

# **STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

**INQUIRY INTO WORKSAFE**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 11 SEPTEMBER 2017**

**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 1.30 pm**

**Mr OWEN WHITTLE**

**Assistant Secretary, UnionsWA, sworn and examined:**

**Dr TIM DYMOND**

**Organising and Strategic Research Officer, UnionsWA, sworn and examined:**

**The CHAIR:** We are now starting the public hearing with UnionsWA in relation to the inquiry into WorkSafe. For those who do not know me, my name is Adele Farina and I am the chair of the committee. To my left is Hon Kyle McGinn, who is a member of the committee. Darren West extends his apologies; he is unable to be with us today. To my right is the deputy chair of the committee, Hon Jacqui Boydell, and to her right is Hon Ken Baston, also a member of the committee. Now I have some formalities to go through. On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask that you take either the oath or the affirmation.

[Witnesses took the affirmation.]

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

**The WITNESSES:** Yes.

**The CHAIR:** These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and be aware of the microphones. Try to talk into the microphones and ensure that you do not cover them with paper or make noise near the microphones. 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 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.

I would like to invite you to make an opening statement to the committee if you would like to.

**Mr WHITTLE:** Yes, thank you. Firstly, I would like to say thanks to the committee for the opportunity to appear in front of you and outline our views on WorkSafe and occupational health and safety more broadly. We believe it is really important to take the time to examine both those issues. It has been some time since there has been a close, independent look at both WorkSafe and our occupational safety and health legislation and regulations. I will just make a short statement. It is not my purpose to repeat what is in our submission, but there are just a few points I would like to highlight and expand on a little bit.

UnionsWA have a history of working together with government, business and community representatives on occupational health and safety issues and we have representatives on a large number of government committees and forums, such as the Commission for Occupational Safety and Health. We appreciate the invitation to give evidence today, because we are really keen to look

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at whether or not we have a regulator that is adequate to respond to some of the modern challenges we have in this sector. Workplaces in Australia and around the world are undergoing a fair amount of change and we are really keen to ensure that the issue of regulation around work life is generally keeping pace with that change. We believe there have been some warning signs around the country in recent years that point to a shortfall of both regulators and systems for occupational health and safety. A really great example of that is the re-emergence of black lung in Queensland, which has really forced a much closer look at their occupational health surveillance system. I think it might be worth expanding on later that WA cut its mine health surveillance system in 2013, which is causing us some concern in what might be lying around in the mining health industry that we do not know about. Also in WA, we have had some serious workplace fatalities that have been of great concern to unions. In particular, the Morley Galleria incident was a high-profile incident that gave us much concern, but there have also been a number of high-profile construction fatalities, one of which we are seeing is subject to a prosecution which was announced in the last week or two by WorkSafe, and we are very pleased to see that.

On the legislation front, we have broad concerns that a range of legislation is not fit for times, including occupational health and safety and workers' compensation legislation. It is important that we stay on top of some emerging issues, and a few that we wish to highlight are the changing nature of work and whether or not our regulations and legislation are properly adapting to that, continuing developments in occupational carcinogens and cancer, and the potential rollout of the NDIS and what that might mean in terms of what is a definition of "employer" and a definition of "worker" in our occupational health and safety systems. We believe that some of these issues are not being adequately addressed at the moment, and we would appreciate the capacity to expand with the committee on some of those issues.

One final note I would make is that in the budget papers last week, it was estimated that only about 72 per cent of workplaces within WorkSafe's priority areas operated in a safe and healthy manner. The total target for government for safe workplaces is 75 per cent. When we compare that with, say, compliance with consumer protection laws in the budget, the government aim for that area is 95 per cent. We just have some concern that that is really not good enough. Compliance with minimum legislative safety requirements should not be in the area of 70 per cent and government really should be looking into the 90 per cents for compliance with basic legislation.

**The CHAIR:** Thank you very much. You raised a lot of very important points in that. I will start off with the questions. In terms of page 1 of your submission, UnionsWA has submitted that WorkSafe has been hampered by budget cuts, an inadequate database, outdated internal policies and procedures, and a reluctance to cooperate with unions. Can you tell the committee how the WorkSafe database is inadequate?

