STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO WORKSAFE

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 29 OCTOBER 2018

SESSION TWO

Members

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

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Hearing commenced at 11.28 am

Mr MICHAEL McLEAN
Executive Director, Master Builders Association of WA, sworn and examined:

Mr KIM RICHARDSON
Construction Director, Master Builders Association of WA, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask each of you to take either the oath or the affirmation. The documents are just in front of you.

[Witnesses took the oath.]

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

The WITNESSES: Yes.

[11.30 am]

The CHAIR: To assist the committee and Hansard, please quote the full title of any document you refer to during the course of the hearing for the record. Please be aware of the microphones and try to talk into them and 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' 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 that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

The committee notes that you have made a substantial submission to the committee and we thank you very much for that submission. We obviously have a range of questions to put to you arising from that submission but would like to provide you with an opportunity to make an opening statement to the committee if you so wish.

Mr McLean: We would like to take that opportunity, thank you. I have been with the Master Builders Association since August 1983. I first worked as the industrial relations manager till September 1996, when I was appointed to the role of executive director.

Over that time I have built up a little bit of knowledge about how the building and construction industry operates, and I hope that that might assist the committee with some of the questions you might pose to us.

For those that do not know the Master Builders Association, we are a state-based organisation but we are part of a federation that comes under the banner of Master Builders Australia, which is based in Canberra. Our association, being a membership-based organisation, comprises builders, subcontractors, suppliers, kindred organisations and any business really that operates in the building and construction industry. Our membership currently comprises probably a little over 1 700 members. We did at one stage have over 2 000 members, but because of the downturn of the industry, we have lost several hundred in recent years. Our organisation is all about providing risk management services to the building and construction industry in this state. We do that by

employing relevant staff and engaging alliance partners, whether they are legal firms, consultants, trainers et cetera to provide the services that our members require. We currently have about 32 staff in our organisation, seven of whom are based in four regional locations, namely Geraldton, Bunbury, Albany and Esperance—Esperance services the goldfields. Our board comprises currently 13 members, one of whom chairs our safety committee. We have a safety committee that meets on a monthly basis, 11 times a year, and one of our board members chairs that committee. We employ a senior safety coordinator that carries out the role of assisting our members in a whole range of areas such as providing site safety audits; to mentor some of our construction managers and site supervisors; to provide a secretariat for our safety committee; to assist our members with high-risk work licences; and to assist them with safe work method statements, job safety analyses and any advice that they might require, either in person or on an electronic—or by phone. That person is pretty busy. About 12 years ago, we decided to split our safety and health department, if you like, into two. We have a focus on safety and we have a focus on health. We have established a health alliance which focuses on a whole range of areas that safety does not deal with, such as mental health. We have a very strong relationship with MATES in Construction; the Prostate Cancer Foundation of Australia; Holyoake, which focuses on drug and alcohol issues; SunSmart; Cancer Council; and Perth Wellness Centre. We have found it very important to raise awareness on those important health-related issues for our members, which is very different to what I would call hardcore services that we provide when it comes to OHS.

Over the period of time that I have been employed, we have enjoyed a good relationship with WorkSafe. I think in recent times, following the WorkSafe commissioner leaving, we have not had as much engagement as we would like and we have some comments to make, no doubt, in response to your questions as to how we think WorkSafe might be improved in terms of its services. The other thing I think is important to this committee is to recognise that in Western Australia our industry is probably the most deregulated of all the building and construction industries in this country. That is as a result of—when you look at the trades—only electrical, plumbing and painting requiring some form of registration or licensing. That has implications for things like membership of associations, including our own, and what impact we might have in actually connecting or engaging with the likes of carpenters, bricklayers, roof tilers, wall and ceiling fixers, wall and floor tilers, concreters, riggers, scaffolders and the like. It is a challenge for us to engage with unregulated members who work in our industry. It becomes difficult also if WorkSafe are not engaging with them for changes of behaviour to come about, but perhaps that might be the subject of some discussion a little later with this committee. We also enjoy, strangely enough, a reasonable relationship with the CFMMEU when it comes to proactive strategies regarding safety. It was the relationship between the MBA and the CFMMEU that introduced the then green card, now known as the white card, which is a universal safety induction program for our industry many years ago, probably about 25 years ago, I am guessing, or more. That has been a very good initiative for our industry. We also have introduced some strategies to improve the level of compliance with scaffolding in our industry with the CFMMEU, who are also concerned that the standard has declined over time. Although we might be combatants in some areas, we do work collaboratively when it comes to safety and other employee benefit schemes. That would be an overview that I would give. Perhaps Kim would like to add to that.

Mr Richardson: I think that is a pretty comprehensive overview.

The CHAIR: I would agree with you.

Mr Richardson: I am quite content to stand by those comments.

The CHAIR: You have actually knocked off the first few of the questions, so thank you, Michael. Can I just clarify—you mentioned in your introductory comment about unregulated trades and this is an

issue that a number of people have expressed with the committee. Do you think all the trades should be regulated?

Mr McLean: The policy of Master Builders in Western Australia is there should be some form of registration or licensing, yes. We think the pros outweigh the cons and we think the level of compliance with a variety of regulations and statutes would be improved accordingly. We also support statewide registration of builders. You may not be aware that there are some areas in Western Australia that builders can operate without a licence, such as Kununurra.

The CHAIR: I had no idea. Is that the only area?

