

Division 16: Department of Mines, Industry Regulation and Safety — Services 1 to 4, Industrial Relations, \$367 589 000 —

Mr S.J. Price, Chair.

Mr W.J. Johnston, Minister for Industrial Relations.

Mr R. Sellers, Director General.

Mr I. Munns, Deputy Director General, Safety Regulation.

Mr P. Stewart, Acting Executive Director, Corporate Services.

Ms J. Hammond, Executive Director, Government Sector Labour Relations.

Mr D. Kavanagh, WorkSafe Western Australia Commissioner.

Mr R. De Giorgio, Chief Finance Officer, Corporate Services.

Mr R. Sao, Chief of Staff, Minister for Industrial Relations.

Mr J. Welch, Principal Policy Adviser.

[Witnesses introduced.]

The CHAIR: The estimates committees will be reported by Hansard. The daily proof *Hansard* will be available online as soon as possible within two business days. The chair will allow as many questions as possible. Questions and answers should be short and to the point. Consideration is restricted to items for which a vote of money is proposed in the consolidated account. Questions must relate to a page number, item or amount related to the current division, and members should preface their questions with these details. Some divisions are the responsibility of more than one minister. Ministers shall only be examined in relation to their portfolio responsibilities.

A minister may agree to provide supplementary information to the committee. I will ask the minister to clearly indicate what information they agree to provide and will then allocate a reference number. Supplementary information should be provided to the principal clerk by close of business Friday, 3 June 2022. If a minister suggests that a matter be put on notice, members should use the online questions on notice system.

I give the call to the member for North West Central.

Mr V.A. CATANIA: I refer to paragraph 8 on page 243 of the *Budget statements* on the Industrial Relations Legislation Amendment Act 2021. It states in part —

The Easter Sunday public holiday provisions of the IRLA Act were proclaimed on 12 February 2022 and the remainder of the IRLA Act will be proclaimed when the necessary regulations are finalised.

Is there an expected time line for when those regulations will be finalised?

Mr W.J. JOHNSTON: I cannot give a firm date, but we are trying to get them done some time in June.

Mr V.A. CATANIA: Is there a rough time line?

Mr W.J. JOHNSTON: Why do we not say Monday, 20 June as a random date?

Mr V.A. CATANIA: So the answer is no! Have the impacts of Easter Sunday becoming a public holiday been monitored by the department?

Mr W.J. JOHNSTON: No, there really is no impact. The ambition was to give an extra holiday day, but different industrial instruments have different impacts when a public holiday falls on a day that a worker does not work. The majority of workers do not work on that day. For those workers who do work on Easter Sunday, often it made the day voluntary rather than compulsory. That was the ambition—to give people more flexibility, particularly in the retail and hospitality sectors.

Mr V.A. CATANIA: I refer to the same paragraph. On Tuesday, the member for Moore raised a question about local government having transitioned from the federal to the state industrial relations legislation. Noting that local governments have flagged that the costs associated with this transition could be in the millions, has the state government considered funding to support the transition for local government?

Mr W.J. JOHNSTON: I met with the Western Australian Local Government Association only recently and it came up with this ridiculous figure of \$15 million. I have asked WALGA to explain how it arrived at that figure, because it is fanciful. For example, WALGA said that one issue is that it will have to review the transitional agreements to see whether they exceed the Minimum Conditions of Employment Act. WALGA gave an example of where the act provided for days and an agreement might provide for weeks. Because that is not what the Minimum Conditions of Employment Act does, that is clearly not a realistic option. If WALGA could actually

come back and tell me what it is actually talking about, as I have been asking it to do for three years, I would have a conversation with WALGA, but I have not had anybody explain to me what the extra costs are.

Mr V.A. CATANIA: So the minister is not averse to providing some financial assistance to local governments to do that transition, provided it can be justified?