**Mr WHITTLE:** Sure. It has been our experience with WorkSafe that they have a very outdated database and management system that is not built for statistical reporting. It has been built more for case management. We just have concerns that there is a lack of global data around health and safety and being able to look at themes and trends in the data, and that they just do not have a system that is able to, I suppose, capture those kinds of issues.

**The CHAIR:** Can UnionsWA please comment on how WorkSafe's internal policies and procedures are outdated and give examples?

**Mr WHITTLE:** UnionsWA and our affiliates have had a fair bit of concern around how WorkSafe operates, particularly around the prosecutions and investigations aspect of their work. We have found that their triaging the system has not been effective at really looking at high-risk areas, as well as responding to imminent threats that are reported to them. We are not aware of the full

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detail of their policies and procedures, but from an outsider's perspective, when union officials or union members or health and safety representatives have reported what we believe to be serious and imminent risks to health and safety to WorkSafe, we see very little either initial investigations or follow-ups. We believe that some of that is related to budget cuts and funding and the number of inspectors, but also a lot is related to potentially what they deem as serious and imminent and what internally they may choose to spend their resources on.

**The CHAIR:** Can UnionsWA give an example of how WorkSafe is reluctant to cooperate with unions?

**Mr WHITTLE:** A recent example which was brought to our attention from a member of one of the public sector unions is that their public sector office was across from a residential building site. They were witnessing some work at heights that was of great concern to them. I believe it was in the Leederville area. They called up WorkSafe as a union member or a union delegate in that workplace to report what they saw. The call centre at WorkSafe had then asked them a range of sceptical questions about their purposes for reporting, including whether or not they were a union member when they called up to report, and when they indicated that they were a union member, their impression was that they were treated as if they were troublemakers rather than just a member of the public who was calling up to raise some concerns that they saw. That example is something, I think, that has been reported to us over many, many years at UnionsWA. Certainly, in my five years at UnionsWA, that kind of anecdote is something that is quite common that we see. Union officials find in their day-to-day work—there are hundreds of union officials in this state entering workplaces on a daily basis—all kinds of things that WorkSafe may not see just given that not everyone can be everywhere at once. They often find that when they call up WorkSafe to report, there is not a mechanism as a third party to not only report an incident, but then follow it through the processes at WorkSafe. Often WorkSafe are insistent that an individual who reports an incident is in that workplace, rather than a third party, and that only an individual or a worker in that actual workplace can continue to follow that matter through as it progresses at WorkSafe with inspectors and the like. There is an unwillingness to treat unions as a genuine stakeholder in workplace issues and following through with the engagement of those issues from investigation to, say, prosecution or resolution.

**The CHAIR:** Has UnionsWA taken that matter up with WorkSafe and what has been the response?

**Mr WHITTLE:** I suppose both ourselves and our affiliated unions have raised these issues with WorkSafe. As I said in my introduction, we sit on a range of committees and the like in government that look at those kinds of issues and safety more broadly in the state. WorkSafe largely point to the legislation as not really inviting union cooperation around the table on some of these matters. They often view privacy as being an issue around unions as a third party being involved in an issue between an inspector and the actual workplace. Our reading of the act would not necessarily agree with that, given that unions are mentioned as a relevant stakeholder multiple times in the act. We also do not see an issue in us at least being kept up to date with the progress of investigations.

**The CHAIR:** UnionsWA submits that legislative remedies take too long and gives an example that live electrical work has still not been banned following a tragic incident at Morley Galleria shopping complex. Is UnionsWA able to advise the committee why the ban is yet to be enforced in regulations?

**Mr WHITTLE:** WorkSafe has put out some notices post that incident that effectively say that live electrical work should be banned, and it was really positive that that step was taken. I believe WA was, if not the last, one of the last states in Australia to ban such work, so it was quite positive that that has happened. There has been a push to see that kind of notice reflected in regulations to highlight the seriousness of live electrical work. It has been quite some time since that has

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happened. It just seems to be moving quite slowly in terms of enforcing that ban. We think it is a good example that, when there is a prominent safety issue that has been identified that is an imminent risk to lives and health, the time taken for converting that from a kind of public notice that this work should not happen into a legislative ban is too long.

