

SESSION THREE

Members

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

Hearing commenced at 1.31 pm

Mr CHRISTOPHER KIRWIN

Director, Industrial and Regional, WorkSafe, Department of Mines, Industry Regulation and Safety, sworn and examined:

The CHAIR: We are on air on the inquiry into WorkSafe. We have before us the director of industrial and regional of the WorkSafe division of the Department of Mines, Industry Regulation and Safety. On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witness took the affirmation.]

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

Mr KIRWIN: 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, when you refer to a document, could you refer to the full name of the document. Please be aware of the microphones and speak into them, and also ensure that you do not cover them with papers. 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, 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 your 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. Chris, would you like to make an opening statement to the committee?

Mr KIRWIN: I am here to help. I do not really have a statement to make. You asked for me.

The CHAIR: Okay; no problems at all. Could you just outline to the committee your role at WorkSafe and how long you have been in that position?

Mr KIRWIN: I have had a number of roles at WorkSafe. I have been at WorkSafe for almost 20 years. I started life as an inspector in 1998 and then became a team leader in Bunbury. Later I became a team manager, also in Bunbury, and then a chief inspector for construction, regional and primary industries, in West Perth. Then there was a change to that role to become director for construction, regional and primary industries, and most recently there has been an organisational change and I have become the director for industrial and regional industries. I have been there a little while.

The CHAIR: The committee has heard evidence that the triaging of requests to attend are actually done by the team leaders. Is that correct?

Mr KIRWIN: Yes. A request to attend will arrive at WorkSafe, either through the online channel or through the telephone channel. It is put into WISE. If it is something that can be handled by the call centre, it does not become an RTA; it becomes what they call an OSH inquiry and they are dealt with by the call centre staff. It is a query of some kind and they have a very short life cycle. An RTA gets marked as an RTA and it goes to the team manager, who allocates a classification to it. We have numbers for that—1, 2, 3 or 4. A “1” is a fatality or something really serious. We have an expectation

of timeliness for that; the investigation needs to start within two hours in the metropolitan area and within 24 hours in the country. Each of the other numbers has a different time classification, so a “2” is within that day, or within a couple of days in the country. A “3” is within that week; I am not quite sure what the time line is in the country, but it will be written down. A “4” is to start within two weeks.

The CHAIR: So is there a policy to guide the decision-making in the triaging of requests to attend?

Mr KIRWIN: There is. Yes, it is a policy.

The CHAIR: Would you be able to table that policy to the committee?

Mr KIRWIN: I will ask when I get back.

The CHAIR: We can take that as question on notice 1. Is there a level of subjectivity to that triaging process?

Mr KIRWIN: Yes. Some complainants choose to provide contact details; others do not provide contact details. When doing the triaging, the richness of the information is what the decision-maker makes up their mind on. Decisions are made. Sometimes people say things and it is not quite accurate. I remember once that we got a notification about a lacerated hand. That does not sound too bad, but on closer examination, it was an almost amputated hand. Our response would have been somewhat different if the information was given in a different way. It is early information and it is not always accurate.

The CHAIR: In your role as director, do you have any role at all in that triaging process?

Mr KIRWIN: Typically not in the triaging. From time to time when fatalities arise, the system is that all directors get informed. It is one of my roles to make sure that we have a fast response to those sorts of things, so there is some triaging there. I could not say that I am involved in the triaging process. It all happens very, very quickly when a fatality arises.

The CHAIR: Do you audit that process to make sure that the team managers are appropriately applying the policies and making the appropriate decisions in relation to triaging?

Mr KIRWIN: We have a quality investigations policy, whereby an inspector’s investigation has been automatically selected to be looked at. As part of that, you are looking at the inspector’s work. I do not think it goes to what decision was made on the classification in the first place. I do not know of any auditing that happens on the classification. We talk about it at OMC.

The CHAIR: What is OMC?

Mr KIRWIN: The operational management committee; apologies for the acronym. That is where the team leaders and directors get together on a regular basis to get consistency on how the inspectorate works.

[1.40 pm]

The CHAIR: Is there a management of caseloads for inspectors, and what is the maximum caseload that an inspector can carry?

Mr KIRWIN: The inspectors work for the team manager and the team manager is the one that allocates the work and does the classifying of the job. The team manager knows what they have given an inspector, so they know what is on. That is how that is done. WorkSafe has changed a little bit in the last couple of months. Previously within the team, you had some work that was serious injuries or fatalities, in addition to the inspection function, and that was all in together. Since August, we have split those apart, so that the inspection function is separate from the investigation function. In answering now, if it is about the inspection function, which is my area, the team manager knows

what is on for that inspector and there is no upper limit. In some matters, some judgements are made whether or not we need to apply any resources to that, because it might have been looked at recently and the decision has been made not to investigate. But that is not a function of the workload of the inspector, I do not think.

The CHAIR: So the workload of the inspector does not impact the triaging of requests to attend at all?

Mr KIRWIN: Not that I am aware of, no.

The CHAIR: If all the inspectors are at their maximum caseload capacity and there are more requests to attend coming in, how are those additional requests to attend dealt with? Are they assigned to another team?

Mr KIRWIN: We would try to assign them to another team and call for help from other areas and look at what they are and see if we can move them forward that way.

The CHAIR: When a call comes in from a person who has lodged the complaint asking for a status report on the follow-up action to that complaint, does that come through to you?

Mr KIRWIN: Typically not—try and rout all calls in through the call centre and then the call centre operator will put it through to the team leader or the inspector who has been allocated to it on WISE; or, if it has not been allocated, if a decision has been made not to be investigated, that will show on the screen. That decision has been made and that call would be routed through or a message sent to the team manager for the team manager to respond, because it would not be fair, because the call centre operator was not involved in making the decision whether or not to investigate it, to then put them in a position of explaining why it was not; it is not fair.

The CHAIR: So do you have any input at all into which inspectors are assigned to particular cases?

Mr KIRWIN: Not in my role as the director, no. The team manager in the inspection space assigns the job to an inspector. Sometimes the country-city thing—I notice that we have regional members here—if it is sort of in the middle between Bunbury and Perth and if Bunbury has a lot on and Perth does not have so much on, I will intervene and say the team manager from Perth can pick that up and take that and give it to someone, but the assigning will be done by the team managers.

The CHAIR: In that sort of situation, would the team manager come to you and say, “Look, we’ve got an overload of requests to attend in Bunbury; we’ve got capacity in Perth.”

Mr KIRWIN: Yes; I have those conversations a lot.

The CHAIR: But the final decision rests with you as to where the staff are reallocated?

Mr KIRWIN: Yes. We had a fatality in Rockingham that Perth were doing and some of the witnesses were in Bunbury and Perth was busy, and I said, “I think Bunbury can take this one” and they did; they took it. Perth had done a lot with it and then we just packaged it up and passed it over.

The CHAIR: In your role as director, could you just explain in a bit more detail what it is that you actually do? You oversight the team managers?

Mr KIRWIN: Yes. The team managers report to me. There are three of them. I have an industrial team, a construction team and a regional and primary industries team. My role is about budgetary stuff and the day-to-day management of that and the oversight of the job of the branch. I am involved a lot in recruiting of inspectors and then educating customers and stakeholders generally.

The CHAIR: In terms of when calls come into the call centre asking for follow-up information and it is put through to the team manager, is there a policy about what information the team manager can actually release?

Mr KIRWIN: A policy? There is some information about that, yes.

The CHAIR: Can you share that with the committee?

Mr KIRWIN: I think it has already been provided, but, yes, I can go back and find that and get it to you.

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

Is it the case that information is actually provided to the caller or is it the case that the caller is told that they need to lodge a freedom of information application to obtain that information?

Mr KIRWIN: I understand that some basic information is provided to the caller as to it is not being investigated or that it has been investigated and we have completed our work, but not any great detail as to who we spoke to, what we saw, what were the notices about—that kind of thing. WorkSafe inspectors are going into someone's business. It is their business and it is their privacy. We are not putting it out there in the world, and there is no particular provision for the release of that information other than the Freedom of Information Act.

The CHAIR: Departments release information all the time and they just develop policies within the organisation about what information can be released. There are not many agencies that will not provide some level of information. You have told me that if a decision has been made not to investigate, that information will be provided to the caller and the reasons why that decision was made?

Mr KIRWIN: I do believe so, yes. I have provided some callers information that said, yes, we investigated that or we did this and we have finished our work. But all the detail as to all the things you did at the time is generally not provided. It is not that we do not provide information. We do provide information; it is maybe not what some of the callers want—the whole detail.

The CHAIR: Just to step this out, if the caller says, "I lodged this complaint; I want to know if an on-site inspection was undertaken", their team manager would be able to say yes or no in relation to that question?

Mr KIRWIN: Yes, they would be able to say that.

The CHAIR: If improvement notices or prohibition notices were issued, would they be able to provide that information?

Mr KIRWIN: They would, but as to the content of them, that would be a different thing. Most of the time, the Occupational Safety and Health Act is about employers and employees at workplaces working it out. Some of the complaints we get may be from workplaces and if the person was in the workplace, they would see that the inspector had arrived and they would see that notices were issued. They would hear from the safety and health rep. They have told them they hear from the manager. They have told them they see the notices on the notice board. It is the people who are external to the workplace who do not have this information. Is that what we are talking about—the ones that are not there?

