

# **EDUCATION AND HEALTH STANDING COMMITTEE**

## **INQUIRY INTO THE CAUSE AND EXTENT OF LEAD POLLUTION IN THE ESPERANCE AREA**

### **TRANSCRIPT OF EVIDENCE TAKEN AT PERTH THURSDAY, 7 JUNE 2007**

#### **SESSION TWO**

##### **Members**

**Dr K.D. Hames (Acting Chairman)**

**Mrs D.J. Guise**

**Mr T.K. Waldron**

**Mr M.P. Whitely**

**Dr G.G. Jacobs**

**Mr P. Papalia**

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**Hearing commenced at 11.01 am****MacTIERNAN, HON ALANNAH****Minister for Planning and Infrastructure, examined:****JACKSON, MR MICHAEL PHILIP****Esperance Response Coordinator, examined:**

**The ACTING CHAIRMAN:** We are letting cameras in for just the start of each session for five minutes and then they will depart.

This committee hearing is a proceeding of Parliament and warrants the same respect that the proceedings in the house itself demand - it seems a bit silly reading this to you as a member of Parliament and the minister. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as a contempt of Parliament. Have you completed the "Details of Witness" form?

**Ms A.J.G. MacTIERNAN:** I have.

**The ACTING CHAIRMAN:** Did you understand the notes at the bottom of the form?

**Ms A.J.G. MacTIERNAN:** I did.

**The ACTING CHAIRMAN:** Did you receive and read an information for witnesses briefing sheet regarding giving evidence before parliamentary committees?

**Ms A.J.G. MacTIERNAN:** I did.

**The ACTING CHAIRMAN:** Do you have any questions relating to your appearance before the committee today?

**Ms A.J.G. MacTIERNAN:** I do not.

**The ACTING CHAIRMAN:** Before we ask any questions, do you want to make any statements to the committee?

**Ms A.J.G. MacTIERNAN:** I would like to make a general framing statement. I want to place on record that our government is very concerned about what has happened. We recognise that there has been a failure of processes, so we are not in any way attempting to say that deficiencies have not been revealed in the way in which lead has been handled during transportation to the port and in the way it was dealt with at the port.

[11.05 am]

**Ms A.J.G. MacTiernan** continuing

We accept very definitely that there was a failure in the system and that that needs to be addressed. We need to keep a balance on this issue in terms of what the impact has been on the community. I am very concerned that we do not create an environment that causes undue fear and alarm within the community and that damages the economic future of the tourism industry in Esperance. We hope that this committee will be able to deal with the evidence in a very dispassionate way. For those journalists who have come in late, we are in no way moving away from a very clear recognition that our processes have not been adequate and fit for the purpose in this regard. The evidence that we are accumulating suggests that the findings of the concentration of lead in the blood of the people who we have sampled in Esperance does not give a community profile that is significantly different from any other studies that have been done elsewhere in general populations. It is becoming increasingly evident from the isotope testings of those blood samples that it is not at all clear what percentage of the lead that is being recorded is lead from the Magellan mine. We

need to keep in context what the lead levels are compared with a normal population or a population whose community does not have a lead operation. We must be conscious of the emerging evidence about the sources of lead within those blood samples that have shown those elevated levels. I also want to make it very clear that we are absolutely committed to cleaning up all the contamination. We have a very detailed program in place. Different agencies across government are being coordinated so that there is a strong response to the mistakes that have been made. I also want to say particularly to the parents of children between the ages of zero and five who have elevated blood levels that we will ensure that a legal framework will be set in place - recognising that it may be 10 years hence before it is able to be shown there is any damage to those children - to waive limitation periods to enable those parents and children to claim compensation at some point in the future should it appear that damage was caused by exposure to Magellan lead.

**The ACTING CHAIRMAN:** I would like you to expand on the isotope identification of the source of lead. That evidence has not been presented to our committee. Who presented that evidence to you?