**The CHAIR:** Have you taken the matter up with WorkSafe and have they provided any feedback as to why there is a delay? It is not like drafting a regulation is a difficult task.

**Mr WHITTLE:** I think there were some complexities in the drafting of the legislation, because it does reflect in both EnergySafety and the Occupational Safety and Health Act, but we are unaware of what reasons there would have been for that delay to occur for so long.

**The CHAIR:** Is there anything that UnionsWA consider WorkSafe could do to address these sorts of safety issues arising from a fatality in a more timely manner?

**Mr WHITTLE:** It is a really interesting question and we are seeing that being grappled with in a few jurisdictions at the moment. There was recently a report in Queensland into best practice in the Work Health and Safety Act in Queensland that was looking at a response to expose some high-profile fatalities there, in particular at a theme park where there was quite a tragic incident recently. They were looking at how to ensure that investigations and prosecutions happen in both a more timely and a more effective way. They listed some recommendations around some new statutory officers being created to look at prosecutions and ways that the act could be written or structured better to allow prosecutions. Some of the information from that report might be of interest to members in this inquiry.

[1.45 pm]

We certainly think that there can be improvements made both to our current legislation in this state to allow health inspectors to carry out their work from WorkSafe, but also some internal processes at WorkSafe or some resource allocation to ensure that investigations happen by people experienced in, I suppose, the immediate kind of aftermath of serious incidents, and that some of the delays in investigations that we have seen in recent times do not occur. The industry is always looking out for what industries generally are looking out for, I suppose—responses to serious incidents. I think the quicker you can progress an investigation, while making sure that it is done in an effective way, and publicise the fact that prosecutions are happening, I think that kind of broadcast of that information is going to be really positive to ensuring better compliance with the laws in Western Australia.

**The CHAIR:** UnionsWA submits that it is difficult to get an inspector to attend at a workplace. Does UnionsWA have any stats on the number of requests to attend that have been made by unions and that WorkSafe has failed to attend?

**Mr WHITTLE:** I would not have direct numbers. I suppose it is more just anecdotal in terms of our work with our occupational health and safety committee at UnionsWA, of organisers who do health and safety work, as well as we have got a network of health and safety representatives that we communicate with from time to time. I suppose it is anecdotal reports from health and safety representatives that sometimes when they call up the WorkSafe helpline, it can take some time to get an inspector out to site—sometimes a matter of weeks or sometimes never at all—but also from union organisers who express frustration in, I suppose, communicating back what they see on a day-to-day basis at their work and whether or not that is actually followed up.

**The CHAIR:** Can you please expand on your comment on the delays in prosecuting fatalities? What is unacceptable about WorkSafe's current behaviour and why is there a delay in prosecuting fatalities? Is that just because of the length of time it has taken for the investigations?

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**Mr WHITTLE:** Yes. To pick up on a point I made briefly before that, when prosecutions occur, it is a big media item for people. Workers take notice; employers take notice. WorkSafe always puts out a media release and there is often a fair bit of publicity around it. While we respect the need for due process to happen in terms of the investigations and putting together the prosecutions, we believe that there may be some funding issues or some internal issues at WorkSafe that occasionally hold up what unions often see as straightforward prosecutions being dragged out for a number of years. An example is the one that was recently announced in the last two weeks with the East Perth construction double fatality. That fatality rippled throughout the construction industry and other industries in Western Australia. Because it was such a shocking incident, people really sat up and took notice. We believe that the longer it has taken to prosecute that, the more it has kind of fallen out of people's minds that that was happening and that there were not consequences happening because of it—the more it kind of did not ensure that other workplaces were getting brought up to compliance with some of those issues. There have been some other incidents with Paspaley pearls. A long time was spent looking at that. There is a prosecution. The coroner, I think, is into its second round of hearings into that. That was a very complex issue. I suppose when the coroner was holding those public inquiries into that, that really made the industry shape up in terms of its activities. We would very much like to see how prosecutions at WorkSafe are handled and looked into at depth to see if there are ways that we can make them happen quicker or more effectively, but also a way of kind of broadcasting it to ensure it is common knowledge when it does happen.