[1.50 pm]

The CHAIR: Either one. I mean, obviously you would only know if you were a worker on that workplace. You would only know if a WorkSafe inspector arrived on site if you saw the inspector or if you were told the inspector was on site. You could be on a different shift to the time the inspector came and inspected, so you may not actually be in a position to know that an inspector attended on site. Is it the case that the notices are always displayed prominently and all the workforce are informed of the information on the notices?

Mr KIRWIN: The duty to display them is on the employer at the workplace. Whether they meet that duty or not, that is really a question for them. But in my experience they do. They post them up on the noticeboards and people are aware of them. The people who are not workers at the workplace that do not have that information, we can tell them, “Yes, we went there. Thank you for your complaint. We went there and we did our work, notices were issued and the investigation is now closed.” We could say that.

The CHAIR: If there was a request to attend arising from an injury on the workplace —

Mr KIRWIN: A notification of injury or a request to attend?

The CHAIR: No, sorry—a notification of injury. It could be very soon after the event.

Mr KIRWIN: The only one that can make a notification of injury is the employer.

The CHAIR: Surely there are situations in which the employer has not provided a notification and maybe a union official has contacted WorkSafe to say, “Look, are you aware that an injury occurred at this worksite?”

Mr KIRWIN: Yes. That is a request to attend, not a notification.

The CHAIR: Okay.

Mr KIRWIN: The duty on notifying is the employer’s duty.

The CHAIR: Okay, in that situation, if the union official were to then contact WorkSafe a couple of weeks later and say, “Look, I would like a status report on that request to attend”, would information be provided to that union official?

Mr KIRWIN: If they lodged it, yes. They would be the same as everybody else. We treat them the same as everybody else.

The CHAIR: You would say, “Yes, we inspected, and we found these breaches”, or, “We issued an improvement notice”, or whatever the outcome of that action was?

Mr KIRWIN: If they ask; yes.

The CHAIR: In the situation of a fatality, would information be made available to anyone who phoned wanting to seek information about an investigation following a fatality?

Mr KIRWIN: Likely not. I would say no. When the investigation is still underway and it is ongoing, it is not good to let any cats out of bags, so to speak. So we do not generally do that, in my experience.

The CHAIR: All right. When you say, “When an investigation is underway”, what do you mean by that? Do you mean the investigation proper, in terms of the investigatory side, or does that also include once the legal brief is provided to the legal team and a decision is yet to be made as to whether to prosecute?

Mr KIRWIN: An investigation starts when something occurs and it finishes when the charge is laid. It may have left the inspectorate and be with the lawyers, or waiting to be looked at by the lawyers. It is still an open file and not yet finalised by the whole of WorkSafe.

The CHAIR: Team leaders are told they are not able to differentiate to the caller, “The investigation has been completed but it is currently with the legal team so I can’t release any information at this point in time”?

Mr KIRWIN: Yes, you could say that.

The CHAIR: Are they able to provide that level of information?

Mr KIRWIN: They can say it is an open investigation and it is not yet finalised, or words to that effect. That is where it would stop.

Hon JACQUI BOYDELL: Chris, I am just trying to work through in my mind how this information gathering, sharing, keeping interested parties informed is happening. When I am listening to you, you are saying, “Yes, we could do that; yes, we can do that.” But does it get done, and who provides the information to the caller? Is it a relatively small amount of innocuous information given from the call centre staff, to then escalating it to the team leader? That is what I am struggling with a little. I am not getting any clarity on what actually happens.

Mr KIRWIN: It is not the call centre staff. The call centre staff do not do that. If information goes out, the innocuous stuff, it will be via the team manager, and they will say, “Yes, we’ve been there, we’ve done that and we’ve moved on”, or, “We’ve been there, we’ve done that, we’re still doing it, and it’s a work in progress.” That is the specifics. In the background, the department will, you know—if we have had lots of people go through a fragile and brittle roofing material, whether it be alsynite or skylights, that kind of thing, there are two things we use. One is the significant incident summary, and that goes up on the website and we flick it around to the stakeholders, or we convince the commissioner and the media officer to do a media release on exactly that, and they flick it around to inform everybody—the public, not just the ones who called up. If I was a member of the public and I wanted to know all about the Claremont serial killer, do I ring the police station and do they tell me? Probably not. That is the level of information that some people sometimes want.

Hon JACQUI BOYDELL: I was just going to expand on this a little. The committee has heard some evidence that family members have tried to contact WorkSafe regarding an investigation where there has been a fatality and they have struggled to gain information. I am trying to understand that.

Mr KIRWIN: I did not hear what you heard, but WorkSafe have a very deliberate policy of informing family members. What happens, certainly when I was doing it until a couple of weeks back, is you find out from the coroner, who tells us who the senior next of kin is—that is a legal person—and my role then was to contact the senior next of kin and say, “Look, I am from WorkSafe, this is what we do. We have a document about the loss of a loved one in a work-related accident which is published on our website.” It is a pretty tough gig investigating a fatality, I will give you that, and their inspectors do it diligently. We contact these family members, usually within two weeks, sometimes straightaway.

Hon JACQUI BOYDELL: Of the coroners decision, or the incident?

Mr KIRWIN: No, the coroner has, through the births, deaths and marriages computer, the person who is the senior next of kin. In my case, it would be my wife or it might be my son if I did not have a wife—there is a hierarchy of who is the senior next of kin. They tell us who that is, and the relevant director at WorkSafe contacts that person. Sometimes they might be in Ireland, they might be in England or in New Zealand. If they are in the state, if they are in the metro area, we will see them. If they in the country, we make a plan to see them. I have done that many, many times. You explain to them that this is a WorkSafe investigation; this is how it goes. This document that I talked about that is available on our website talks about what WorkSafe’s role is, what the coroner’s role is and what the police’s role is. It is very informative. It tells about milestones that occur. The information that we give to the next of kin is as much as we can give. There are some things you cannot give. If you are in an investigation and you have interviewed three people and there are still four to go, if you start giving information out after you have interviewed three, you have half the story. You do not have the whole story. We say to the next of kin, “Look, these things take time. When we get to the end, we’ll get to the end. These are the things that we will tell you along the way.” We are very,

very good at that. I do not know who is this next of kin that you have heard from, but we are good at that.

[2.00 pm]

The CHAIR: Just to clarify, Chris, you have said that there are particular milestones at which WorkSafe will contact the next of kin.

Mr KIRWIN: Yes.

The CHAIR: Can you mention what those milestones are?

Mr KIRWIN: The milestones will be that the investigation has been finished in the inspectorate. When I was doing it, I contacted the next of kin saying, "Look, we've finished it. We've got some recommendations. It has to be looked at by our lawyers. The next update will be when the prosecution notices are signed. When that is signed, we'll give you a copy. We'll tell you what the charges are. We'll give you a first mention date. We'll invite you to do a victim impact statement in accordance with the act of Parliament that provides for that." We engage with them quite vigorously but in the early days, they want to know exactly what happened, and at that time we do not know what happened; we are still investigating.

The CHAIR: Under the legislation, WorkSafe can take up to three years to complete an investigation. If that first milestone is the completion of the investigation, which from what I understood you have just told the committee is at the time the investigation is finished, not at the time that the prosecution notices are issued, that could be three years before they are contacted by a WorkSafe inspector.

Mr KIRWIN: There is initial contact. Certainly, when I contact a next of kin, I give them my contact details—all the channels—so they can make contact with me, particularly if they are in a different time zone. For one I travelled to the eastern states and met with them when I was having some holidays. I tacked it on to the end of my holiday. There is no barrier to them ringing. I am not going to ring them every week and say, "This happened today and that happened last week." We do not have that kind of relationship with them. We tell them about important things that happened. The legislation provides that a prosecution can be signed within three years. It is very rare that it gets to that, I think. They are usually completed a lot earlier than that but it depends on what you are doing. If you have a fatality involving the collapsing of a silo in a paddock and there is one witness and a sheep, there are not many people to interview, versus a multi-storey construction site, where there are lots and lots of people to interview and you might have to engage some experts. They are not the same. One dead body is not the same as another.

The CHAIR: Sure. The committee has heard evidence from family members of a person who died as a result of a workplace fatality that the lack of a publicly released report at the end of the process is very difficult to deal with because they would like a report where they can understand what sort of investigation has been undertaken and get a feel of the level of investigation that has been undertaken, some findings or recommendations at the end of that report. What is the reason why WorkSafe do not provide a report at the end of their investigations?

Mr KIRWIN: We do not actually do a report; we do a brief of evidence. We have notes on our WISE system as to all the things we have done—our activities. The inspector will produce an inspector's statement. There will be statements from a bunch of characters that we have interviewed or records of interview. At the end of it we will produce a brief of evidence. That is to inform senior officers and lawyers in the organisation as to the way forward to recommend prosecution. It is not a report as such; it is not an account as to what happened. We investigate to determine whether there has been a breach or not of the Occupational Safety and Health Act. We are looking for a breach or not

a breach. If there is no breach, that is the end of it. We make some notes on WISE and we are away. If there is a breach, then a brief will be prepared.