Mr McLean: No, it probably goes a little bit further to the South Australian border. I think for all intents and purposes, I would not want you to think that there are unregulated builders working in those vicinities, but technically they could, and there would be no jurisdiction to ensure that they were registered. We support statewide registration of builders. In fact, we support tiered registration of builders, which means that those persons who might be responsible for building swimming pools, sheds, pergolas or, let us say, internal fit-outs over $20 000—like bathrooms and kitchens—may have a different level of registration than a registered builder building a house or a multistorey building.

[11.40 am]

The CHAIR: Can I ask: if there is a general view in industry that this is a good thing, why has it not happened? What has prevented it from happening?

Mr McLean: It has not happened for a variety of reasons. One is that the organisation within government, the Building Commission, has not given it the priority that we believe it deserves. It would be fair to say that the Building Commission, having limited resources, has allocated priorities to other areas. I think that is probably the short answer.

The CHAIR: They might actually find their complaints work decreases if they actually had registration of all the trades.

Mr McLean: It might, yes. When you compare each other jurisdiction in Australia, we believe that there is probably greater compliance with statutes than there is in Western Australia for that reason. I think the builder's responsibility is as the principal contractor. I was around when the current OH&S legislation was introduced in 1987–88, when we moved from a prescriptive environment to a duty of care environment via the principal, and his or her job would be made a lot easier if the trades had something at stake by not complying with the statute.

The CHAIR: Has the Master Builders Association of Western Australia made any approaches to government to have that issue addressed?

Mr McLean: We have made the approach through the former building commissioner, Peter Gow, and we were challenged to provide evidence, if you like, as to what is wrong with the current regime rather than look at the merit of a registration regime with what it would benefit our industry by. So, short answer, we probably have not gone to great lengths to pursue that from a lobbying perspective, but we have raised it in several media commentaries, including my weekly column in *The Sunday Times*, as to the merits of registration.

The CHAIR: In paragraphs 4.1.6 and 4.1.7 of the Master Builders Association of WA submission, you outlined figures from WorkSafe reports illustrating a reduction in lost-time injuries and diseases. The committee has heard evidence that these reductions are, at least in part, caused by employers engaging injured staff on light duties and thus avoiding the reporting of the injuries. Do you agree with that information?

Mr Richardson: Speaking from my experience, we have heard no reports of that. I have seen that evidence as I have been reading the transcript material of this inquiry, keeping myself up-to-date with it, but it is not information that I am aware of. From time to time I have heard anecdotal reports, but no actual reports or factual circumstances that can either substantiate or not substantiate it, so if the question is posed, "What does Master Builders say?", we cannot comment; we are not in that position.

The CHAIR: The Master Builders Association of WA states that despite those figures, there is room for improvement. Do you have any thoughts as to how that improvement might be achieved?

Mr McLean: I will have the first go. As I said before, we have enjoyed a good relationship with WorkSafe. The chief inspector has regularly attended our safety committee meetings—not every committee meeting, but he would come and go and give an update as to what is happening at WorkSafe—and we have had quarterly meetings with the former commissioner of WorkSafe, Lex McCulloch. Since Lex has left we have not had that regular form of engagement with him and the chief inspector collectively. We think there is a lot more that WorkSafe can do to improve their performance and the standard of safety in our industry. We think the first thing they could do is to have a higher visibility in workplaces. Nearly one-third of our members are based in regional WA. It is very hard for us as an association to commit or engage our members in safety training and awareness practices if the regulator is not visible in their midst. We would say, "Look, we can offer this, this and this", and they would say, "Well, out of sight, out of mind. We don't see WorkSafe; why do we need to do this training?" It is almost like a catch-me-if-you-can approach, and they do not see the value in attending our safety courses et cetera. We think that WorkSafe could communicate better and I think the challenge for them with electronic transmissions and electronic forms of engagement is to put out a lot more alerts as to what they have found with some of their inspections on site, so that they are adopting a proactive approach.

I was asking Kim just before we came in here, "Do WorkSafe put out any information about what lessons can be learnt from the fatalities that occur in our industry?", and the answer is no, either because the investigations might still be ongoing or there might be some risk of litigation, or there might be some implication that WorkSafe has a responsibility for reducing fatalities, or whatever. I think they could be a lot more proactive. As you would be aware, the penalties that arise where employers breach safety legislation recently went up significantly. We do not believe that that should be the deterrent for safety compliance as much as a proactive approach to safety. It is very easy to have the train wrecks and to fine people and take them out of the industry with industrial manslaughter charges and the like; we would prefer a lot more focus at the front end to stop the train wrecks—to stop the accidents and fatalities. I think WorkSafe, in conjunction with industry groups like our own, has an important role to play in that regard.

The CHAIR: Michael, can I just explore that a little bit further with you?

Mr McLean: Sure.

The CHAIR: I think there is no disagreement on the issue of WorkSafe needing to have a more proactive role. It has been raised with the committee that part of that proactive role could be enhanced if WorkSafe had the ability to issue on-the-spot fines for noncompliance. Does the Master Builders Association WA have a view on that?