**The CHAIR:** Okay. WorkSafe say that investigations have become more complex and demanding due to the evidentiary requirements for successful prosecutions, access to experts who are prepared to give independent comment because of concern that their long-term employment may be impacted by doing so, delays in getting the expert reports back, and just some resourcing issues as to the reasons why their investigations take too long. Have you got any comment or response to that? Do you agree that those are the reasons?

**Mr WHITTLE:** It would be hard to know without being within WorkSafe. As a third party observer looking in, I would say that some of these fatalities, to us, or some of these serious incidents do not seem that complex. I am sure there might be complexities as you delve in, but there have been many fatalities that were very simple breaches of simple occupational health and safety legislation and regulations, be it basic safety from heights—that is something that has been of great concern and has been breached time and time again. We do not see that working from heights is necessarily a complex safety issue. It is very well known what standards apply and what fall protection exists. It is hard to see why there would be a delay in some of those prosecutions from a third party looking in.

**The CHAIR:** What is UnionsWA's position in relation to the continued exposure to risk due to the delay in getting any feedback after a complaint is made or, in the case of a fatality, we are seeing that investigations are taking three years to complete and there is no feedback coming through during that time that that investigation is being undertaken? Sometimes even on the conclusion of that investigation there is no feedback from WorkSafe. Are workers still at risk during this process?

**Mr WHITTLE:** Certainly. I think prosecutions and investigations are a great way to see where regulations or legislation may be failing. Certainly, I think in some areas where we have had fatalities in recent years there has been a response to, I suppose, beef up regulations or legislation in response to that. Electrical work is a good example; a diving pearl fatality is another. The longer it takes to take a close look at our regulations where it may be improved to protect workers in the future—if that extends to three or four or five years after the fatality before those regulations are patched, so to speak—surely there would be risk to workers in those industries in the meantime.

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**Hon KYLE McGINN:** Just on page 3 of the submission there are comments that —

A larger number of proactive safety inspections are needed to ensure that accurate spot checks of safety are taken in high risk industries.

The comments that follow that are —

It is unfortunate but true that many workplaces will only be safe if there is a risk of prosecution or fines against employers and managers

It is a bit interesting, that comment. Do you think that, potentially, if WorkSafe was resourced enough to be out on the sites and visible to employees, that that is another option on improving safety, not just increasing the fines?

**Mr WHITTLE:** Yes. Look, certainly, there is a whole range of ways you could improve safety on workplaces. Part of it is an active inspection regime that is well resourced looking at high-risk areas, looking at priorities, and looking at where the data is, I suppose, showing that there are issues. There is also education and other compliance mechanisms that could be used—supporting health and safety representatives. I think we have got some other comments in here around there is not a lot of education resources coming out of WorkSafe in terms of safety and how that could be better utilised to assist occupational health and safety representatives undertake their duties in the act. Looking at some of the information in our submission from Safe Work Australia's comparative monitoring report, it has shown that proactive workplace investigations by WorkSafe in WA has dropped quite considerably. In our submission we say it has dropped from 6 612 in 2010–11 to 5 114 in 2014–15. That is quite a sizeable drop in inspections carried out by WorkSafe. Having an active inspectorate is really important to ensure that that risk of fines and enforcement exists, but it needs to come with education and compliance, I believe.

**Hon KYLE McGINN:** Would you believe a statement, if I was to put a statement to you, that the quality of inspections has improved and that would be the reason why the inspections have dropped? Would that be a true statement?

**Mr WHITTLE:** I would not say so. I would say that the reason the inspections have dropped has been the reduction in WorkSafe's budget. While the number of inspectors has remained relatively stable, I think cutting public sector staff from other aspects of WorkSafe's operations has meant that inspectors have had to carry a greater load of the day-to-day administrative work of the department. While I have full respect for the quality of WorkSafe inspectors—they are very committed and talented individuals—I think it is more of an issue with the kind of systems and processes that exist within WorkSafe.