The CHAIR: In the case where there is no breach, would it not be possible to produce a report and make that public so people are aware of the fact that there has been an investigation and that the findings were that there were no breaches of the occ health and safety act and regulations?

Mr KIRWIN: Anything is possible—it is all resources. Anything can be done.

The CHAIR: You are directing resources to preparing a legal brief —

Mr KIRWIN: Or not.

The CHAIR: Well, you are preparing the legal brief regardless of whether or not there has been a breach.

Mr KIRWIN: Not all the time. Sometimes you get partway through and you realise that there are not any prospects of success and we truncate it there, write a memo and it is finished. It will go to someone else to look at and check and then it will be finished. It will not even find its way to the lawyer. It is dealt with like that so we do not always get to that place. But if we do prepare a legal brief, we have a legal brief. There is a lot of sensitivity around legal documents—legal professional privilege and the like that you could maybe talk to others about.

The CHAIR: The committee has heard evidence from a number of witnesses that when they contact WorkSafe to find out the status of the complaint they have lodged, they get told that it is an open investigation and if they want information, they need to lodge an FOI—and that is all the information that they get. Would you agree with that statement?

Mr KIRWIN: If that is what you are telling me. I have had people ring me up and I tell them that it is an open investigation: “At this time, a couple of notices have been issued to the employer and a couple of notices have been issued to individuals, but it is an open investigation and I cannot tell you any more.” You are not satisfying their hunger for information, but you are saying what you can say. If you are telling me that somebody has said they did not get any information, I am believing you there.

The CHAIR: What are the KPIs for team managers?

Mr KIRWIN: WorkSafe operational areas prepares a business plan at the beginning of each year. In there they indicate what work will be done for that business year. They effectively become the KPIs that we need to achieve—that work. Them and their team need to produce those results.

The CHAIR: What are the KPIs for inspectors each year?

Mr KIRWIN: Each of the inspectors have their own contribution to the team’s operational plan and thus the branch operational plan. If team X has said that they are going to do 600 whatsits, if there are 10 inspectors in that team, then each of those inspectors would have a proportion of that. It depends on what is going on in the whole of the world. If you have an inspector with a prosecution brief, he or she is not producing any inspection work because they are tied up interviewing people with the investigation work. Their contribution to that 600 is going to have to be taken up by the others.

[2.10 pm]

The CHAIR: Do you think that WorkSafe’s policy of not sharing information about investigations actually impacts on safety in the workplace?

Mr KIRWIN: I do not think it does. We try and get out information via a media release or a safety alert, a safety bulletin, without—sanitising it in such a way that you do not name parties to get that

out. Yes, we could do better at that, I will agree. Giving particular information on the matter under investigation I think would damage us. The potential when we get to trial is that you damage yourself if you have let too much stuff out in the beginning.

The CHAIR: The committee has heard evidence that in the past, WorkSafe was able to release more information to the public, and that has just changed recently. Would you agree with that statement?

Mr KIRWIN: Sorry, I do not understand the context of that.

The CHAIR: We have been told that in the past, WorkSafe provided more information to the complainant when the complainant telephoned seeking information and when union officials contacted WorkSafe seeking information; but now they get less information than they were able to obtain previously.

Mr KIRWIN: I do not think that has changed. I think it has always been like that. I do not know of the particular change there.

The CHAIR: The committee has also heard evidence that WorkSafe used to generate an investigation report at the end of every investigation, and that some time in the recent past that changed to producing an investigation brief rather than an investigation report, and as a result less information is able to be obtained because it gets tied up with legal professional privilege and public interest immunity issues.

Mr KIRWIN: Previously, there was a report that the inspector wrote and that went up, and I think the policy of WorkSafe was to, after we had finished with it, provide that to the coroner under an arrangement—some warrant or something—and then we stopped writing reports and just wrote briefs, and then that did not happen anymore. The only recipient of those was the coroner. I recall a matter where I investigated, produced an investigation, and prosecuted a few—the company and two persons. We had finished with the matter within 12 months and we were interested in the coroner putting out some educative material, because it was the farming sector that needed to hear it, and the coroner did the inquest—it was not really an inquest; it was an administrative finding based on what we had done—and it was assisted by putting some information out. We put out a safety alert at the same time.

The CHAIR: Could you just speak up, Chris, sorry.

Mr KIRWIN: Sorry; I am quite softly spoken.

The CHAIR: Yes, sorry; you will need to puff up those lungs and speak a bit louder so Hansard can record it.

Mr KIRWIN: Yes, a number of times in the distant past WorkSafe has produced reports and the coroner has ultimately accessed those reports. The coroner has used those reports to inform himself or herself about the technical aspects and then used that in the inquest. On one matter, I was called to an inquest to give evidence. That has not happened in recent times.

The CHAIR: Changing tack a little bit, construction sites in the CBD often require road closures at various times. The committee has heard that WorkSafe does not consider the road closed-off section, even though it becomes an extension of the construction site, to be within its jurisdiction. Is that correct?

Mr KIRWIN: No; it is not correct. If you think about it, any work on roads, the roadwork, involves workers and they are working on the road. But the particular thing is that in order to close the road, you need permission from the local authority, which is the City of Perth in the CBD. There are a few different authorities to let you do it. The Water Corporation can give you authority to close a road,

and some of the gas people. Typically, in the CBD, the City of Perth gives that permission to close the road. But it is still a workplace—a place of work where workers are working.

The CHAIR: If any safety concerns or hazards are identified on that road that was closed and that was an extension of the construction site, WorkSafe is still able to investigate those complaints?

Mr KIRWIN: Yes.

The CHAIR: And they do investigate those complaints?

Mr KIRWIN: Yes, they do when we hear about them, yes.

The CHAIR: The OSH act contains provisions that encourage cooperation and consultation with stakeholders such as the union, government departments, the public, employees, and employers. Can you explain to the committee how WorkSafe is achieving this?

Mr KIRWIN: Certainly. WorkSafe deals with a lot of stakeholders; we have so many of them—many unions, many employer groups, our friends in local government. Lots of people have an interest in what we do. We are represented on some of the commission groups, commission committees. One I sit on is called the Construction Industry Safety Advisory Committee, which is a subset or a subcommittee of the commission. The commission's tripartite function is to have on that people from unions, people from employer groups, industry experts of one or another, and people from government, and I am one of the people from government there. We meet with all those folk at those places to strategy the way forward—not operational stuff, the here and now, but the bigger-picture stuff. There are industry associations we liaise with. We have a huge email list that we update people on, called OSH updates that people subscribe to, and they are updated. We do lots of talking to lots of people. This year and last, we were particularly reaching out to architects, because architects under the OSH act have duties as designers, and we think if we can fix it in design, it is a lot better down the track. A few cents in design makes hundreds of thousands of dollars in construction. So we hooked up with a private lawyer from outside—I will not mention the name—and we did talks to lots of industry associations, architect and designer associations, with a view to bringing them up to speed on codes and the standards. Hopefully, those people will take up that knowledge and produce better things in the future and solve problems later. Yes, we do lots of engagement.

The CHAIR: When a WorkSafe inspector attends a workplace to conduct an inspection, does the inspector always contact the employer ahead of that inspection to inform them that they will be on site the following day to undertake an inspection?

Mr KIRWIN: No. In fact, there is a written policy on that in I think it is called the criteria for inspection or one like that. Inspectors are prohibited from making advanced notification. You arrive and then you introduce yourself. That is true with all kinds of workplaces. The rare exception is some agricultural workplaces, not only because they own shotguns but because they are sometimes remote and it is their house, so you have to treat them a little bit differently. But for the most part, everybody gets the same thing. We turn up, advise who we are, and things start going from there.

[2.20 pm]

The CHAIR: Chris, could you take as a question on notice to provide us with a copy of that policy that you referred to?

Mr KIRWIN: Certainly, yes.

The CHAIR: That will be question on notice 3. So there are no circumstances other than the agricultural one in which an inspector should notify an employer of an impending inspection?

Mr KIRWIN: Of an inspection, no, but sometimes when an investigation is underway, you need to see person X and if you want to see person X, it is good to have an appointment with them. But you are not doing an inspection then. You are going to interview them. So, that would happen.

The CHAIR: When the inspector arrives on-site, as we understand the act, they are required to notify the employer that they have arrived on-site.

Mr KIRWIN: They are.

The CHAIR: Yet they are not required to notify the HSR.

Mr KIRWIN: They are required to notify the HSR before they leave to advise the outcomes of the inspection, but the duty in the act is on the employer to notify the HSR and tell the HSR or more than one that the inspector is here and will be inspecting. So, that is what it says.

The CHAIR: As I understand it, all the HSRs are registered—WorkSafe receive notification of HSRs when they are elected to the positions.

Mr KIRWIN: We receive notification of the election, yes, conducted by the person who did the election.

The CHAIR: So, therefore, WorkSafe would know who are the HSRs on the site.

Mr KIRWIN: No. WorkSafe would know who the HSRs are, but not on the site.

The CHAIR: Could you explain that distinction to me?