**Ms A.J.G. MacTIERNAN:** I have been seeking this evidence for some time. These things must be evidence based. I first asked the question when I was advised that the lead in the bird corpses was attributed to the Magellan mine. I asked whether we could do the same thing with the blood samples. There was some doubt about whether that could be done in the first instance. The advice that came back suggested that we could do that. As I understand it, this is a report that has been prepared by Professor Brian Gulson from Access Macquarie Limited and Michael Korsch from the Commonwealth Scientific and Industrial Research Organisation. They did a random test of the blood samples that appeared with elevated levels; that is, above World Health Organisation standards. They also did analysis of the water tanks. They have said that isotopic data for blood samples for young children - I think for young children we are using the zero to five age group -

**The ACTING CHAIRMAN:** At five micrograms per decilitre? Or above 10?

**Ms A.J.G. MacTIERNAN:** I would probably need to get more data on precisely which ones were chosen. They chose a random sample of the elevated levels and I presume they were operating above five. We will double check that. What they said is that using the simple two-component mixing relationship, the contribution of lead and blood of young children arising from Magellan ore ranges from 30 per cent to 87 per cent. In some cases, the majority of the lead in the blood is actually from non-Magellan sources. In other cases, the majority is from Magellan sources. You can see that the picture is very complex. We obviously need to do more work to determine what the blood samples are. This is hardly surprising when you consider the results that have come in from other lead level surveys that have been done across populations that have shown comparable, if not higher, lead levels than we see in Esperance. It is not surprising that within these blood samples we are seeing non-Magellan lead as well as Magellan lead. Surprisingly, up to 70 per cent of the lead has been determined not to have been from the Magellan source.

**The ACTING CHAIRMAN:** Who else apart from you is aware of what is in that document?

**Ms A.J.G. MacTIERNAN:** Professor Brian Gulson and -

**The ACTING CHAIRMAN:** Yes, but the Department of Health -

**Mr Jackson:** Would it be appropriate for me to comment?

**Ms A.J.G. MacTIERNAN:** I defer to Michael Jackson.

**The ACTING CHAIRMAN:** Mr Jackson, have you completed the "Details of Witness" form?

**Mr Jackson:** Yes, I have.

**The ACTING CHAIRMAN:** Do you understand the notes at the bottom of the form?

**Mr Jackson:** I do.

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**The ACTING CHAIRMAN:** Did you receive and read an information for witnesses briefing sheet regarding the giving of evidence before parliamentary committees?

**Mr Jackson:** Yes, I did.

**The ACTING CHAIRMAN:** Do you have any questions relating to your appearance today?

**Mr Jackson:** No. This information is becoming available. We have not received a full report. When I say “we”, I refer to the minister and the Department of Health. We endeavoured to get that as late as this morning. All we have received is summary data at this stage. As the minister said, it is differentiating between the actual isotope of lead found in the blood lead levels, and it appears to be clearer for children as distinct from adults. As the committee will appreciate, sources of lead in adults may be lead in petrol, lead in paints, lead in sinkers or whatever. The picture appears to be quite more complex in adults than in children. I repeat: we have not seen the full report. It is not available. There is some draft information that has come to the attention of the health department, and we have a summary of it.

[11.15 am]

**The ACTING CHAIRMAN:** As you know, we had the Director General of the Department of Health here on Tuesday. At that time he had no idea about these results.

**Mr Jackson:** I cannot answer for Neale Fong.

**The ACTING CHAIRMAN:** Can you say when the test was done?

**Ms A.J.G. MacTIERNAN:** It says that the report was prepared in May 2007. As I say, Mr Chairman, I suppose I have been particularly pursuing this because I have been very interested. This is always a question that is asked: how does one determine where the lead is actually from, given that we know there is lead out there in the community? We have also been surprised at some of the areas. When we looked at the tanks where the lead was being found, it did not seem quite consistent. Obviously there were some areas around the port and there seemed to be other areas that were outside the prevailing winds. Interestingly, they only analysed the results of three tanks, and they looked at the tanks in the Castletown area, which is one of the areas in which it seemed a bit odd to be finding lead. There was found to be a minimal contribution from Magellan lead. The relatively elevated lead values in the water may represent leaching from tap or tank materials, or some other lead activity, including construction or hopping activities. I guess this is the point I am trying to make. We have to actually get some concept of what the baseline is in the community, and where in fact this lead is coming from. In saying this, I want to stress that I am not in any way suggesting that mistakes have not been made in the way we handle lead. We accept that. However, in terms of what the consequences are, we have to be prepared to look at the evidence.

**The ACTING CHAIRMAN:** It is fairly certain, I believe, that the lead that killed the birds was Magellan lead. Is that still thought to be the case?

**Ms A.J.G. MacTIERNAN:** We have not actually seen the report, but that is my understanding. The information that I received led me to ask the questions about what the isotopes were that were being found in blood. If they can be found in birds, can we not do the same with humans? The initial advice I got was that we would have to take too much blood to do that. However, when we looked at it further, we were advised that a similar analysis can actually be done from the blood that has been collected.