Mr W.J. JOHNSTON: What I am saying is that I have not seen anything to suggest that there is any cost involved in the transition. It would have been good if WALGA had set out for us three years ago what the challenges were, because we could probably have dealt with them in the meantime. I am not saying no, but the clock is ticking. If the legislation comes into effect relatively soon and the commonwealth minister makes a decision in a reasonably short time frame, by the time WALGA gets back to us to tell us what it needs, it will probably be a moot point. I have never had any local government raise any challenge about the transition. I have had WALGA raise issues, but never a local government. I would love to see local government explain to me what it is they think the challenge is, and then we could deal with it at that point.

Mr V.A. CATANIA: I suppose WALGA is the peak body of the 139 local governments in Western Australia, so it is advocating on behalf of those 139.

Mr W.J. JOHNSTON: No; sadly, that is not what is happening.

Mr V.A. CATANIA: I am just assuming that that is the case.

Mr W.J. JOHNSTON: That is not what is occurring.

Mr V.A. CATANIA: Mind you, I am not the lead on IR. Unfortunately, David Honey, the member for Cottesloe, is not well. In terms of the \$15 million that WALGA come to the government with, did it have any detail on that \$15 million?

Mr W.J. JOHNSTON: No, it did not. I met with WALGA in February 2021 when I was still the IR minister—before I was not the IR minister. That was in the lead-up to the election, when we made the commitment to reintroduce the legislation. I said to WALGA then that it really needed to tell us what it had a problem with, because we could have dealt with it at that time. I want to make clear that WALGA has told local governments that it will cost \$15 million; local governments never told WALGA what the costs are. It is not correct that it is representing local government on this. This is WALGA's invention. Early in the piece, before the legislation was drafted, WALGA put a report to its members that contained factual errors. That is one of the challenges—WALGA is not representing its members; it is telling its members what it thinks. That is not what we would ordinarily expect in these circumstances.

Mr V.A. CATANIA: Out of the 139 councils in Western Australia, has not one council approached the minister to say that this changeover has a potential financial burden?

Mr W.J. JOHNSTON: That is correct; not a single local government has ever raised it. I have had local governments write to me to tell me they support the transition, but while I have been minister—I do not know what happened when Hon Stephen Dawson was minister—I have never had any local government write to me to say that they oppose it.

[4.40 pm]

Mr V.A. CATANIA: On page 244, paragraph 18 at the bottom of the page refers to the WA building and construction consultative committee. Is the minister able to advise who is on this committee?

Mr W.J. JOHNSTON: No, I am not. We have had nominations from outside organisations, but it has not yet been to cabinet. That is imminent.

Mr V.A. CATANIA: What is meant by “high-level consultative forum to provide advice”?

Mr W.J. JOHNSTON: Thank you for the question. We do not want to get into the weeds about individual projects; it is about the bigger picture of the industry and the issues that people have at that higher level. I am not restricting what people should raise, and it is based on what is being done in Victoria. The primary role of the committee will be to provide a forum for regular consultation between government and these stakeholders to provide advice to the Minister for Industrial Relations on economic and industrial relations issues in the commercial construction sector.

Mr V.A. CATANIA: Is advice provided to the minister, and how is that advice provided? What will be the process for the committee to provide advice to the minister?

Mr W.J. JOHNSTON: The private sector labour relations division of DMIRS will provide the secretariat support for the committee. When there is consensus or other issues raised at the committee, I will be advised. I have had conversations with building industry representatives about the poor relationship between employer organisations and

unions in the building industry, and it was talked about here in the chamber during the passage of the IR legislation. That is not in anybody's interest. As a Labor government, we want good relationships, so we see this as an opportunity to deal with those high-level issues and try to find some common ground, because there is always common ground. If we find some common ground, we might find more later on. That is the aim of the committee.

Mr V.A. CATANIA: The department will be the facilitator, I suppose. It will provide secretariat services, so minutes will be taken. Will they be made public?