Mr KIRWIN: Yes. I foresaw this question so I did some research on it. The computer system that registers HSRs—there is a form that the person conducting the election fills out and they record on there the HSR's details, contact details and it talks about an area for which they are elected—their area of coverage. There is a place there to say who the employer is, but it is not—say, for police, the police have a huge number of safety and health reps, but when you look at the forms that the police fill out, they put they work for WAPOL, but our computer does not have WAPOL in it. Our computer will have Commissioner of Police or something like that. So, the information that the reps give you or the people conducting the election give you does not accurately reflect who they are working for. So, they are not linked together.

The CHAIR: Okay. They are not worksite-specific?

Mr KIRWIN: No. Certainly, we have a list—a computer that has all the reps in, all the reps that are current, because every two years it refreshes and after two years you fall off. You get archived because a rep's election is only for two years. So, I could look up, you know, "Kirwin, Chris" and I would see Kirwin, Chris works for Commerce but if I did not have Kirwin, Chris's name, I could not look up Commerce and find Kirwin, Chris.

The CHAIR: If you were going to ABC Construction's worksite, you could not check who the HSRs were at —

Mr KIRWIN: No, it does not allow that. The original architects of the system did not put that in. We could throw some money at it and fix it, but it does not do that at the moment.

Hon JACQUI BOYDELL: Do you think it would be useful?

Mr KIRWIN: It would be very useful. If you are the person who regularly goes out to look at a particular company and really have an interest in making sure you access all of the reps when you are there, if we could get that out of our system, it would be great. But the other way is to go to the business concerned and say, "Who are your reps? Give me a list", and certainly my employer has a list of all our reps; it is on our webpage and you just print it out and you give it to the inspector. That is the default. But we do not have it. Then the other bit of problem with that information is that a

rep might get re-elected and they do not tell us and after two years they get washed off because it is more than two years. So, unless they have told us they have been re-elected —

The CHAIR: The same person has been re-elected.

Mr KIRWIN: — we do not know. They only sort of do it once. But, having said that, when someone is elected, there is sort of a pack or some information goes to them; it includes an email address for the elected rep to register—not register with WorkSafe, but to sign up to an email server and we can pump information to them that way. But, yes, it would be great if we could have the two systems talk to each other.

The CHAIR: You said earlier that the inspector will speak to the HSR before leaving the worksite after having —

Mr KIRWIN: That is their duty, yes.

The CHAIR: I am curious as to why there is not a requirement to include the HSR in that inspection process because the HSR is on-site, they in a lot of ways should be viewed as an extension of WorkSafe. Why are they not engaged a lot earlier in the process?

Mr KIRWIN: Sometimes they are. I was talking to one of my inspectors just last week and he went to a place and said “Right. We know you have got seven reps. Where are they?” “Oh, we have only got one here.” So he invited the rep to accompany him on the inspection. One of the functions of the rep is, when asked by the inspector, to be allowed on that inspection.

The CHAIR: Do you think that it would be beneficial to have a change to the legislation that actually required the employer to notify the HSRs immediately when the inspector arrives on-site and then for the HSRs to be part of that investigation—sorry, inspection as opposed to investigation?

Mr KIRWIN: It is sounding a bit like a policy decision, but I do not think there is any problem with doing that. Maybe sometime an inspector wants to speak privately with somebody and in those circumstances they might ask the rep to move aside. But I cannot think of many of those occurring during inspection or with an investigation.

The CHAIR: The committee has heard evidence that often the inspectors will come on-site, conduct the inspection and leave without speaking to the HSRs.

Mr KIRWIN: Are these HSRs being notified that the inspector is there?

The CHAIR: They are aware that the inspector has been.

Mr KIRWIN: Right. Yes.

The CHAIR: So what is breaking down there? Is it the employer not notifying the inspector that they have HSRs?

Mr KIRWIN: Inspectors are asked to make inquiry of the employer on every occasion whether there is HSRs. In the construction industry in particular, there is not many HSRs, some of the big-end tier 1 builders will have them. I mentioned before the police service have got one at every station, if not, two. And in hospitals and schools and things—public sector do it well, private sector not so much. I admit there has been occasions when inspectors have not—an inspector, I know on one occasion, 2008, an inspector went to site, to a tier 1 builder, and did an inspection. He was told by the manager that he would tell all the reps. And then I had a call a day later saying, “Inspector was here. He didn’t see me and I am a rep and I was here.” I checked with the inspector and scolded him and then I wrote an improvement notice on the tier 1 builder saying, “You need to have a system where you tell your reps. It is not good enough.”

[2.30 pm]

The CHAIR: When the inspector attends on site and finds out that no HSR has been appointed and no safety committee has been established, does the inspector have a role in encouraging or facilitating the appointment of HSRs and the establishment of a safety committee?

Mr KIRWIN: We certainly encourage it, but there is no power for an inspector to make a safety committee. I think the legislation says, if there are regulations, when prescribed in the regulations, and there have not been any regulations that prescribe it. The only other way is if the commissioner says that you have to have a committee. and I do not think that button has ever been pressed. But, yes, Parliament has not said that you have to; then it is all on the commissioner's shoulders to.

The CHAIR: In view of the fact that you said earlier that on a lot of big construction sites there are no HSRs —

Mr KIRWIN: Yes.

The CHAIR: — do you think that it is time that a regulation was put in place requiring HSRs to be appointed and for safety committees to be established on construction sites over a certain size, or for all construction sites?

Mr KIRWIN: I have a view that health and safety reps, as you said before, are an extension of the inspectorate; they are very, very useful. The Parliament made some changes in 2004 and that provides that a qualified rep can write what they call a provisional improvement notice, which is a notice from the rep to the employer, with a minimum compliance period of seven days. They can get things sorted themselves so they become a whole army of inspectors out there. Yes, it is tragic that people are not taking that up. WorkSafe has a portal on its website—a pro forma PIN document. They just have to download it and use it. So, yes, that is provided for in the current legislation, but the take-up has not been big.

The CHAIR: The evidence before the committee is that HSRs receive a really difficult time by employers when they raise safety concerns, and sometimes they are actually black-listed from employment. I know that the legislation is supposed to protect them, but there is a view that the legislation does not. Finding that causal link between not re-employing a person and the fact that they have raised safety complaints in the past is not always easy. The suggestion has been made to the committee that the Fair Work Australia legislation actually provides stronger protections for HSRs than the WorkSafe legislation. Do you have a view on that?

Mr KIRWIN: Not really. WorkSafe has taken prosecution proceedings in the past in relation to employers that have treated employees less favourably than they ought to have—like, sacked someone for talking to an inspector. They prosecuted the employer and they got whacked. We have done that on a number of occasions, but you have to have a bad outcome before we can intervene. The protections for the “fragile flower” safety reps who do not want to stand up and put themselves forward, I do not know what we can do about that. If the safe work provisions give them more courage, then it is probably a good thing.

The CHAIR: We have talked about the involvement of HSRs in relation to inspections, and you have indicated that you would be open to that. What about the involvement of HSRs in investigations after a fatality?

Mr KIRWIN: That is a tricky one. After a fatality, which is the worst that you can get, WorkSafe, the regulator, would be doing its inquiry. No doubt the police would be doing their inquiry, firstly, looking to see whether there is something suspicious, or, if there is nothing suspiciousness, making inquiries on behalf of the coroner. Then you have got another one in the mix—the safety and health rep. It is a function under the current legislation that safety reps can make inquiries after an accident—a fatality is just another kind of accident. The provisions are already there. Would they

be in the way? Would they be tampering with evidence? I do not think so, because if WorkSafe were involved, firstly, the way the scene goes, typically the police arrive there first when there is a dead body. They seal it up and there is tape and stuff everywhere. Then they control entry to the place. Sometimes we have to hang around for a number of hours waiting for them to do all the forensic things, because their look at the world is to see whether there has been any foul play—someone was pushed or whatever. After they have come to the conclusion that there was not, they default to the role of assisting the coroner, being the coroner's investigators, and producing a report for the coroner. WorkSafe's role, after they have released the scene to us—they release it to us; they do not release it back to the employer—we take the scene and then we do what we need to do. Then, when we finish with it, we will release the scene back to its lawful owner, the employer. Having the safety reps in the mix, they will be, you know, the third one.

The CHAIR: Could they not be involved in the investigation as WorkSafe is undertaking their investigation?

Mr KIRWIN: We train our investigators about site contamination and all sorts of other things, and the police do not let us in in their investigation; I do not think we would be letting other people in ours because so many things can go wrong. You have worked so hard to protect the scene; sometimes you have to put people there overnight to guard it for you. We have done that in Port Hedland—into the favour bank with the police to have people there on a Thursday night while we could get to get an engineer to look at it. If they were in with you, then things could get damaged. That is my thought on it.

The CHAIR: The committee has heard evidence that with improvement notices, the employer is required to display the notice in a prominent place at the workplace, and then tear off a compliance slip when the notice has been complied with and return the compliance strip to WorkSafe; is that correct?

Mr KIRWIN: That is correct, yes.

The CHAIR: After the slip has been received by WorkSafe, is there a policy regarding how many or which compliance slips are followed up by inspectors to ensure that the employers have actually complied with the notice, rather than just filling out the slip?