Mr Richardson: It is not something which has been discussed by the safety committee or our construction council. I would caution against that. I know it sounds a bit counterintuitive, but it places WorkSafe into issuing on-the-spot fines, and if it is going to be just a small fine, is it going to be sufficient as part of an education role? It is where WorkSafe has that education role and the compliance role that needs to be, I think, a constructive balance. I do apologise; my background

with industrial relations has been since 1983. I was with the state government through the Office of Industrial Relations—DMIRS—before its forerunner joined the Master Builders Association in 1990, and I have been with the association since that time. Since 2005 I have had coverage of policy issues and occupational safety and health, because of that blurring in the overarching arrangements, so I also sit in a secretariat capacity with the Master Builders safety committee. I also sit on the Master Builders Australia national safety committee for policy issues as well, so I have had that sort of flavour for well over a decade in that sense.

Coming back to on-the-spot fines, I can say that in New South Wales my understanding is the regulator does have the ability to issue on-the-spot fines in that jurisdiction. The feedback from my counterpart in New South Wales is that that is seen as a benefit by the industry because of what they see as a reduction in WorkSafe injuries occurring, but I think it needs to be explored a little bit further. I make no criticism of WorkSafe or any regulator, but the industry could see it as being a bit like the Multanova radar traffic fines: it is just a revenue-raising exercise. That could then erode confidence in the regulator as improving road safety and acting in an educational role to improve safety. As Mike properly said, getting ahead of the game to prevent the train wreck, which is where I think industry and all stakeholders want to be, not at the back end dealing with the tragedy; we do not want that to occur.

[11.50 am]

The CHAIR: Sorry for interrupting, but surely there is a role for on-the-spot fines in that proactive approach in terms of trying to get tradies to understand the importance of safety in the workplace, because we are hearing time and time again this view that, "She'll be right, mate; I know what I'm doing"?

Mr Richardson: If I could, I could extend that argument. I understand fully, and that is a common criticism that the industry, certainly from builders and peak employer groups, do have, is that within the building industry, under the current structure of the Occupational Safety and Health Act 1984, the duty of care goes to the builder being in control of the site. The way the structure operates is if a subcontractor does something wrong in not meeting their safety obligations, WorkSafe shifts that responsibility not onto the shoulders of the subcontractor but up the line to the builder, saying, "You are responsible for what occurs on site." With the changes proposed next year and the modernisation of the WA safety laws, and the introduction of this creature called "person in control of a business or undertaking", that has been mooted since 2007 when Kevin Rudd was the then Prime Minister and the modernisation of the safety laws. Master Builders has always been a very strong supporter of "person in control of a business or undertaking", because, for the first time, subcontractors would be accountable for not meeting their safety obligations as well, as opposed to the builder. It should be a joint or common responsibility, but the way the structure is, it is always sheeted back to the builder, and time and time again the builder has put the necessary systems in place, with subcontractors ignoring it, knowing that if they are caught, they do not get pinged by WorkSafe, because WorkSafe go to the builder and say, "This the way the legislation is structured. You are the builder. You are responsible for the conduct of that subcontractor." To put it in another way, if the subcontractor is not held accountable for not meeting their obligations under the safety laws, there is no need for them to change. So the argument is, looking at penalties or on-the-spot fines, would that contribute to an improvement in safety? I would say, speaking to my counterpart from New South Wales, the anecdotal evidence is yes. But I would caution that to put in place "person in control of the business or undertaking" as part of the modernisation structure for next year under the governing safety legislation to see how that works. My biggest concern is not to see the integrity or lack of confidence in WorkSafe seen as being just a revenue-raising exercise, because I think the issue of safety at the workplace is far, far too important for that.

Mr McLean: Can I add one thing there, if I may. I think there is merit from the point of view that it puts a little bit more responsibility—this is about the imposition of fines—on the person carrying out the work. So if a WorkSafe inspector were to go to a site and see a worker with bare feet or in thongs or not wearing a safety helmet or not wearing appropriate protective equipment, issuing that worker with a $50 or $100 fine, as long as it is reasonable, to remind that person of the importance of wearing that protective equipment, does reinforce what the employer of that person is trying to achieve, because sometimes employers are at great odds where the person under their responsibility is not complying with their requirements. So from that point of view, it can change behaviour and can change culture, because you only have to do that a few times and word would get around the industry that WorkSafe could have an unscheduled visit and you could be up for a fine.

Hon DARREN WEST: I am just curious about your analogy between Multanova fines and workplace incident fines. I have a great interest in that area of road safety. Similarly, they are both very avoidable occurrences. People can avoid it, or they can choose to break the speed limits and attract the appropriate fine. But research has shown that it does not particularly change their behaviour and that, ultimately, we have had an increase in road fatalities since the introduction in Western Australia of such devices. Ultimately, when you accrue enough of these fines, your licence is taken away from you and you can no longer drive until that period of time expires, and research has further shown that behaviours do not change. So I think it is an interesting analogy to make because I do see the similarities in exactly the two things we are talking about. We have a fine system, but we are still seeing more and more people killed and injured in workplace accidents in Western Australia. So what do you suggest we do, given that that analogy is probably pointing us more to a different direction in terms of deterrence for those who choose to break the laws?