Mr W.J. JOHNSTON: I have not thought about that. It will be up to the committee to determine those sorts of details. I am pretty sure that everyone will know what happens. It is not like the organisation will be reporting back. There is an independent chair, and a respected person from business will be the chair. I hope that the committee will encourage open dialogue, but it is not like it is a secret forum and it is not a decision-making body, so I expect all the representatives on the committee will feed back to their stakeholders; otherwise, there would not be much point.

Mr V.A. CATANIA: I go back to the make-up of the committee that the minister cannot disclose.

Mr W.J. JOHNSTON: I cannot disclose the membership because it has not gone to cabinet.

Mr V.A. CATANIA: Will the committee have someone from the construction side and from the residential building side?

Mr W.J. JOHNSTON: No, because it is aimed at the commercial construction sector.

Mr V.A. CATANIA: So union and —

Mr W.J. JOHNSTON: Yes.

Mr V.A. CATANIA: Will it include the Housing Industry Association or something like that?

Mr W.J. JOHNSTON: There will be the Master Builders Association and others on the representative side and perhaps some large employers. I have written to a range of organisations requesting that they provide a nominee. It is fair to say they all agreed to provide a nominee, but because the names need to go to cabinet and that has not occurred yet, I am not in a position to disclose it.

Mr V.A. CATANIA: I accept that, but how many are there? Is it five or 10?

Mr W.J. JOHNSTON: It is 15 members, including the independent chair.

Mr V.A. CATANIA: It is quite a large committee then.

Mr W.J. JOHNSTON: There are public servants on the committee as well. It is a large group. It is not a decision-making body. It is a consultation body.

Mr V.A. CATANIA: I am still on page 244 and I now refer to paragraph 14. How is the mentally healthy workplaces grant program going?

Mr W.J. JOHNSTON: The election commitment was to make grant funding of \$1 million per annum available to initiatives such as MATES in Construction and Steering Healthy Minds. The mentally healthy workplaces grant program funds organisations to implement initiatives that prevent mental injury at work by managing work-related psychological hazards and promoting positive practices at work that support mental health and wellbeing. Half the funding, which is \$250 000 per annum over four years, is applied by direct grants to both MATES in Construction and Steering Healthy Minds, which are initiatives that provide peer-to-peer mental health support for workers in the construction and transport sectors. They both submitted funding proposals and they have signed agreements with the department. The remaining half—that is, \$500 000 per annum over four years, given that two others will get \$250 000 each—is being made available to other mentally healthy workplace initiatives by an expression of interest. Additional funding might be available through the Mental Awareness, Respect and Safety program in the mining sector.

The EOI process has finished with assessment of the applications completed by DMIRS and the Mental Health Commission cross-agency panel. The panel's recommendations are currently in my office to be determined. I must say that I have not read the file yet, but it is apparently in my office. Recommendations for the funding of mining industry-specific initiatives through MARS will be submitted in the second week of May for ministerial determination. Some questions have been raised about the selection criteria, but the department handled that process independently of me. The decision to give the funding to MATES in Construction and Steering Healthy Minds was made by the former minister. This process will end up on my desk very soon.

Mr V.A. CATANIA: I understand in Victoria there has been a recent successful legal case whereby a former solicitor in the Office of Public Prosecutions sued for PTSD. What is the minister's department doing to limit this liability to government?

Mr W.J. JOHNSTON: My department is the regulator; we do not have responsibility for public sector health and safety, which is executed by the Public Sector Commission. It would be a conflict of interest, given we are the regulator, if we were the agency responsible for managing the health and safety risk in the public sector. That is handled by the Public Sector Commission. DMIRS engages with the PSC and we conduct support for agencies in executing their health and safety obligations, but we are not principally responsible.

Mr V.A. CATANIA: I refer to page 245 and paragraph 20 regarding energy transformation.

Mr W.J. JOHNSTON: Is that not what we just talked about? I am not allowed to answer this.

The CHAIR: Yes.

Mr W.J. JOHNSTON: I raised this before the tea break. I was trying to get this —

The CHAIR: We are only dealing with the industrial relations section; the energy part is over.