Mr KIRWIN: Yes. When the inspector has issued a notice and the employer has signed a slip to say, "I have done it", they are certificating that they have done it, so they are making a claim that it is done. That gets entered onto our system. At that time, the inspector may choose to go and follow that up, saying they have got a feeling in their water that all is not right and they want to go and check it out themselves—their self-directed follow-up. Then the computer system, WISE, randomly selects, you know, the lotto—a number of investigations with notices attached that have had all their compliance slips signed off for revisit. It will generate a new and fresh job for that inspector to go and do.

The CHAIR: Is there any capacity for human intervention into that process? For example, if there have been a number of requests to attend for safety breaches at a particular worksite over a number of years, and it is the same sort of request all the time—the same sort of breaches that have been reported all the time—does it get to a point where WorkSafe says, "Once we've got the compliance slip, we're going to go out and check that it has actually been complied with?"

[2.40 pm]

Mr KIRWIN: Yes, and that would be the inspector who was last there or the team manager saying, "We need to have a thorough go-through", and they call that a verification inspection, to verify those notices, and you can verify as many as you like. You can verify the ones from the previous one.

The CHAIR: Is there a policy for when that human intervention decision might actually come into play, as opposed to leaving it to the WISE lotto system?

Mr KIRWIN: The WISE lotto system is nominally five per cent that gets looked at again, but the human intervention ones are over and above that and it is a human intervention; there is no policy on that. I can give an example. I attended a fatality in Narrogin one year and that matter was dealt with. It was tragic; it was investigated, but while we were there, we noticed from the WISE system that there was a notice on this, and it was not right. It was unrelated to the fatality; it was related to something else, but it was not right. Why was it not right? Then, during the course of making inquiries about the fatality we also made inquiries about that and said, "This inspector wrote you a notice. What did you do about that?" "Oh, we did it at the time, but it fell away into disrepair again." "Yes, but have you been using it since?" "Yes." "How long? When did you last use it?" "We used it last week. We used it last month." "So you've been using it without a guard on it?" "Yes." So we charged them with that one as well. The verification can happen at any time.

The CHAIR: The committee has heard evidence that there are fewer proactive investigations in regional areas than in metropolitan areas. Would you agree with that?

Mr KIRWIN: Proactive? Currently, the regional team is a bit overloaded with work. It comes and goes with agricultural stuff and other stuff. We moved some people around some years ago. We used to have somebody in Broome; we used to have two bodies in Karratha. We moved them to different places, so in all we have the same amount of people in the country; they are just in different places in the country. The proactive work slips away when the reactive work—as you can appreciate, a serious injury or a fatality is our highest priority; it gets your attention every time. So when one of those happens, that is what you are doing. When a few of those happen or a number of serious injuries happen, that is what you are doing, and if you are doing that, you cannot be doing this. That is what happens with our resource. If you are focused on investigation stuff, it is not being able to do proactive stuff.

The CHAIR: But now that you have separated investigations from inspections, and that will not be a factor into the future?

Mr KIRWIN: Yes, it will. We have separated investigations from inspections; however, as you highlighted before, if the investigators become overloaded with stuff, they come looking for other people to help them with their work and currently we are helping them with their work. A number of my inspectors in the regions, a number of my inspectors in construction, a number of my inspectors in industrial, are helping the investigations directorate with their work because they are our colleagues; we need to help them with that.

The CHAIR: So when the Karratha office closed, are you saying there was no cut to the number of inspectors?

Mr KIRWIN: I do not think there was a cut. We kept the same number. We used to have two in Karratha and then it went down to one, and then we established one in Geraldton, so we had Geraldton and Karratha, and then we had Broome. We moved one down to Bunbury and one retired, and we moved another guy from Broome down to—yes, I think the number of pieces on the chessboard are still the same; they are just in different places.

The CHAIR: Is there less likelihood to be an inspection in response to a request to attend in relation to a breach in the Pilbara area, now that you do not have an office in the Pilbara?

Mr KIRWIN: If you have an office in the Pilbara and they are just down the road, it is easier to get in the car and go. The severity of it, if it is a serious matter, we will schedule a visit, make a special visit, or pick it up in the next regional visit. There is a regional visits planner and you pick it up and for the

construction team, the two inspectors are up there in May because I was up there at the same time, doing talks about asbestos for them. Yes, so it would get picked up then, but it will not be immediate and we have something called—you may have heard it already—a regional letter that we send with the consent of the complainant, they have to agree to us being able to contact the employer and we will write to them saying, “We’ve heard about this. If it were true, it may be a breach of the OSH act. We’re not saying it is or isn’t, but if this was true, you need to sort your house out.” They typically write back and say what they have done.

The CHAIR: The committee has heard evidence that many regional businesses see WorkSafe as ineffective and that the businesses are not that motivated with maintaining safety practices because they hardly ever see an inspector. Do you think this is correct?

Mr KIRWIN: I do not know what—the number of fatalities and serious injuries that occur, there is a higher proportion of them in country areas, so it is not that they are doing everything properly there. What their views are on whether we are effective or not is really a view for them. We are doing what we can with the people we have and to the best of our ability. We put things out on the internet, we have an OSH updates list, we talk a lot with industry associations and telecentres, people who write newsletters of one kind or another and try to get the word out. There is not that many of us and it is a very big state. The population was growing; it is shrinking a bit at the moment. When I was running the agricultural section, we are not going to be able to get to every single farm, so a lot of it has to be the buy-in from the stakeholder. You have to get that engagement from the public. Previously we had a system, I think, say, a small business assistance program, which was fantastic. They went out, these were private enterprise people that accessed some dollars from the budget, and they went out and provided services to the ones that needed it—the little guy. They put a plan in and they got on with stuff. That is not available to us anymore; that was one of the great tools for reaching out to the little guy in the country, and it was only available to small businesses; it was not available to big businesses. But yes, if that is what the regional businesses think, that is what they think.

The CHAIR: Okay. With the closure of the Pilbara office, when there is a need to conduct an inspection in the north west, who is that assigned to? Is it assigned to an inspector from the regional inspectorate or is it someone in Perth?

Mr KIRWIN: The Pilbara office is actually still open; it was always open. WorkSafe withdrew its inspectors from it, but the greater Department of Commerce has a presence there—Commerce or now Department of Mines, Industry Regulation and Safety. They have people there doing that; I think some labour relations fellow there and some consumer protection people.

The CHAIR: So the office was not closed?

Mr KIRWIN: It was not closed. The building is still there and the office is still there, but there is no WorkSafe inspector there. To answer your question, it would likely be assigned to someone in Perth because there is an airport here and it flies up there. It would be unlikely to be assigned to the regional team.

[2.50 pm]

The CHAIR: The committee has heard evidence that the construction industry has no confidence in WorkSafe’s inspectors and that WorkSafe is seen as the body that does not penalise employers for safety breaches. In terms of “penalise”, I think the reference is “prosecute”. This has resulted in many employers becoming lax in their safety standards. Do you agree with this statement?

Mr KIRWIN: I do not.

The CHAIR: Do you want to comment or express a view on that statement.

Mr KIRWIN: Some stakeholders are quite challenging—that one in particular. The facts are that we do. You can have a look at it—there is a thing on the WorkSafe web page called a prosecution summary of all of the outfits that we have prosecuted. A high proportion of those are in the construction sector. The inspectors in my former branch—the construction, regional and primary industries branch—were very skilled in producing prosecutions, both proactive prosecutions, although they have slipped, and reactive prosecutions. A proactive prosecution is one you are having when you have not had an accident. I recall one from one of my inspectors that saw somebody—a rigger, I think he was—on the steel walking along with no visible means of support. He called him down, chatted with him, and then he looked on the system and he had been previously given a number of notices for the same thing. So he said, “Here’s another notice, and we’ll be back with a prosecution notice”, and he subsequently prosecuted him, because the pieces of paper were not working, so he needed another piece of paper—a different kind of piece of paper. So, it got escalated to that. Those type of prosecutions, the proactive prosecutions, are very effective in changing culture, but you can only do what you can do with what you have got.

The CHAIR: If an inspector is unhappy or feels uncomfortable with the direction an investigation is taking or disagrees with the direction an investigation is taking, are they able to raise that with someone senior at WorkSafe and who would that be?

Mr KIRWIN: So, a WorkSafe inspector doing an investigation and they are uncomfortable? They would probably come to their director, which, if it was in my branch, would be me, or one of the other ones. The investigations now have all been kicked over to another directorate, so that would probably go to them.

The CHAIR: The committee has heard evidence that inspectors are discouraged from speaking to inspectors in another division at WorkSafe and that everything needs to go up the chain through the team manager to the director, who then speaks to the director of the other unit, and it goes back down again. Would you agree with that?

Mr KIRWIN: No, I would not agree with that. That would be somewhat complicated. Inspectors need to keep their team manager informed. They need to manage up as well as down. But there is no issue at all with them talking to their colleagues. That is what they can do. We have recently made some changes to the duty phone roster, whereas we had a separate roster just for construction and another roster for everybody else, and we have bunched the two together because of resources, so you are not on every week. There were initially complaints saying, “I don’t know anything about that.” It was almost an opportunity for you to ring a colleague and phone a friend and find the answer and then come back, and then next week when they are on, when you get a construction question, they will come to you. We are encouraging people to talk to each other.