Mr Richardson: I can answer that. It is something which has been exercising the mind of the safety committee. I can say that it was discussed at length, the principle, Darren. During the debate and discussion in state Parliament about increasing the penalty regime under the occupational safety laws and the mines safety legislation, and around that committee is practitioners in safety, and there is a very common position put all the time, and the theme was, penalties will not stop these things occurring. It is education, which is what Mike was saying previously. It is getting ahead of the game, or preventing the train wreck. Picking up the point that you are saying, Darren, I think is right, because fines will not change it. It is education. It is a cultural thing. Use of mobile phones while driving as we know is a common problem. Fines, no matter how increasing they are, is not stopping what people are doing. However, the safety committee is looking at some other examples where there has been a change in attitudinal arrangements by the community—drinking and driving, for example. There was a time when drinking and driving was acceptable—smoking. It is an ongoing, constant education program to change that attitude. That is where fines themselves—speaking again from what the safety experts are saying and the safety committee—were not going to be the motivation for change. It is getting that education. That is where WorkSafe can play a massive role, as well as being the regulator, in assisting and building with education programs, and working with industry stakeholders to push that. Industry stakeholders, such as Master Builders, also have a very important role to play in that, and what Master Builders has been doing certainly over the past 18 months is working at putting in place relevant safety services for the twenty-first century, not what was going through in the 1980s and 1990s, because that was then; this is now.

But with the amount of red tape which has to be involved in safe systems of work, safety management plans, what is a JSA, what is a safe work method statement, a lot of people working in the industry do not know what they actually are. They have a document, and they will go to the internet and get a copy, "I've signed it", that is it. It has to be a much more properly structured

education program, even down to what is occurring on site, so that those who work in the industry have a better understanding of the safety obligations. In a minute form as to the tradie, it is working in boots, safety hat, glasses, but working safely. It is having a situational awareness of what are the risks on that site that they do have, bearing in mind our industry is so different from the manufacturing or retail, because in the building industry, the workplace changes every day during the construction phase. At the start of the project, it is earthmoving, but, at the end, it is fit-out, and the nature of risks vary from day to day, week to week, month to month and year to year, depending on the size of the job. So the risk profile changes as that building progresses all the way through. That is where the education has to be a multilayered approach as well, and that is something to be mindful of.

The CHAIR: Just picking up from the point you made about the fact that we have seen a reduction in drink driving, one of the key factors that played a role in that reduction in drink driving is the likelihood of a term of imprisonment if you are found guilty of the offence of drink driving or an offence that could also result in more serious injuries to people. So following on from that analogy, would you agree, then, that if people are faced with periods of imprisonment for serious negligence or serious breaches of the occ health and safety laws, that they may then take them more seriously like they have in relation to drink driving?

Mr Richardson: There are two points there. One is that at least two years was available under the OSH legislation prior to 3 October for serious breaches of the occupational safety and health laws, which has now been increased to five years. I go back to what the safety experts say around the safety committees. A penalty itself is not going to be motivation for change. Drawing the link with drink driving, penalties or going to jail I do not think alone was the motivation for why there was a change in culture. It was a community acceptance, through the massive education program, of saying, “This is unacceptable conduct and behaviour”, similar to smoking, because there were no penalties connected with people giving up smoking; it was the health consequences which can flow from that. But it is a constant education program over many years where people change. The young people started to get it and, as they got older, it was common understanding that they would just not do this kind of behaviour. As the older generations began to leave the workforce and move on, the younger generations, it was the norm not to drink and drive, it is the norm not to smoke. Again, it is getting that education, especially the younger people coming into the industry, that safety is not an add on—safety is second nature as part of work.

[12.00 noon]

The CHAIR: I think you cannot ignore the fact that there are imprisonment terms for drinking and driving and the fact that they have been imposed on people when appropriate has been a factor. We know that under the OHS regulations there are a range of offences for breaches of those regulations that do carry significant fines. The committee has heard evidence that WorkSafe does not undertake proactive prosecutions because of a lack of resources. Is it your view and that of Master Builders WA that if WorkSafe had the resources to undertake proactive prosecutions under the regulations, as was intended by Parliament when they passed those regulations, that that would have an impact on improving safety in the workplace? As you say, it is fine having a whole lot of offences and whole lot of penalties but if you are not actually applying those penalties and prosecuting for noncompliance, they have no effect regardless of the size of the penalties that apply. It is actually ensuring that you actually are undertaking those prosecutions where it is appropriate and that has not been happening. Is that an issue that needs to be addressed?

Mr McLean: Perhaps I will kick off there, Adele. It goes to my earlier points that having a heavily weighted regime on penalties will provide some deterrence to some employers. But the nature of the building and construction industry is that it is very competitive and people will still do things in

order to win work. The consequences do not always have a bearing on whether they will continue to tender for those jobs. It is a little bit like at the moment where the building industry is struggling and contractors are tendering on projects at low margins knowing that they take the risk of going broke. But they are that desperate to sustain employment with their workforce—that is, to keep their subbies or their workers engaged—they will continue to price the job at what I would call unsustainable levels. It is a little bit like penalties with safety. If you are going to work in the industry and you are going to sustain your business, you might be taking the risk in terms of your practices; that is just a fact of life. Getting back to Darren's point a bit earlier about what can be done to reduce serious injuries and fatalities, I think the focus needs to go a long way away from the penalties and to look at what can be done to educate the workers to minimise their risk of injury and death. Things such as procurement; Building Management and Works, for example, needs to look at their prequalification regime to determine the people tendering on government-funded projects have a safety culture and a performance record to warrant them winning government work. I think WorkSafe needs to recognise the champions within our industry with awards that recognise the champions, not just focus on the penalties, because there are a lot of followers in our industry and very few leaders. WorkSafe need to identify who the leaders are so that more people will follow them. We run safety awards for that very purpose and that does help to change the culture of the way business operates. Another way of looking at our industry —

The CHAIR: Michael, sorry for interrupting, but I feel that the explanation we are being provided with is a little bit self-serving and protectionist against people who are clearly flouting the safety laws of the state. Working at heights is a major problem, a significant cause of fatalities in the construction industry, yet we hear time and time again of people not wearing harnesses, not having regard for the hazards that are associated with working at heights. A huge amount of effort has been put into education campaigns on this issue and they are just not cutting through. How many more people need to die on a construction site before we realise that education alone is not sufficient? It is not actually delivering the outcomes that are needed.