Mr V.A. CATANIA: I was not there.

Mr W.J. JOHNSTON: That was the thing. I tried, but the clerks would not let me. It is not my fault!

Mr V.A. CATANIA: Fair enough.

Mr W.J. JOHNSTON: Why not ask the question and see whether I can answer it.

The CHAIR: Go on.

[4.50 pm]

Mr V.A. CATANIA: The note states that Energy Policy WA has established an energy industry development team to accelerate the transition to renewable energy at remote mining sites. As we have government people involved in this area already across several agencies and the mining sector is ahead of government on renewables, what can this new team offer that is not already in the marketplace?

Mr W.J. JOHNSTON: Obviously, the member did not write that question. It does not reflect reality.

Mr V.A. CATANIA: Like I said, the member is not here.

Mr W.J. JOHNSTON: I understand the member was asking it on behalf of someone else. I am not trying to criticise the member. This came out of conversations with people in the mining industry. Many people in the mining industry, particularly the junior miners, do not know what is available and they do not see energy as important to them because they are just trying to dig up gold or whatever. We have created a small unit of two people to engage with people in the junior mining sector in particular to let them know what is able to be done and then put them in touch with the technology providers. If the member thinks about it, those at the big end of town know what they are doing. They have their own plans and are off doing their stuff, but the mid-tiers and juniors are not in the same position. The team is not marketing on behalf of Horizon Power or something; this is more about the other technology providers.

Mr V.A. CATANIA: Do they look at —

The CHAIR: Member for North West Central, we have other divisions we need to work through.

Mr V.A. CATANIA: It is just a quick one. This is quite important, given that I have a lot of junior miners in my electorate.

The CHAIR: As long as it is short.

Mr V.A. CATANIA: Will it look at other opportunities that other mine sites close by may have that have extra generation? Is it doing any of those connectivity type of things?

Mr W.J. JOHNSTON: It could do, but it is focusing on the renewable side of things. The director general pointed out that maybe a commonwealth program can help out. Often it is about capital because the mine has a short life and a longer life is needed for the project.

The CHAIR: The way the program was structured is unfortunate. If you have other questions, put them on notice.

Mr V.A. CATANIA: I am happy to put them on notice.

The CHAIR: Are we finished with this division?

Mr W.J. JOHNSTON: I think there is a question over there.

Mr G. BAKER: I refer to the number of work-related traumatic injury fatalities on page 247 of the *Budget statements*. What action is the government taking to work together with the agricultural industry to improve its safety performance?

Mr W.J. JOHNSTON: It is a very good question, member; I am pleased the member thought to ask it!

Mr G. BAKER: I was riding on the back of a tractor the other day and I thought of page 247 of the budget papers!

The CHAIR: In South Perth!

Mr W.J. JOHNSTON: Over the period 2010–11 to 2019–20, 172 people were fatally injured in traumatic workplace incidents in Western Australia, of which 41 occurred in the agricultural, forestry and fishing sector. That is 24 per cent of fatalities in a sector that represents three per cent of the total hours worked in Western Australia. Members can see that it has disproportionately eight times the number of deaths. We know that agriculture can be a particularly dangerous industry. A range of hazards is present in the workplace in the agricultural sector. Often people work with plant and equipment in an isolated location and often they are on their own. Consistent with this commitment, a new agricultural safety advisory committee will be formed under the new Work Health and Safety Act to provide advice to the Work Health and Safety Commission and the commissioner on matters relating to safety in the agricultural industry. The committee will work to identify major health and safety issues in the industry as we work to get zero harm in the agricultural sector. This committee will replace two former agricultural advisory bodies that have been supported by the department—the agricultural working group, which was an advisory body to the commission, and the agricultural industry safety group, which was the consultative forum convened by the department. The commission is in the final stages of endorsing the proposed membership and finalising the terms of reference.