The CHAIR: The committee has also heard evidence that inspectors are not permitted to speak to the legal team and that all has to be done through the team manager and the director. Is that the case?

Mr KIRWIN: The lawyers are busy. They have, nominally, 93 inspectors—less than that—feeding briefs of evidence to three lawyers. They do not want to be bothered by inspector X coming to the door every day. More often than not, that particular question that they are going to ask has already been answered once or twice before by the lawyers, and the people who will know that information is their immediate team manager and their immediate director. Then after that, if it has not been answered, they can get an appointment. It is to discourage a hundred people knocking on their door. Yes, there is an instruction, but it is an instruction based on disturbance of the work.

Hon JACQUI BOYDELL: Chris, just to clarify that: it is not that they cannot ultimately speak to the legal team; there is a process of due course to follow prior, and if they are not satisfied, they ultimately can?

Mr KIRWIN: Yes, ultimately they can. If there is an investigation underway, certainly my regional guys, there will be a phone conversation between me and a lawyer in a video hook-up with everybody who is on the page to deal with the matter, so everyone has the same information. In the city, what typically happens is there is a meeting with the people in one room.

The CHAIR: The committee has heard a lot of evidence about the length of time it takes WorkSafe to complete an investigation. Is there a reason why it takes up to three years for an investigation to be concluded, and do you share the view that WorkSafe takes an extraordinary amount of time to complete an investigation?

Mr KIRWIN: I think the odd one goes out to that, but as far as I know that is very rare. Most of the ones in my branch have been sort of done and dusted within 18 months—they are done. Inspectors have finished with them and they are at Legal. There is somewhat of a bottleneck at Legal sometimes. There are briefs that are at court, and when they are at court, they cannot do anything. Then they have got things in a holding pattern. Lawyers put an expiry date on the top right-hand corner of the brief and everything else gets sorted on that date because you do not want things expiring. But for the most part, things with priority get priority. Fatalities move through very quickly. Other ones—regulatory matters—move slower. But I do not know that we have had any that have fallen off the back—that we have missed the time on. A long, long time ago when we were in West Perth, I had a call from State Solicitor's saying, "This one, I need to find a Mr Smith and you've got a week to find him, otherwise it's going to be expired." I thought, "I can't find Mr Smith in one week", so it expired. But that does not happen—we manage listing.

The CHAIR: What is your involvement in the investigation of a fatality? Do you have any involvement at all under the new structure?

Mr KIRWIN: Yes. Under the new structure, yes; I am still on the on-call list. I stood as duty director on the weekend, for example. If something happens, I get the call, and then I allocate resources and attend myself. I imagine in the new year that will not be the case anymore. We are working to an old roster. Prior to that, my involvement was considerable.

The CHAIR: Are there any circumstances in which you actually undertake an inspection of a workplace?

Mr KIRWIN: Married to a fatality or —

The CHAIR: Separate to a fatality—just a request to attend a safety breach inspection?

Mr KIRWIN: Yes, in some circumstances. Roe 8, for example, I did three or four inspections during that. No-one else did it; only me.

[3.00 pm]

The CHAIR: Why was that?

Mr KIRWIN: There was a significant political element attached to that. The minister of the day was getting lots of calls from your colleagues—members of Parliament. We were getting lots of calls from members of Parliament. There was an inordinate amount of public ringing up and abusing the call centre staff and then they became escalated to someone else, and so I thought, "I'll intervene here and I'll do this." There was something like 100 RTAs for that. I took that one on. I said to everyone else, "I'll just do this."

The CHAIR: If WorkSafe receives a complaint about an inspector, how is this dealt with within WorkSafe and what is the process for dealing with complaints about staff?

Mr KIRWIN: I did tell you before about that inspector who did not see the safety rep before he left and I dealt with him and I dealt with the business. There is a customer feedback page on the former Commerce webpage—it is the Department of Mines, Industry Regulation and Safety webpage—where if anybody is unhappy with the service, they can put a complaint in about us, not a complaint about a workplace, and that goes through to the director general's office and the director general's office allocates it down. Typically these days, it would go to the commissioner, and the commissioner would assign it to an investigator not attached to the inspectorate as such, attached to another part of the agency, and an investigation would be conducted and inquiries would be made and a report would be produced and provided to the commissioner; and, if there is disciplinary that falls out of that, that is what would happen.

The CHAIR: The committee has heard evidence that there is a tendency for inspectors to issue verbal directions rather than notices for breaches. Do you agree with that statement?

Mr KIRWIN: The enforcement policy for WorkSafe, which is available on the webpage, provides that an inspector can deal with breaches by way of verbal directions, improvement notices, prohibition notices, prosecutions or any combination thereof. In the context of verbal directions, it has got to be fixed there and then in front of you before you leave the site. It is fast and efficient. In addition to being a verbal direction, it gets recorded on our WISE system. No pieces of paper go to anybody else, but it is recorded on our system, so we know if we go there again, "Told you about that last time", and we are going to deal with it differently this time. Is there a tendency to do it? If they can fix it there and then in front of you, inspectors do do it; they can give them a verbal direction. You want them to own the problem and fix the safety issues and you tell them about it, and if you have told them about it before and you go back again and they are still doing it, you would treat it differently, I would think.

The CHAIR: There is also a view that has been expressed to the committee that WorkSafe tend to prosecute for a breach only when there is a fatality. Would you agree with that?

Mr KIRWIN: No. The test there is the WorkSafe webpage. The prosecution summaries show all manner of people who have been prosecuted for all manner of things, including fatalities. But we prosecute for many things. I have recently inherited the industrial team, which includes transport. They prosecute the driver fatigue regulations regularly. There is a lot of that. Similarly, other bits of WorkSafe have been prosecuting assessors for not doing the right thing with assessment instruments. No-one has been hurt yet, but they are bringing about prosecutions because there is a breach there or they are doing the wrong thing. So, no, I would not agree that it is only fatalities.

The CHAIR: What is the process for dealing with the impact of post-traumatic stress on inspectors who have witnessed horrific workplace fatalities or injuries and have had to investigate those?

Mr KIRWIN: As I said, it is a tough gig and it can affect different people in different ways. WorkSafe have, as part of inspector training, a session with our EAP—employee assistance provider—psychologists about dealing with traumatic situations. I actually talk at that to give some of the colourful examples. All inspectors get that; no matter who you are, you get that. Afterwards, there is a fixed and inflexible policy about if you are called to a job where there is a body or traumatised people as the result of a body, you will make contact with the EA provider; you will reach out and you will contact them. It is confidential, but they ring back and say, "Inspector Fred has made contact", so that we know that they are getting the support they need. Then there is a debrief situation with the team manager. We put a lot of resources around that, because it is confronting stuff.

The CHAIR: Do inspectors from your team respond to bullying complaints on construction sites?

Mr KIRWIN: No. Sally North, whom you have met, in her branch she has specialists and she has psychosocial inspectors in there. There was a deal done some years ago saying all the bullying ones go to there, and we said thanks. Some of those are quite complex—lots of paperwork. They pick up those for us. Having said that, there are not that many that come out of the construction sector that come as complaints.

The CHAIR: When a decision is made to conduct a proactive investigation into a particular matter, how does WorkSafe identify and select those workplaces to be investigated?

Mr KIRWIN: We build a business plan at the beginning of our business year, which is subsequently published on the webpage. It is pretty easy for construction, because it is going to be construction workplaces, as opposed to reactive ones. We will do a blitz on the CBD for as many inspectors as you can for a week and make a lot of noise beforehand, like the tax office does, saying, “WorkSafe is going to be there. We’re going to be looking at this, this and this” and then do it, and, similarly, a blitz on the southern suburbs in a geographically discrete area so that you can do absolutely everything while you are there. Those decisions are made. We have some intelligence; WorkCover give us some information as to injury trends or injuries, not specifics as to who was injured, but the kinds of Australian and New Zealand industry codes associated with employment, and we use those to inform ourselves as to where we need to put some resource. The other branches—whether it be the parts of the branch, my branch, agriculture, aquaculture, commercial fishing—look at the numbers and say, “It looks as though we’re having a lot of trouble there. We can do some more good; we’ll go there.” There was a project that the former transport team did on hoists, and they alerted all the stakeholders, saying, “Look, we’re coming to have a look at these hoists and we’ll be looking for these things.” Now, you are not going to get to every hoist, but by putting out that release to say these are the things we will be looking at, the smart money around town is they will look at the list and say, “We’d better make sure our hoist has all these things sorted out.”

You get compliance without going there, in some cases. Then when you do go there you get our letter, you get our media release, “Did you do anything?” “No.” Then there is really no argument when you are inspecting and finding things wrong and issuing notices, because they have been informed as to what the industry project was about. One of them that does that very, very well, is the Motor Trade Association. Every time we say that we are looking at this, they publish it on their webpage to all their members and write to all their members, saying, “If you are in the back of Meekatharra, you need to have this sorted”—places that we might not get to. It has a bigger impact by publicising it that way. We are not saying where we are going; we are saying if we do go, we will be looking at that.

[3.10 pm]

The CHAIR: Would a WorkSafe inspector visit every big construction site in the metro area at least once during the life of the construction site?

Mr KIRWIN: A hundred per cent, yes.