Mr McLean: Well, I suppose you could throw the coin back, Adele: How many people need to be imprisoned or fined for that to change? Will the additional penalties change the behaviour? I think that is uncharted waters in Western Australia at the moment. You look at other jurisdictions —

The CHAIR: But perhaps if WorkSafe had been pursuing prosecution for breaches of those regulations, particularly when it comes to working at heights regulations, perhaps if they had been pursing in a proactive sense prosecutions where there is not compliance of those regulations, there might be more of a culture within industry to seriously address those issues and not ignore those very real concerns. The number of young people who have died as a result of a fall from heights when all the information is out there that this is a high-risk activity, the need to be wearing a harness, to be properly secured, to have an arrest distance properly calculated and the rest of it, yet time and time again we see that it is simply not happening on work sites and that people are just taking risks unnecessarily.

Mr McLean: Let us take your notion that fines and penalties will change the behaviour. I am not privy to all of the circumstances of those workers who have died not wearing a harness. But anecdotal information that I have from some of the builders and contractors in the vicinity, let us say, and involved with those projects is that those individual workers took the risk themselves. At what point do you stop putting the onus on that worker's employer in ensuring that that worker is wearing his or her harness or working in a safe environment?

The CHAIR: But surely it is the obligation of the employer to supervise the work that is being undertaken and to ensure that it is being undertaken safely. That is responsibility of the employer.

Mr McLean: It is, but let us take a multistorey residential building project. You might have workers working on five, 10 levels. The supervisor might have 20 employees under his or her control. At what point do you have someone not directly looking over that person if he or she is working near a lift shaft and not wearing a safety harness, even though at the start of each day all the workers are reminded that when working in lift shafts, you have to have your safety harness on. If you are working near a window cavity, you have to have your safety harness. If you are working on a roof, you have to have an attachment. The point is that human error and workers—I am not putting the onus more on workers than employers, I am making the point that even with a penalty regime, who is the penalty going to apply to in the event of a worker choosing not to wear the appropriate safety protective equipment?

The CHAIR: Michael, can I just draw your attention to recent reports that have been on the radio where Regan Ballantine has been interviewed. She is the mother of Wesley Ballantine, who died as a result of a fall from heights. The interview that I personally heard her give on radio supported the evidence that she recently provided to a Senate inquiry. During that interview, she said that her son, who was only 18 years old at the time and had only started working for the roofing contractor, had told her that it was only a matter of time before someone died on the work site because they were, to quote, "hell reckless" and no-one was wearing safety harnesses. This is an 18-year-old boy who obviously just got employment at a time when it is really difficult to find a job in the trades because of a lack of work. He does not want to lose his job. He is young. He is not going to lodge a complaint about the fact that no-one is wearing a harness. That is a responsibility of the employer to ensure that he was aware—I mean, he was aware that he should be wearing a harness but the system of work that was being used, no-one were wearing harnesses and everyone was taking risks on that site, according to the interview. The mother, Regan Ballantine, who heard this from her son just days before he fell to her death, felt that she could not lodge a complaint with the employer because she did not want her son—you know, it is not cool for an 18-year-old to have their mother ringing up saying, "You're not taking care of the safety concerns of my son" and she did not know where to go to lodge a complaint anonymously to have that addressed. Surely no 18-year-old should be in that position where they are going home and saying, "It's just a matter of time before someone's going to die on this work site because they're "hell reckless"." It is the requirement of the employer to ensure that safe work practices are being carried out on that worksite.

In addition to that, I heard from the interview that she gave on radio that there was a safe work method in place for the work that they were doing. Because of the cost involved in implementing that safe work method, it had been decided not to do that—to employ another method—which put the employees at greater risk in carrying out that work and ensure that the normal sort of safety preventions were not put in place. Again, this is a situation in which the employer has made the decision about changing the safe work method to another method because of financial savings for the business. Obviously, we will have to await the outcome of the investigation that WorkSafe undertakes in this but you cannot help but question why was not his employer, the subcontractor, speaking up and saying, "I'm not putting my employees at risk undertaking this work in the way that you've set it out?" Why was the person in control of the operations on the site not saying, "No, we've got a safe work method in place that we've agreed to; it's going to be implemented to the letter and this is how you are going to do the work"?

[12.10 pm]

Mr McLean: Adele, as a father, I would be in the same position as Regan Ballantine in that situation. If the facts are as clear-cut as you have made out, that employer needs to be held account to the extent of the law, because to subject any worker to imminent risk when it comes to their health and safety, there is no excuse for that. The issue becomes, how do you prevent that?

The CHAIR: Yes, but employers are doing it and the current practice by WorkSafe to simply issue improvement notices or prohibition notices, to undertake irregular inspections when they have the resources to do it and to provide all the education material on the risks of working at heights is not cutting through, is what I am saying. I am not saying you stop doing the education work because clearly you need to continue doing that, but surely part of that package of addressing this issue has to be proactive prosecutions where there is a clear breach of the regulations which carry a financial penalty and the whole point that those regulations were put in place by Parliament was to provide for those proactive prosecutions and also reactive prosecutions in the case of the fatality. But surely if we engage the use of a proactive prosecution where there are clear breaches of the safety laws, that will hopefully prevent us having to do a reactive prosecution after a fatality. Nobody wants to be put in that position.