**Hon KYLE McGINN:** Do you believe that potentially throughout these cuts, that job descriptions may have increased the workload on inspectors?

**Mr WHITTLE:** Certainly, the feedback from the union membership within WorkSafe is that inspectors believe that some of their jobs have morphed or they have had to carry a greater level of administrative load, rather than purely an inspectorate load of work. I am not sure if their job descriptions have changed; I just think the nature of work has changed. I actually believe the union responsible put a submission into this committee and I hope it shed some light on that issue as well.

**The CHAIR:** At page 2, UnionsWA state —

... lack of follow up on investigations and improvement notices are harming occupational health and safety in WA.

Do you want to expand on that, and what evidence do you have to support that statement?

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**Mr WHITTLE:** Some of that is the communication with our health and safety representatives, who may be involved in an investigation with an improvement notice put on. It is anecdotal amongst them that the improvement notice may be issued but not always is there follow-up down the track to ensure maybe three, six, nine months, 12 months later that all the conditions of that improvement notice have been followed up. Sometimes the department will check about the compliance with a mere email or a mere phone call just to check to see whether or not that compliance with the approval notice has happened. I suppose it is a concern from our health and safety representatives that maybe boots on the ground are sometimes needed to do a more thorough follow-up of whether or not that has been complied with.

**The CHAIR:** At page 1, UnionsWA state —

... many new business models are set up to circumvent workers compensation and occupational health and safety responsibilities.

Would you please expand on that and maybe identify some of the business models in question?

**Mr WHITTLE:** Sure. We are taking really aim there at what is known as the gig economy or the sharing economy—there are many different terms for those kinds of businesses. With our current occupational health and safety act, there is a definition of “worker” and a definition of “employer” that is relatively narrow. Many businesses are established to, I suppose, circumvent what would be very traditional workers’ compensation and occupational health and safety arrangements for workers. While workers might not have a lot of freedom to go about how they work and that all their business comes from, say, an app or a website, our act does not adequately cover the work that they do. You look at many of the common known platforms like Uber or some of the food —

**Dr DYMOND:** Deliveroo, UberEATS—that sort of thing.

**Mr WHITTLE:** It is those kinds of workplaces where a worker does not necessarily have much freedom about how they go about their work—how they work is dictated to them by these platforms—yet they are not covered by occupational health and safety regulation and, of concern, not covered by workers’ compensation insurance if they do get injured. We do not think that that is adequately being captured in the current definitions in the occupational health and safety act.

**The CHAIR:** Is that because they are considered to be self-employed?

**Mr WHITTLE:** Yes, they are. We would make the argument that if you do a basic—this is more his level of expertise than mine.

**Dr DYMOND:** A lot of the criticisms we have of the gig economy arrangement, of course, precede not just occupational health and safety, but also just general industrial standards and conditions. The line, shall we say, that Uber, for example, often trots out is that “Drivers don’t work for us; we work for the drivers”, which is why it is not really an employment relationship. They have tried that in a number of labour relations tribunals around the world. It has not stood up, but they are keeping on doing it and keeping on using that particular approach. Nevertheless, it may not be on paper a formal employment relationship, but the simple truth is that, as Owen was saying, the company—I do not necessarily want to pick on Uber, but I will just use them as an example—they really can determine how much work you get at all, when you get it, and do you stay on the books. Often they have been accused in other places around the world of monopolistic behaviour. If you are a driver and you want to drive for an Uber competitor—Lyft, for example—they basically strike you off the list, so you are not really, in that sense, in any way an independent businessperson in the classical sense of the term.