The CHAIR: Would a WorkSafe inspector visit every big construction site in regional WA at least once during the life of that construction site?

Mr KIRWIN: No. Some you do, some you do not. Barrow Island, for example, I went up there with a colleague. I had a number of inspectors go there. It was about looking at their systems, seeing that they had safety reps, they had safety advisers, they had a committee, and they were managing it well. That was the same system they had at Wheatstone. It is on an island that is in the middle of nowhere. You have to be working to be there. You are not going to have any tourists coming

through. They have got a system, and they can deal with their stuff. If complaints came in, we ask, “Have you been through your consultative mechanism? Have you been through your consultative mechanism?” If they say, “Oh no, we have not done that; we do not want to do that”, we say, “This is what you need to do. You need to go through this consultative mechanism.” We will refer them back into the system and things got resolved. On other big construction sites like that, we typically meet with the project proponents when they advise us that something big is happening and tell them, “This is the act and regulations and these are the obligations. You need a construction safety management plan, construction safety awareness training and high-risk work licences. We need you to do it properly. If it all goes pear-shaped, we will turn up, and if it is not right we will be dealing with you. But we are not going to be there every day, because you have a large safety workforce, you have consultative systems, and we will leave you to get on with it.”

The CHAIR: Would you be able to provide the committee with information in relation to for each of the last five years, how many residential building sites had been inspected by WorkSafe in the metropolitan area and in regional WA, and by proactive and reactive investigations?

Mr KIRWIN: If I could take that on notice, I will pass it back when I can.

The CHAIR: Yes. That will be question on notice 4. Does WorkSafe undertake many proactive investigations of residential construction sites?

Mr KIRWIN: Yes. We have in the OSH regulations, I think it is regulation 2.10, an obligation on local authorities, local government, to provide the WorkSafe commissioner with a list of the building approvals that it approved in the previous month. That is supposed to be with us within five days of the month. So we know on a regular basis that in Meekatharra they are going to be doing this and in Collie they are going to be doing that. There is going to be a house popping up here and a house popping up there. We have that information and that comes through and gets put on our system. Inspectors are typically organised into geographical areas in construction. The inspector that does Swan or Joondalup, they will download those ones for their area and put it on their laptops so they will know when they go to a place that there will be something turning up right here. So we are not driving around the suburbs looking for places. We know where they are going to pop up. We sort those jobs out. WorkSafe tries to go to where they can do the most good. If it is a multi-storey place, a double storey or more than that, it is likely to have scaffold, and there are going to be more risks, a fall from height, that kind of thing. That will get more of a look than the driveway crossover at your place. In fact, the driveway crossover at your place will not get looked at; we will not go there. A single-storey dwelling house in Doubleview might, but we know what is around.

The CHAIR: The committee has heard evidence that WorkSafe should conduct joint inspections with union representatives, both inspections and investigations. Do you have a view about that?

Mr KIRWIN: I kind of answered that question with regard to safety and health reps. My view would be that evidence could be contaminated. That is what it would be—evidence and witnesses could be contaminated. I will probably leave it there.

The CHAIR: What is your view on whether WorkSafe inspectors should be able to issue spot fines for breaches?

Mr KIRWIN: I am aware that in the eastern states they have such things—my colleague in Victoria has told me about them, and also in New South Wales. They have a purpose. Thinking of the negative side here, it would probably increase the number of complaints that come about WorkSafe inspectors, if you are the bloke that is handing out the fine. But it is a tool that other jurisdictions use and it probably has some merit.

The CHAIR: You mentioned earlier that you undertook a number investigations in relation to Roe 8. In your view, are there any lessons to be learnt from the Roe 8 experience? Do you think that earlier issue of a media statement and provision of information and advice to complainants about the investigations that had been undertaken and the outcome of those investigations may have resulted in fewer complaints being received?

Mr KIRWIN: It was a very strange situation, Roe 8. It had a background that at that time, the City of Cockburn, the then council of Cockburn, had a position of anti-Roe 8 and then not having anything to do with it. They prohibited their health officers and building officers from dealing with anybody on it. The public was doing the normal thing and trying to come to the local government and not getting the answers. Then there were things going up on the City of Cockburn's website that were inaccurate to the extreme. I took that up with my colleague there, and said, "Really? This is not —" and he corrected it. It was asbestos-containing material dumped in the bush, as is common around Perth and the country—people doing the wrong thing; they put it in the bush decades ago. The building Roe 8 alliance had identified where this stuff was, had GPS-d it, had a plan to deal with it, and there was not much information coming out of them. The protesters did their own research and did their own testing, which is unusual, as it is very expensive to do that, and put out information on social media and the like. It was a very heated situation. Some of them put my name on a letterbox drop and I got put in everybody's letterbox. It was a difficult time. That said, the Occupational Safety and Health Act, my role was to see whether that was complied with or not. The contractors were doing what they could. They identified where it was, fenced it off, put tarps over it and called removalists, and the removalists removed it and took it away to proper places. That is what happened. There were lots of protesters and lots of noise. There were lots of calls to WorkSafe. The public were saying that they were concerned about the health of people and that they were also concerned about a freeway coming through. It was difficult to separate what their concern was.

[3.20 pm]

The CHAIR: Do you think that we could learn lessons from the way that was handled—had there been earlier public communication that inspections had been undertaken and that the outcome of those inspections was that there was no asbestos within the envelope of the development of the site?

Mr KIRWIN: The communication could have been better and the timing could have been better. I said at the initial meeting I had with the alliance, "Why are you doing it in the middle of summer, during school holidays, when the uni students who like to protest will be available to protest? You need to do it in the winter when it is rainy and it is cold—that's when you do it." They said it was contracts and the mandate of the government of the day. Yes, there were lots of things wrong. It was a very volatile situation.

The CHAIR: I have just been asked if the committee could have a five-minute adjournment. I will close the hearing for now for a five-minute adjournment. Then we will get you back in, Chris. That will give you a chance to have a bit of a break.

Proceedings suspended from 3.21 pm to 3.51 pm

The CHAIR: We are back on air with a continuation of the hearing with the director industrial and regional from the WorkSafe division of the Department of Mines, Industry Regulation and Safety. Chris, the committee has a document that it would like to provide to you and then ask you questions in relation to that document. We will give you the document and provide you with a few minutes to read the document. and then could you indicate to the committee whether you are happy to be asked questions in relation to that document in public or whether you would prefer to go into a private session?

Mr KIRWIN: I have seen this document before.

The CHAIR: Would you prefer this document to be taken in private session or are you happy to proceed with questions being taken in public session?

Mr KIRWIN: I think I am happy to be in public at this time. I just do not want to mention names, that is all.

The CHAIR: Okay; understand that if you say you are happy with it to be public at this time, it is public; it is being broadcast on the internet. There is no capacity to take it back. If you have any concerns, now is the time to raise them and we can go into a private session. The committee then has the opportunity, if at some future time when we are writing the report we feel that information provided during a private session needs to be included in the report, we will contact you to alert you to that and talk to you about that. Whether it stays private is a matter for the committee at the end of the day.

Mr KIRWIN: Okay; I am happy to proceed.

The CHAIR: To proceed in public?

Mr KIRWIN: Yes.

The CHAIR: Okay. This is a redacted email exchange between a WorkSafe officer and the CFMEU officer regarding safety concerns at a particular workplace—I note that the workplace is redacted so we do not want any reference to the particular workplace—and the injury of a worker at that workplace. The committee understands that there were at least two separate incidents at that workplace resulting in injuries to an employee. Do you agree that it would have been in the interests of safety at the workplace to provide the CFMEU with some general information in relation to WorkSafe's inspection in relation to that complaint?

Mr KIRWIN: Yes, it would be, and I did.

The CHAIR: What information did you provide?

Mr KIRWIN: I provided them with some information that WorkSafe had inspected and that we had issued some notices, and that was in writing. It is not on this email, though.

The CHAIR: So that was a separate email exchange, was it?

Mr KIRWIN: It was all part of the same lot, but yes. It was an email in November, yes.

The CHAIR: Would you be prepared to provide that email exchange to the committee?

Mr KIRWIN: Yes.

The CHAIR: We take that as question on notice 5. Your evidence to the committee is that you did provide CFMEU with a lot more detail than appears to be the case on the basis of the documents currently before us?

Mr KIRWIN: Yes.

The CHAIR: Do you want to go through the background to this and at what time more information was given so that the committee has a better understanding of what occurred?

Mr KIRWIN: Yes. From my recollection, there was a complaint to WorkSafe about August and then WorkSafe dispatched an inspector to inspect this place soon after that. They inspected and wrote some notices on the company that was an employer there and some workers who were working there. We were not aware of any injury. There was another injury in September that we subsequently became aware of. It was not reported at the time. It was reported to WorkSafe by the CFMEU and they asserted in that that we had not been there the first time, and had we gone there

the first time, we would have prevented the accident. In my exchange to them, I said, “Well, we did go there and we did issue notices, and they were about this and about that—to this and to that”, covering all the issues that they raised with us. It was just a little bit mischievous that they should leave that out. Subsequently, the CFMEU provided WorkSafe with—I said in my communication, “Look, we are not aware of any injury. If there is an injury, and if there’s a medical certificate and reports or anything that’s medical, we would be interested in that, because it is our duty to report injuries by an employer, and we do not know of that.” Subsequently, information did arrive from the CFMEU of an injury, and we dispatched an inspector to go to that place again. Some further time went by, and we sent someone there again, a third time.