Mr Richardson: If I could add to that, Adele. Master Builders does support the concept where there are blatant breaches of the occupational safety and health laws that a prosecution should take place because of reckless or negligent behaviour. That has always been the case because for any employer, especially in the building industry, to go down that path, they put workers at risk on their particular sites but also it is an unfair competitive advantage that they have against other builders who are doing the right thing. From a Master Builders perspective, that unfairness needs to be removed from the equation, so it is particularly important. But it also touches upon the issue you have raised, and I am aware of people who are very close friends of the Regan family and they were shocked—close school friends. I will not say anything more on that.

You have raised a question of falls from heights. I have the stats from Safe Work Australia where falls from heights is not at three metres or over three metres; it is below three metres—even fatalities below one metre. Safety harnesses only trigger at three metres. That is why Master Builders, over the last 12 months, has been working very closely with Tap into Safety and Dr Susanne Bahn with interactive training programs. It has cost about $10 000 to develop this but it is an interactive gamification system which will be launched in the next few weeks. It is to teach young people and older people as to falls from heights in commercial and residential. It is cutting-edge technology—it is a cutting-edge system—because having looked at those statistics, again, if we step back and take an overarching helicopter view, which I have to do in my policy arrangement, it says, "There are problems there. How does one fix it?" Yes, penalties for reckless and negligent behaviour in a proactive sense, Master Builders technically will not have a problem with that because that is part of the education process but it is not the be-all and end-all and I think there is common agreement there.

The CHAIR: Agreed.

Mr Richardson: But it is putting in place a raft of different strategies and multidimensional issues all at the same time as part of this overarching education program. Now, with the risk factor—and, again, Masters Builders has touched upon it—with that particular incident at the HPM fit-out, that was not a commercial builder; that was an outfit from Melbourne. I make no criticism in that sense. If you have WorkSafe going to large construction sites—I will use Multiplex as an example—they will have a very sophisticated safety system in place. What is to be gained from WorkSafe being in those kinds of sites having a look at a sophisticated safety system like that as opposed to what the health and safety executive do in the United Kingdom—they look at where is the higher risk profile going to be? It is not necessarily the very large construction project. Demolition contracts, smaller projects where the builders are less sophisticated, where the high risk will probably be practical, present themselves and that is where in a proactive approach WorkSafe can be more sophisticated in their approach at their targeting regime. They will need to do that also with the datasets they have got because, looking at falls from heights, we can say that is the construction sector. But if I say to you

the construction sector represents commercial construction, residential construction, heavy engineering, resource construction and civil construction, that is not the commercial sector or the residential sector that Master Builders represents. We have no remit in civil construction or heavy engineering. So we can only put in place systems and education systems that we see as particularly relevant and cutting edge into the twenty-first century for our bailiwick in that sense. We have no control.

Sadly, often when fatalities do occur, I will see and recently it was in *Business Review Weekly*—the highest level of fatalities is heavy transport, you would be familiar with; agriculture; the third is construction. The photo showed a construction site, not a heavy transport vehicle, not a farm. So stepping back from the industry, the industry needs to do greater in the education role as part of this overarching approach. WorkSafe has a role to play. Proactive regulation has a role to play but is not the be-all and end-all. But looking at the question of falls from heights, we need those greater levels of subsets or slicing of the data available from WorkSafe to target where those risks are.

At a meeting recently at the Construction Safety Advisory Committee, which Masters Builders, the Housing Industry Association, the metal workers, the CFMMEU and Unions WA are party to, with WorkSafe, WorkSafe advised that their software programs are 20 years old. They cannot give the industry stakeholders the detailed information that we need to start to target where we can be very effective. The reason why? It is going to cost money and, with the budgetary constraints, WorkSafe does not have the ability to update their software.

[12.20 pm]

The CHAIR: Can I clarify? Would Master Builders WA support greater inspections by WorkSafe of residential/industrial estates where they are just being constructed? We have heard evidence that WorkSafe very rarely goes into those areas unless it has actually had a complaint because it simply does not have the resources.

Mr McLean: Yes. We see that they would need to have greater visibility to make a difference and to change behaviour. As our submission has said and has Kim has alluded to, they should be targeting what they would consider to be higher risk projects—not necessarily a higher risk project from the point of view of it being multistorey, but where they have some prima facie intelligence that there might be greater risk of injury on that project. Let us take, as Kim said, a builder like Multiplex who has an exemplary record when it comes to OH&S. There might be a building next door to Multiplex with a new builder—it might be a builder from overseas. WorkSafe needs to investigate what the level of compliance is on that project. Having recently returned from Singapore, I had the opportunity to meet with the Singapore Contractors Association, my equivalent. Over the last three years, the highest number of fatalities have occurred in the falls from height area with multistorey buildings. My concern is, with the trend going from single, detached housing to medium to higher density residential there is greater risk of accident and injury on those sites. So WorkSafe needs to target that type of project to ensure that the builders who are taking on that work have appropriate safety mechanisms in place, including workers with appropriate harnesses and other safety equipment.