[2.00 pm]

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But nevertheless you are riding your bike for Deliveroo and you get hit by a car, there is really nothing beyond what personal arrangements you have been able to make for yourself. There was an example, I think a few months ago, of somebody just here in Perth—a delivery driver—who got caught in an accident. Fortunately, a number of people who saw the accident actually participated in a crowd-funding arrangement to get the guy medical treatment in hospital because I think he was an overseas student. As heartwarming a story as that is, it nevertheless goes to the point that a lot of these new, non-standard employment arrangements leave workers highly vulnerable. To the extent that the Uber or the gig economy employment model starts spreading throughout the labour market, we think that a lot of these ambiguous relationships, shall we say, with occupational health and safety are going to become bigger and bigger and bigger, to the extent that there is going to be a whole bunch of injuries that are not covered by occupational health and safety, are not covered workers' compensation insurance. Leaving aside the cost to, of course, the workers themselves, there is also the cost to the public health system. So this is just another example, I guess, of something we brought up in our submission about how workplace law, occupational health and safety law really needs to catch and catch up quickly with this sort of new arrangement.

**The CHAIR:** I take it that currently it is outside the jurisdiction of the WorkSafe, given the legislative framework in which WorkSafe works in?

**Mr WHITTLE:** Yes, that is our understanding that it is. We understand it is definitely out of the jurisdiction of worker's compensation arrangements. I believe that may have been tested in the state. I am unsure if it has been tested at least in a court in Western Australia with occupational health and safety, though.

**The CHAIR:** Has UnionsWA looked at the occupational health and safety legislation, and do you have some suggestions that you could put to the committee about legislative changes that should be considered to improve the occupational health and safety framework and scheme in the state? It is a question you can talk about generally, and you can take any more detailed information on notice if you would like to provide us with any suggested legislative changes.

**Mr WHITTLE:** Sure. We are participants in a current process that is ongoing. We are looking at the Work Health and Safety Act in the state. There is a ministerial advisory panel that has representatives of, well, myself as a union representative, but there are also representatives of industries groups on that panel looking at that. So far that is a positive process, looking at those laws. As stakeholders we do have views around definitions in the Occupational Safety and Health Act as it relates to the sharing economy. Certainly we think that in all—in industrial relations, workers' compensation and OSH—there needs to a strong look at the definitions of “worker”, the definitions of “employer”, and in the WHS act that may or may not be coming the definitions of a person conducting a business and undertaking. They are all very important definitions that need to be looked at in the context of a changing workforce. In terms of broader changes to the Occupational Safety and Health Act, I suppose we would have a long list of things that we believe should or should not be in there, but maybe we might be able to send some correspondence to the committee.

**The CHAIR:** Yes. We might have that as question on notice 1, and accept a further submission in relation to that from you. You mentioned earlier about the NDIS and how the definition of employer and worker work in the NDIS system and that ramifications that has in relation to occupational health and safety. Would you like to expand on that?

**Mr WHITTLE:** Yes, sure. So I suppose with the potential rollout of the NDIS in WA, us and other stakeholders have had some concern about who would be responsible for the occupational health and safety and workers' compensation arrangements for those workers, given that there seems to be a school of thought that the person with a disability may be the employer in situations. If that is

the case, what kind of a duty of care and what kind of arrangements are they responsible for bringing in for workers normally into a home-based arrangement to undertake that work? Firstly, I suppose it is a concern of home-based work is inherently unpredictable and risky and in a range of industries result in very high levels of risk for workers, but also what kind of a risk exists for someone who may be deemed as an employer in that situation? There would be a common law risk potentially if they are supposed to but do not take out workers' compensation insurance. There is a significant risk of fines and enforcement associated with that. So some of these questions have not really been answered in Western Australia yet. I suppose the future of the scheme—I am not an NDIS expert so I am not sure where the future of the scheme is at, but when it comes to rolling it out we would be really keen to ensure that all these questions are adequately answered for both surety of the, I suppose, client of the scheme as well as the workers who are coming in to provide support to them. We believe that there may need to be some—again, looking at the definitions in the Occupational Safety and Health Act, does that adequately cover this kind of employment relationship that would not have been even conceived of in 1986 when the act was first drafted and introduced?

**The CHAIR:** I do not think the hourly rate takes into consideration the need to get insurance cover, so it is an interesting point. Members, have you got any questions? I might just touch on another point you raised in your introductory comment, and that was—if I heard you correctly—the mine health surveillance. Would you mind expanding a bit more on that?