The department is also in the advanced stages of planning a major project for the government that will focus on work health and safety outcomes in the agricultural industry. The safety initiative, the ag industry in Western Australia project proposal, is currently being finalised by the department and will be informed by data, research and analysis of agriculture-focused safety projects conducted by other regulators, including WorkSafe Victoria's *Agricultural strategy 2020–23*; the SafeWork NSW *Agricultural work health and safety sector plan*; and the commonwealth Department of Agriculture, Water and the Environment-funded Farmsafe Australia's *National farm safety education fund strategy 2020–21*.

I highlight that when I was previously the industrial relations minister in the first term, I engaged with a range of representative and stakeholder bodies. It is tragic that many of the people who have been killed in the industry are family people in the industry. We have to do this. We have to improve. Some equipment is tens of years old and is not being properly maintained. The agricultural industry does not have the same safety culture as other industries, so it is time for change. We want to work with the industry to change the culture. Health and safety is the responsibility of employers. They need to accept that responsibility. We want to work with them. In the end, there will be enforcement, because that is what the law is, but we want to reduce the risks and change the culture because we do not want to see people die in the agricultural sector.

Ms M.J. DAVIES: Does the minister envisage—or is there provision in the budget as part of what the minister has just spoken to—that that will entail education? I make the point of asking that question because there has been a proliferation of what I would call shysters peddling really expensive consultancies to people who are quite scared about their liability. I think the minister will find that most people want to adhere to the law. They do not want to break the law. They also desperately do not want to see injuries on their properties, but there has been, as a result of the legislation, I would say, a wild and varying number of consultants who are charging, in some cases, eye-watering amounts for something that I know is provided at a very reasonable price by others. Does the department keep an eye on that and will it also play a role in providing pro forma advice to assist in that circumstance?

Mr W.J. JOHNSTON: It is a serious issue. There is a budget allocation for the Department of Mines, Industry Regulation and Safety to undertake its project of highlighting the new legislation. One of the challenges, of course—I acknowledge that the National Party supported us in the end; I am not here to criticise the National Party—was the hysterical commentary, around the time of the legislation, that was very extreme and, therefore, people in the broader community listened to that extreme commentary.

Ms M.J. DAVIES: It was not from me.

Mr W.J. JOHNSTON: No, as I said, I acknowledge that the National Party was on the side of the angels for that one time, but others were not. There was a hue and cry and other things were happening. On the matter of the excessive costs, one of the interesting things is that the act now requires the service providers to be accountable for their work, because that was previously not the case. That was actually one of the controversial provisions at the time that the Chamber of Commerce and Industry of Western Australia opposed the legislation. That is a level of protection for the Leader of the Opposition's constituents. I will ask the commissioner whether he wants to make any comments on this topic.

Mr D. Kavanagh: Thank you, minister. The agricultural industry has been advocating for this. As the minister pointed out, a number of people stepped into the realm to provide advice and, to use the Leader of the Opposition's word, there were some shysters, which was a bit of a problem. There are now provisions relating to that. Section 26 allows the commission to look at WHS providers. If it finds that the advice is not fit for purpose or does not address

the hazards, we can look at that, as the regulator. In terms of the broader education, the department is putting together programs that it will talk about and release information on soon. That program will provide information and education to the agricultural industry.

I would say that there has been some movement with some of those previous committees that the minister referred to. A number of the farming associations are working towards trying to improve the performance of the agricultural industry, but there is still a long way to go as the fatality rates indicate that we are starting from a very low base. My interactions with the association have indicated that there is a lot of movement around the work, health and safety legislation. Farmers are looking at their systems and starting to make the changes that are necessary and that turns into better industry performance.

[5.00 pm]

Mr I. Munns: In terms of the budget, we would be doing this sort of activity as part of our general everyday business. When we identify these major projects or campaigns—as we refer to them—a common approach is to firstly identify the sorts of information needed by the industry sector specifically to assist them. Part of that will be to develop things such as a checklist that they can utilise in their workplace to assist them to identify the risks and hazards that they might encounter in their workplace but were not aware of, and then to work to find solutions that will resolve that. That is certainly part of the education process that precedes any activity we might do on the ground with them through the inspectorate.