The CHAIR: I am just noting that we are now out of time; we have gone over the time that was allocated for this hearing, and we started late, so I would like to give us another 10 minutes, but I want to focus on some of the key questions that we want to get answers to, if you have the time.

Mr McLean: We have got the time. This is an important issue for us, Adele, so do not feel constrained by our limits.

The CHAIR: Unfortunately, we are constrained because we have another hearing.

Mr McLean: Right; no problem.

The CHAIR: I will try to touch on some of the more important issues that we want to raise, and that is not to diminish the other issues that have been raised in your submissions. But we might put some questions to you in writing, seeing that we have run out of time today. One thing that really struck me was the concern by Master Builders WA about the adequacy of training in the construction sector. It is certainly a concern I share, and the committee has heard evidence on this. In your submission you basically say that the training sector badly fails the construction sector and compromises safety standards. I want to provide you with an opportunity to expand on that and to put forward any suggestions on how that can be better dealt with. I will leave it at that for now.

Mr McLean: We said earlier about the difficulties having a deregulated labour market creates, where people who work in that sector—where you, Adele, could put up a shingle today, "Adele's Bricklaying Service" or "Adele's Wall and Ceiling Contractor Services". I say that with respect to any of the skills that you may have.

The CHAIR: They are not in that area!

Mr McLean: But that is a problem. The other issue I would raise is that when people enter our industry, you would be aware that they need a white card, which is a generic safety induction training course, generally four to six hours. It is our view that there should be refresher training every five years, because work methods change. We think that would be a proactive strategy to ensure the young people who—they might be apprentices—tick the box in terms of going through that training and had reasonable comprehension of what was being discussed, should be refreshed because they might be working in a completely different sector as well. That would be a proactive strategy in my view. There is no continuous professional development in our industry. We are working towards that, but we cannot do that in a voluntary environment; that needs to be mandatory, otherwise we are wasting our time as an industry association. So there needs to be more professionalism from those who work in our industry to ensure that they are kept abreast of their obligations and opportunities. That is something we are working towards.

When it comes to training, we can have the best training system in the world as an association, and we can have the best marketing of that training, but whilst there remains choice, and in a difficult economic environment where training is considered to be a discretionary spend and not necessarily an investment by many—we do not even get to most of the industry because they are not members of ours—you run the risk of these people being allowed to work in an unregulated environment, which causes a lot of the risks that you identified earlier.

The CHAIR: Michael, is part of addressing this training issue a requirement for a more onerous type of training and perhaps more apprenticeships being required in different trades, because, for example, scaffolding, you have raised the concerns and problems with scaffolding, which are well documented and the work you are doing with the CFMMEU to try to address those issues? The committee has received submissions arguing that there should be an apprenticeship system in place for scaffolding and that you should not just be able to sit your beginner, immediate and advanced scaffolding courses that run for a few days one after the other and then call yourself an advanced scaffolder; you should actually be required to have some hands-on experience, and an apprenticeship system provides that for you. Are you advocating that we adopt an apprenticeship system for more of the trades?

Mr Richardson: I can probably add to that in connection with scaffolding. There is a traineeship in WA for steel fixing; there is a traineeship for concrete work; but there is no formal traineeship for scaffolding.

The CHAIR: Can you explain for the committee the difference between a traineeship and an apprenticeship so we have that on the record?

Mr Richardson: In a very rough fashion, because I am not an expert in the training area, thank goodness. A traineeship is not a formal apprenticeship as such, even though there is a certificate III. But the steel fixing, which is a skilled labouring area in the construction sector, has had a traineeship for at least three to four years in WA to my understanding. It is the same with concreting, even though my understanding is there are very few traineeships. If there can be a traineeship for such skilled work, there ought be at least a traineeship as well for scaffolding for the reasons articulated in our submission and the extensive evidence. It comes back to the core issue, which I think you were raising, Adele, is yes, you can have apprenticeships, but it is the quality of the training that is so important. The scaffolding problem that exists in this state—let me say, from speaking to my counterparts in other states; they have exactly the same problem with scaffolding—is that the course context is not the problem; it is the quality of the training being conducted. In the Master Builders' submission, there is reference to the Training Accreditation Council report, called "Strategic Industry Audit into Units of Competency that lead to High Risk Work Licences in Western Australia". Such a title to me reflects the training sector. It is very verbose in its use of language and also training content, and the difficulty is many registered training organisations are very good at what they do, but they are competing in a very tough market. Other registered training organisations can push through people very quickly and, at times, are dubious. The TAC report identified that only 30 per of the registered training organisations in this state met the necessary state requirements. They put out a lot of high-risk work licences, including crane driving and scaffolding. That is the concern that the Master Builders and the CFMMEU have. We have these students coming out and what is the checking mechanism? An assessor. It is not WorkSafe who do that. They did historically, and ideally Master Builders would prefer it would go back to that, but because of limited resources probably will not be the case. But the assessor has a commercial relationship with the RTO. It is that symbiotic relationship. At the absolute minimum that needs to be broken so there is a high level of integrity when the assessors' commercial relationship or viability is not beholden to a particular registered training organisation with that independent panel. The point you make is: time is against them.

The CHAIR: I agree with the point that you make about the separation of the assessor, and the committee has heard evidence from other submitters on that point. Why has it not happened? Who makes the decision and have Master Builders WA pursued that end result?