**Mr WHITTLE:** Yes, sure. It was just a point I thought of this morning while looking at my introductory remarks. Looking at where regulators and regulation has failed in other states, one of the biggest examples of that is the re-emergence of black lung in Queensland, which was a disease that was thought to have been well and truly gone. Looking at some of the reports following that—there are still some investigations ongoing—it seems like a complete failure of the purposes of their health surveillance system for mine workers that was really established to ensure that this disease never came back again. I suppose of concern to UnionsWA was that in 2013 WA's own mine health surveillance scheme was scrapped. It was kind of seen as an impost on industry, and so the requirements for those compulsory medical appointments for mine employees were removed and were instead replaced with what is called a risk-based approach to health surveillance —

**The CHAIR:** Which is?

**Mr WHITTLE:** Which is where an employer is responsible for monitoring their own levels of risk and determining the kind of health surveillance that is appropriate to their own employment. It would be fair to say that WA does not have a coal industry the size that exists in Queensland, but it does exist here. But there is also a range of other occupational carcinogens that are of great concern to us. In kind of recent times the International Agency for Research on Cancer has classified welding fumes and UV radiation as what they call group 1 carcinogens, which is the highest level of carcinogens. I believe that diesel may have also made that list recently, but I do not have that in my notes in front of me. You would say that UV radiation, diesel and welding fumes are three carcinogens that would be high risk in the mining sector, and given that they have now only recently been upgraded to the highest level of cancer-causing carcinogens we have great concern that the surveillance scheme that was established to really monitor occupational diseases and cancer has been kind of scrapped in Western Australia, and whether or not that might have significant risk for workers in the industry now that these new modern occupational carcinogens are being understood.

**The CHAIR:** Can you just tell me, in 2013 when it was scrapped was that a legislative process or was it in regs —

**Mr WHITTLE:** Regs.

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**The CHAIR:** It was regs? Okay.

**Mr WHITTLE:** Yes. And to be fair, that was not WorkSafe; that was the Department of Mines and Petroleum and the department of mine safety, although now of course those departments have been amalgamated.

**The CHAIR:** Joined together. We are still trying to work out what impact that actually has for WorkSafe, and I think they are still trying to work that out as well.

**Mr WHITTLE:** Yes, as we are.

**The CHAIR:** Do any other members have questions?

**Hon KYLE McGINN:** Probably just one question. Obviously there is a lot of things that are concerning here that have come from your affiliates. Has UnionsWA written or complained to WorkSafe directly; and, if so, did you get any responses from WorkSafe?

**Mr WHITTLE:** Just in relation to the broader concerns?

**Hon KYLE McGINN:** Any complaint in respect of from affiliates or from union members, have you as a body written to WorkSafe and do you get feedback?

**Mr WHITTLE:** We have supported our affiliates. Our affiliates are the ones with the members in the workplaces. Our members are unions themselves. So we provide support to affiliates to do that kind of work in terms of raising their concerns directly with WorkSafe and supporting union delegates to do the same. So we have been present in conversations with WorkSafe and our affiliates as well. As I stated before, I think some of the feedback we got through that process has been on budgetary issues and a range of, I suppose, inhibitors to their response to some of our concerns.

**The CHAIR:** It has been put to the committee that there is a cultural problem at WorkSafe that is anti-union and is not really that focused on getting good safety and health outcomes for workers. Do you want to comment on that view?

**Mr WHITTLE:** I suppose from the outside looking in, it has been a concern to the union movement that there are barriers to, I suppose, greater cooperation with unions. As I said before, we have hundreds of organisers out in the field and we know that they are seeing all kinds of things. We could see working with us being of great value to a health and safety inspectorate in that we can give a lot of intelligence that might otherwise be missed. I think whatever barriers exist, be it kind of cultural or what others exist in there in terms of working with unions, I believe it stops them from getting the job done properly. If they work closely with us and there was great cooperation between our organisations and theirs, I think you would see health and safety improve in this state. In terms of the cultural issues, I think the CPSU—CSA—the union that represents members in WorkSafe—has given a submission on some of those issues. Given their members, they would have a far greater understanding of some of those issues that are happening internally there. But from the outside looking in, from our perspective it has been frustrating at times.