**The ACTING CHAIRMAN:** Is the minister aware of children who are above 5 micrograms per decilitre? I forget the total number; I think it is about 50-odd. How many of those children have lead where the greater percentage of their lead contribution is from Magellan, and how many from other sources?

**Ms A.J.G. MacTIERNAN:** I do not have that information in sufficient detail. There were 22 samples of children under the age of five years. I think what really comes out of this is that we need

to do more analysis. These initial analyses are in fact showing that the picture is more complex. Of those 81, we tested 22, and it was a random sample of testing. As I say, all I have here -

**The ACTING CHAIRMAN:** That is half of the children, for the minister's information. There are 41 children. I am misreading this.

**Mr Jackson:** Chairman, I think the current data shows that there are 81 children under five who are above five micrograms, of which seven are above 10 micrograms. That is our latest data at this point.

**The ACTING CHAIRMAN:** Were all of the ones above 10 tested through this procedure?

**Ms A.J.G. MacTIERNAN:** No, of the total 81 who were above five micrograms, 22 were examined. I am happy to get the committee more information on this.

**The ACTING CHAIRMAN:** We will obviously need more information, but we still have questions.

**Dr G.G. JACOBS:** Following on from the minister's comment, of those 22, did the minister say that 70 per cent of those -

**Ms A.J.G. MacTIERNAN:** No, I said there was a range of profiles of lead. In some, the profile was as low as 30 per cent Magellan lead. At one end of the scale there was 30 per cent Magellan and 70 per cent non-Magellan. At the other end of the scale, there was 87 per cent Magellan and 13 per cent non-Magellan.

**The ACTING CHAIRMAN:** Minister, can the committee have a copy of that so that it can look at it now while asking questions?

**Ms A.J.G. MacTIERNAN:** Sure.

**Dr G.G. JACOBS:** How many of those 22 kids had a majority of Magellan lead -

**Ms A.J.G. MacTIERNAN:** I do not have that degree of data. We are very interested in pursuing this further and getting a more comprehensive report. I guess I was just alerting the committee to that fact, because it is a very salient fact. It is not a surprising fact when the basic lead levels appearing in the general population are considered. We have done some analysis and tried to do some comparisons. We really are very much focusing on the zero to fives, because that is the area for which there is the most concern. In that analysis, there have been a number of general studies done that look at profiles and distribution of lead in the population. There was an Australia-wide study, for example, that was done by the Australian Institute of Health and Welfare in 1995. That was a sample of about 1 500 people, and in fact the lead levels in that population, on average, were higher than what we are seeing in the Esperance population.

**The ACTING CHAIRMAN:** What year was that study done?

**Ms A.J.G. MacTIERNAN:** It was 1995. There was a study in Sydney back in 1991 where the lead levels were very much higher, but that was an inner city Sydney study. There was a study in Fremantle in 1993. Again, the lead levels were much higher. That was a study done of samples of children in Fremantle playgroups and -

**The ACTING CHAIRMAN:** Is the minister aware of the conclusions they came to as to the source of that lead?

**Ms A.J.G. MacTIERNAN:** Lead in petrol. The other one, which was not lead in petrol, was in Brookdale. In Brookdale, there had been an erroneous reading of lead and it had been shown that there was no possible source of contamination from lead. As part of the determination in attempting to resolve the issues, extensive studies were done there of blood samples, and those results were not greatly different from the ones we see in Esperance.

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**Mr P. PAPALIA:** Acknowledging what the minister said regarding the need to obtain factual evidence and the desire to not damage the economy and the tourism industry in Esperance -

**Ms A.J.G. MacTIERNAN:** Or alarm the community.

**Mr P. PAPALIA:** Would the minister agree that regardless of whether there are 20 children or one child under the age of five who have 87 per cent Magellan lead in their blood, it is essential that we as a committee and a government respond just as diligently and assiduously in identifying the cause, how it happened, and in rectifying this?

**Ms A.J.G. MacTIERNAN:** Absolutely. I keep going back, because I know how easy it is for our friends in the fourth estate to misrepresent what people are saying.

**The ACTING CHAIRMAN:** Steady! They will walk out if the minister is too rough on them.

**Ms A.J.G. MacTIERNAN:** We are not in any way trying to paper over the fact that mistakes have been made. We are very committed to the clean-up. We are getting good results from the clean-up. We are going through and cleaning out the rainwater tanks. The very exhaustive soil studies that are coming through are actually showing that we have got normal levels. We are dusting; we are vacuuming - we are doing all that can be done to deal with it. However, we need to understand what we are dealing with here. It is complex and there is lead coming from other sources.