The CHAIR: Can you approximate the dates when they occurred?

Mr KIRWIN: It was approximately August the first time, November-ish the second time, and March the third time. It was not the people who were running the workplace that were the employer; there was a labour-hire outfit. Another inspector issued some notices, and one of those notices came under review to the commissioner, because they disagreed that they were the employer to which the duty to report applied. That came back to me to make some further inquiries with our legal people, and ultimately that notice failed to stand up—it was cancelled by the commissioner—because the persons doing the work were another entity again, and we found that on the subsequent investigation. Sometimes when you go to a workplace, you think that is what it is. Then on the detail and closer examination, they are not really who they are. They are somebody else. So, yes, we dealt with that.

[4.00 pm]

The CHAIR: So the first email communication from the CFMEU is 27 February asking, “Look, we sent you some information regarding our concerns in relation to an injury and provided you with additional information you requested, but we have not had any feedback.”? Are you saying that the feedback was provided before that date?

Mr KIRWIN: I think I brought it with me.

The CHAIR: Terrific.

Mr KIRWIN: Yes. I have an email dated 15 November about this matter. I can pass it to you.

The CHAIR: Margaret, can you please collect the additional copies Chris has for distribution to the committee. Thank you. Do you only have the one copy?

Mr KIRWIN: I do.

The CHAIR: Perhaps we could adjourn the hearing just to provide Margaret with an opportunity to photocopy it. That way we all have the information, because this is important. Are you happy with that, Chris?

Mr KIRWIN: I am happy with that.

The CHAIR: So we will adjourn the hearing for five minutes or so to allow the photocopying of those documents and we will go off air until we have those documents. Thank you.

Proceedings suspended from 4.01 to 4.09 pm

The CHAIR: We are all back, so let us resume the hearing, please. We are back on air and continuing the hearing with the director of industrial and regional from WorkSafe. Now, Chris, we all have copies of the document you referred to, so if you would like to continue giving evidence in relation to those documents.

Mr KIRWIN: WorkSafe were advised of—there was initially a complaint to WorkSafe from the CFMEU. Then WorkSafe attended and did carry out an inspection in early August and issued some notices to an employer and a couple of workers, and we were not aware of any serious injury to anybody at that time. Certainly, at that time, the second—the serious injury that you referred to as the second serious injury, had not occurred. So, we were unaware of it. Then subsequently the CFMEU asked WorkSafe if they had investigated the first one and we said we had. Then following that, it was an open and ongoing investigation in which further inquiries were made and the labour hire employer was contacted and further notices issued and then further notices issued on the entity that was at the workplace.

[4.10 pm]

Then there was a challenge to that or a review of that notice. It went to the commissioner for review and then came to me for finding more information. It was not my investigation. It was somebody else's. I obtained the contractual information to find out exactly who the entity was that was doing the work and backwards and forwards with the labour hire company to find out who they were contracted to and it turned out it was another company that was no longer in the jurisdiction and had gone elsewhere.

The CHAIR: Just to go through this and put it in a time frame, we have the initial complaint, request to attend, in relation to a number of safety concerns at that workplace by the CFMEU. We have a request for information about what has happened as a result of that by the CFMEU on 15 November and a reply by you to the CFMEU on the same date outlining what has gone on to date?

Mr KIRWIN: What has gone on in a general way. Yes.

The CHAIR: Then there is a further communication from the CFMEU to WorkSafe advising WorkSafe that there has been an injury on-site, a worker has had a serious injury and that they believe you have not been notified of that injury.

Mr KIRWIN: No, I think you have the time line wrong there. The letter of the fifteenth to WorkSafe, which is the one on letterhead, says that the injury occurred on 27 September.

The CHAIR: All right. Thanks for that clarification. So, we are all on the same page. They notified you of the injury because the employer had not notified WorkSafe of the injury. They provided you with some additional information?

Mr KIRWIN: Yes.

The CHAIR: Then you got the request on 15 November asking for information—"what is the status of our complaint?"—and then WorkSafe has provided their response on 15 November?

Mr KIRWIN: Yes. It sort of all happened on the fifteenth. So, the initial inquiry we had—I think there were photos attached to that. Then September went by, someone got injured, we did not know about it. November came along. CFMEU said, "What are you doing about that?" We said, "We have done that. We don't know about an injury. This is what we did when we did know—what we did in response to the August information. If you know any information about the injury, tell us."

The CHAIR: Okay. So, on 15 November you had not received the information from the CFMEU in relation to the injury?

Mr KIRWIN: No, we had not.

The CHAIR: So that came after 15 November?

Mr KIRWIN: Subsequently, yes.

The CHAIR: There is then an email communication from the CFMEU on 27 February, saying, “Can you please provide us with an update in relation to our notification to you about the workplace injury?”

Mr KIRWIN: Yes.

The CHAIR: So that is quite separate from the initial investigations that were undertaken, and your response in that instance is that it is an ongoing —

Mr KIRWIN: That it is an open, ongoing matter.

The CHAIR: Was it not possible to provide the CFMEU with some additional information at that point?

Mr KIRWIN: It was still a work in progress, so, yes, there was not any additional—we had not. No, there was not any other information I could provide them at the time.

The CHAIR: I am just playing devil’s advocate here. Would it not have been possible for WorkSafe to say, “Look, we’ve got your information. We’ve attended the worksite”?

Mr KIRWIN: Again.

The CHAIR: “Again, in relation to the injury. We have talked to the employer. It’s an ongoing investigation, so I can’t give you any more information at this point, but we are acting on it”?

Mr KIRWIN: Yes, I thought I said that. The matter is an open investigation with WorkSafe.

The CHAIR: Do members have any questions in relation to this?

Mr KIRWIN: And then, subsequently, there was obstructionist stuff. Are we going into that?

The CHAIR: The obstructionist stuff you are referring to, is that the CFMEU complaining that you did not provide them with information? I think you have answered those questions, by saying you did provide information, and you further answered it in response to my question: was there not something more you could have provided on 27 February. I think we have covered that, but if there is something you want to add, this is your opportunity.

Mr KIRWIN: Some stakeholders want very detailed information and WorkSafe is not able to do that—not able to give that. Rightly or wrongly, we have advice, and we train our inspectors, you give nobody anything except an improvement or prohibition notice—that is it. We do not give out information. If anybody wants a document, they need to go through the FOI process. We tell them that regularly. We do not do public comment in the media. That is just the way things are. In this case, this stakeholder wanted more and we did not give it to them.

The CHAIR: Can I just ask one question for the purposes of clarification: in your email you advised them that if they wanted additional information, at the conclusion of the investigation they could apply for FOI. Can I just understand, was that an intentional choice of words—that there is no point in applying for an FOI during an investigation; you are really better off waiting until the end of it?

Mr KIRWIN: Yes, I think those words were put in my mouth because I think the incoming email mentioned FOI: “Don’t tell me about FOI.” Yes; the response was—my understanding is that there is nothing available during the process because in a practical sense if it is one of my regional guys, they have the file. It is with them. I have not got it yet, so it is not available to FOI officers; it is a work in progress. They are still out there doing stuff. That is my understanding. Whether or not —

The CHAIR: When you say, “they have the file”, the file is actually on the WISE system?

Mr KIRWIN: Yes, if the file is on the WISE system. But if it is a brief of evidence that is being prepared, then the courts like documents with signatures on them, so there is paper.

The CHAIR: Just to get it clear, when you say, “at the end of the investigation”, you mean at the time a prosecution is initiated, if a decision —

Mr KIRWIN: If one goes that way, yes—at the end when it is done. It is not my area, but my understanding is that when the FOI officers get a request for a file and it says it is under investigation, they struggle because they know they do not have the whole story. They can say, “We’ve got this much information. We don’t have all of it yet,” because it is not done until everything is in.

The CHAIR: Is everyone fine with that?

Chris, there is another document that the committee has, which was provided and has been made public. It is a redacted version. I ask Margaret to provide it to you and again give you an opportunity to read it. I suspect you have already prepared for it. You can then advise the committee whether you would like to go into private session in relation to that document or whether you are happy for questions to be asked in the public session.

Mr KIRWIN: Okay, yes.

The CHAIR: It is in relation to a postcard.

Mr KIRWIN: It is, and in the copy that Margaret previously provided to you, you will find some documents that relate to that.

The CHAIR: I noticed that; that is why I felt comfortable raising it now. Can you just indicate, Chris, if you would like to go into private session, or are you happy to answer?

Mr KIRWIN: I am aware that the minister has written to the commissioner about the matter that this touches, so it is probably best we go into private.

The CHAIR: All right. Normally we would adjourn to consider the matter, but the committee had already considered all the options in our five-minute break that extended a lot longer than five minutes, and the resolution was that if you said you wanted to go into private session, we would go into private session, so on that request I am now going to conclude the public hearing, bring it to a close, and we will continue the hearing in private session. Thank you.

[The committee took evidence in private]