**The CHAIR:** Members, any further questions? I do not have any further questions at this point. Are there any further comments that you would like to make before we wrap up the hearing on any issue?

**Dr DYMOND:** I guess just sort of to reiterate something that is already in our submission. We have talked about the role of Australian standards in the coronial recommendations and all that sort of thing. I guess it is more of a question of just being perhaps—if the committee, if and when it concludes, makes recommendations on changes to regulations, changes legislation and that sort of stuff, to be mindful that some have a tendency to fall back on things like Australian standards that, to put it bluntly, a lot of people cannot actually read because it costs too much money to actually

get hold of them. The report that the Joint Standing Committee on Delegated Legislation handed down last year is actually a very interesting one in this regard, and I thought —

**The CHAIR:** Yes. I have read it. It is a good report and it raises some really important issues.

**Dr DYMOND:** So just sort of being mindful of that sort of thing that when you are making, sort of, reforms, changes to regulations and all that sort of stuff just to be mindful that, yes, people on the ground—union reps, occupational health and safety reps—actually have to read this stuff because it is life or death.

**The CHAIR:** Just on that point, it is interesting. I understand that the national model legislation actually still includes, I think, two or three references to the Australian standards, even though the objective when they started out the drafting was not to include Australian standards at all in the model text for the national legislation. Do you want to comment on that?

**Mr WHITTLE:** I think there may be times when it might be unavoidable to have to reference standards in regulation and legislation. I suppose when developing legislation here we would hear those on a case-by-case basis, but certainly we would want to avoid it as much as is possible by the drafters because, as Tim says, often workers and health and safety representatives are expected to comply with what the standards say, and often the consequences of not complying with that can be dismissal, yet access to those standards can be difficult, cumbersome and expensive. So from a regulatory point of view at times it might be unavoidable, but it should be avoided if possible.

**The CHAIR:** The committee has also heard evidence that there are cases where the Australian standard has been superseded by a new standard, yet the reg has not changed. There are problems because people are going to the old Australian standard and taking that as the level at which they should be operating, to when we have a more improved standard that has been adopted. Removing the Australian standard from the regs would avoid that problem, would it not?

**Mr WHITTLE:** It would, but, going back to a point we touched on earlier, we have not really been that quick at adapting to changes and updating our regulations and legislation accordingly. While removing the standards from regulations would help fix that problem, at the same time maybe greater emphasis needs to put on ensuring that legislation and regulations are kept up to date and not get run down. The current occupational safety and health act and regulations are quite run down, compared to contemporary standards, on a whole range of issues, and that would be one of them.

**The CHAIR:** Under the legislation—the OSH act—there is a requirement to review the legislation every five years, and I understand it has been more than five years since the legislation was reviewed. Has UnionsWA raised that with WorkSafe and the minister, and what has the response been?

**Mr WHITTLE:** We have raised with both the need for legislative reform. Certainly, over the last five or six years or more, there have been a lot of reviews of the national harmonised laws, and whether or not WA would adopt those. I think it has just been assumed for some time that a version of the WHS laws would be adopted in this state. We would not necessarily support going down the road of reviewing the current act when potentially a full rewrite of the legislation is on the table. We have made that point to the minister and the department: that we would rather see a version of the WHS laws adopted in this state to bring us up to standard in a range of issues with other jurisdictions.

**The CHAIR:** Now, Tim, I think I cut you off. Is there anything else you want to raise?

**Dr DYMOND:** No, I had finished at that point.

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**The CHAIR:** Okay, if there are no further issues, I will conclude the hearing at this time, but just before doing so, there are some formalities I need to read through.

Thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript and return it to the office. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript of evidence. If you require a little bit more time, just let us know, and I am sure that that will not be an issue, because this inquiry is going to take a little bit longer than we had initially anticipated. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. With that, I thank you very much for your time and for your evidence before the committee.

**Hearing concluded at 2.18 pm**

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