Ms M.J. DAVIES: From my experience, having been through a number of change-management scenarios, presenting that information to the sector using the peer-to-peer method gets the highest level of success. If we start from the base that we are not trying to be punitive, but trying to change the outcomes and improve safety, can the minister give me an indication that the department is trying to embed organisations within the sector so that we can have people who talk their language delivering that information? I am not sure that there is anything that they like less—I would not like to generalise, but I hesitate to say this—than shiny bums coming from Perth telling them how to operate, notwithstanding the very learned people sitting in this room.

Mr W.J. JOHNSTON: Yes, that is right. That is why we want to streamline the committee structure that already exists and engage genuine representatives of the sector. We cannot get culture change from outside the sector; only the sector itself can change the culture, but we want to partner with industry to provide the support that we can, and that should include information in a language that is going to work.

I want to make it clear that in the end there is also enforcement. We cannot have a failure to comply with law and no consequence, because then we may as well not have the law.

Mr V.A. CATANIA: The pastoral industry is very vast and often a person has to fix things simply because they cannot get someone to do it for them—whether it be solar panels or whatever the case may be. Accidents happen and, unfortunately, things go wrong. The minister talked about going to a property, such as a pastoral station, and going through the solar panels or the sheds or whatever it may be. Is the type of enforcement that the minister talked about where an inspector goes from property to property?

Mr W.J. JOHNSTON: Yes. The WorkSafe Western Australia Commissioner has already issued a statement of regulatory intent. I accept what the Leader of the Opposition said; I cannot imagine that a farmer has read that. However, the commissioner has his statutory responsibilities so he is trying to explain to people how he will approach it, which is engagement first and enforcement second. The question for the agricultural industry is: how long is it until industry accepts that there will be enforcement? When I was the industrial relations minister, that was the challenge that I put to industry: how long will we continue to forgive them for not complying? In the end, the obligation is on the employers. The obligation is not new; it has actually been there since 1986. The new act did not create a new obligation, but simply modernised the obligation into the contemporary workplace. The obligation has actually been there since 1986 that a workplace is required to provide —

Mr V.A. CATANIA: Nearly every day I have those debates with those people who do not want that scrutiny, and I can understand why, but I can also understand why it is important to save lives. As long as that dialogue happens, and often it has to be one-on-one dialogue, before that enforcement is put in place. Often, for a small business or a family-run business, compliance is really low on the agenda because there are so many other things to do. Ultimately, that can mean that the employer has to pay a large fine or go to jail; that is a real concern. As long as there is that ability to have dialogue, then at some point a line has to be drawn in the sand.

Mr W.J. JOHNSTON: That is correct. I will throw to the commissioner and then Mr Munns.

Mr D. Kavanagh: I will refer to the statement of regulatory intent that lays out the plan that we will adopt when implementing the WHS legislation. The start of the statement says that we will provide information on and education about the new changes and that our inspectorate will adopt an educative approach to understanding what the obligations are under the WHS legislation. That is clearly the instruction that we have given to the inspectors so that when they go to a workplace, they work with the workplace to understand its obligations. Not all workplaces want to

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meet their obligations. Often our inspectors come across recalcitrant-type workplaces. In those circumstances, the inspectors have the discretion to use the powers, whether it be through an improvement notice or a prohibition notice.

Just to go to the member's point about the one-on-one approach, we have inspectors from industry who go from farm door to farm door and work with the agricultural industry. Over the past 12 months, some material has been produced in conjunction with the large agricultural associations that uses their terms and is written in their language. When members of the agricultural industry read that information, it will resonate with them and give the best effect possible to achieve that change. A lot of work has gone into the areas of information, education and encouragement, but there are a building number of circumstances in which stronger compliance requirements need to be looked at. We need to continue to work with industry, but we need to start seeing some dramatic movement in its compliance with the WHS legislation.

The appropriation was recommended.