[12.30 pm]

Mr Richardson: As far as breaking the nexus between the RTO and assessors, no; it was in the submission for the first time it was raised. The problem goes back, and again in another time where I had coverage of training policy issues for Master Builders, is the training sector sees no problem with the content of its training material. It does not recognise it is the quality of training outcome. For example, with the Training Accreditation Council, the review generally has been for the training sector; let us change the course material. That is really not to change or deliver the better outcome, and the industry is basically now requiring quality outcomes in the training space and the training sector is not delivering. To put a rough analogy in a crude way: the tail was wagging the dog. I was around in the 1990s—showing my age—when training was seen as this is the way of the future with Australia Reconstructed, through Laurie Carmichael of the late 1980s and Australia Reconstructed. The whole concept was the industry gave it across to the training sector to deliver the outcomes industry required. We now have a situation where the training sector is delivering its outcomes, and there is a disconnect with what the industry requires.

The CHAIR: So your position is that you support more hands-on training and experience before a person gets a certificate to say there has been not just a completion of the course, but they actually have some hands-on experience in actually implementing and doing the work safely?

Mr Richardson: Correct.

Mr McLean: Yes.

The CHAIR: Would government regulation in terms of requiring that as part of training courses or obtaining certificates be of assistance? Is that where we need to go?

Mr McLean: Yes.

Mr Richardson: That wold be very helpful, though there will be a clash then with the national training agenda. But I believe there is a way that can be worked through to not disrupt the national standards but put another layer on in WA.

The CHAIR: So why do they not understand this issue at a national level? Because I cannot believe the problem is unique to WA.

Mr McLean: Yes. I think, in summary, Adele, the training industry has become extremely unwieldy and very slow to change. It is a real maze and it is very difficult to demystify it. There are so many layers of bureaucracy and so many different vested interests, it is a very difficult ship to manoeuvre now. We share your frustration, through your questioning, that it is not easy to change or easily changed. For example, we identified only probably 18 months ago that there is insufficient information being imparted to apprentices about the risks of working with asbestos. We were told it would take us two to three years to incorporate an asbestos module within the apprenticeship for carpenters or any of the building trades. It is absolutely ridiculous. So that is what we are working with.

The CHAIR: So this is what national regulation has delivered?

Mr Richardson: Correct.

Mr McLean: It is a disaster.

The CHAIR: Okay. I am just going to touch very quickly on the next point, because we have run over time. That takes me to the proposition that under the harmonised legislation there is a view to reducing the statutory limitation period for prosecutions from three years to two years, and in the submission the Master Builders, I think, expressed a view on that. Would you like to expand on that?

Mr Richardson: I can add to that, yes. The intention is to reduce it from three years to two years. Master Builders does support that because it deals with some employers who have been subject to this prosecution, and they do not know the outcome for two or two and a half years. There have been instances of almost two and three-quarter years and they think nothing will be happening, and suddenly out of the blue they have been prosecuted. Now, that is not a healthy position to have. Again, speaking to those who are directly involved at the workplace—that is, employers and fellow work colleagues—when these impact tragedies occur it has a ripple effect; everyone is caught up with them. I have seen some of the trauma and some of the absolute grief from the employer's side, which I know we are not raising as a defence but it is human nature. Some are deeply affected and never get over it either. Others withdraw from the industry completely because they just do not want to be part of it. Others are highly motivated to improve safety. I can say our safety chair is one of those people who is now highly motivated, having been through a significant tragedy that occurred and been closely connected with it. Looking at it from two years, we think it is better for the family, for certainty, for work colleagues and friends as well, because it goes on for three years and it drags on and it just does not assist anybody. But we recognise also that WorkSafe say with the increasing level of sophistication of the laws, to get the evidence together to be able to prove the case, it then has to go through the crown prosecutor's office to ensure to prove it out. That does take time, but almost three years, we think, is just far too long.

The CHAIR: All right.

I am going to need to bring this hearing to a close. I want to apologise for starting the hearing late because we were running behind schedule, and for cutting it short when I have at least another two or three pages of questions to put to you. The committee will need to consider how we handle those remaining questions, and we will be in contact with you to let you know. One option is for us to simply write to you with those questions and invite you to respond to those questions, or to invite you to a hearing at another time, although we are fast running out of available time because we have so many hearings that we have currently got scheduled in. So, again, I would just like to apologise.

I want to thank you for the time you took to put the submission in because it is obviously a very carefully considered submission, and a very detailed and comprehensive submission. On behalf of the committee I want to thank you for that. I want to thank you for making your time available today, and I wold just also like to just conclude by informing you that a transcript of the evidence will be provided you. You will be provided with an opportunity to make any corrections to that transcript in terms of typos or transcription errors. If there is further information you would like to provide to the committee, you are welcome to do that at the time that you provide that response to that Hansard transcript to Margaret, who will then pass it on to the committee. I also remind you that until the transcript of the hearing today is made public by the committee, it remains confidential and you cannot disclose that to other parties, otherwise you are at risk of breaching parliamentary privilege. With that, I would like to say thank you very much, and again just apologise.

Mr McLean: It has been our pleasure to provide you with some assistance in your inquiry. It is a very important issue and we understand the complexities involved. We are bringing information to you purely on behalf of one industry but, arguably, the second largest industry in the state. I think between Kim and I, we have been around a little while, and if there is anything else we can assist you with we will be very much reliant on your preferred method of receiving that information. We wish you well in your inquiry.

The CHAIR: Thank you very much.

Hearing concluded at 12.36 pm

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