**Mr M.P. WHITELY:** I have a very simple request. Can the committee get a chart that shows each of those 22 children and their reading, and alongside them the proportions of where the lead has come from? That would make it easier for us to understand. Clearly, for the ones that have a very high level, the major source is Magellan lead. There is a clear inference in that. That would be very useful.

**Ms A.J.G. MacTIERNAN:** These samples deal only with those isotopes. We did not, as I understand it, do the isotope testing for those who have non-elevated levels. All of the testing -

**Mr M.P. WHITELY:** Even so, it would be of some use to the committee, although a control group would have been useful.

**The ACTING CHAIRMAN:** Will the minister conduct an isotope analysis of all of the results of those children who were over five micrograms?

**Ms A.J.G. MacTIERNAN:** It is certainly possible that we could look at that. I would need to see what the possibility of doing that is. I want to really get to understand this. We are not satisfied with the processes and we are going to do everything we can to make sure there are no more lead emissions from the port, and that they are not contributing to it.

**The ACTING CHAIRMAN:** I think it is probably helpful information, but in some ways it clouds the issue. In the process of going through all those involved in the export, we have found significant issues that will be reported on. We are certainly aware that dust escaped from those exports, and we are certainly aware from what the minister says it has been confirmed that some children, at least, have significant levels of Magellan lead in their systems. For the committee, that needs to remain the focus. I want to return to a point the minister made in her opening speech with regard to compensation. How will the minister determine who is compensated, and who is not? Does the minister have any plans for ongoing assessment of the effects of that lead, particularly on children, in order to make some determination of compensation? Where does the minister expect the funding for that to come from?

**Ms A.J.G. MacTIERNAN:** We are in early days of dealing with this. Obviously where damage has occurred through Magellan lead, we would want to make compensation.

**The ACTING CHAIRMAN:** How will the minister determine that?

**Ms A.J.G. MacTIERNAN:** I will make a couple of points. There has been some ambulance-chasing going on and perhaps this is panicking parents into thinking that if they do not put a claim

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in now, they will lose their entitlements. I have made it very clear that we will not rely on the statute of limitations or the Crown Suits Act - all of those things that would panic people into having to make an application now - when the evidence, to us, is that it is likely to take perhaps 10 years for some of these problems to emerge, if there are going to be problems. As I say, we have to keep it in context. We are not cavalier or complacent about it, but when it is compared to other population groups, it is not vastly different. However, we will give the parents of all those children a letter of comfort that will make it clear that they will not have to rush in and make a claim now. We will be waiving certain of the limitation periods so that they will have an opportunity to claim in the future should there be a demonstrable loss. There has been some concern put about which agency will take the responsibility in the sense of who will we sue - and we will be looking at putting in place a legal framework so that it will be very clear that there will be one agency or it will be the state itself and there will not be the legal argy-bargy, there will not be any process from government that would put people through the paces of: is it the port I have got to sue, is it DEC or is it someone else? So we have clarified that really, so that parents can be assured that if there is a problem that does emerge into the future, their legal rights have not been jeopardised.

[11.30 am]

**The ACTING CHAIRMAN:** I understand that and that is good, but I would like you to answer those two points that I asked. One is: how are you going to make a determination?

**Ms A.J.G. MacTIERNAN:** I do not know that as yet. I mean, you are a medical practitioner; it is actually going to be quite difficult to do that.

**The ACTING CHAIRMAN:** It is going to be long and difficult, for sure, but you have no plans yet.

**Ms A.J.G. MacTIERNAN:** As you could understand, Chairman, if we are actually serious about the issue, our focus has been on very much, and the effort has been put into, cleaning this up and to actually ensuring that we minimise damage; but at the same time making sure that parents actually understand that they do not have to rush about this stuff, that there is not going to be a statute of limitations that kicks in that is going to undermine their legal entitlements.

**The ACTING CHAIRMAN:** Was there an environmental bond paid by Geraldton, are you aware?

**Ms A.J.G. MacTIERNAN:** I do not know. You would need to ask the port that.

**Mr T.K. WALDRON:** When you were just talking very much about the clean-up, minister, and there was some advice at one stage to advise people with their tank water to tip it on their gardens. Were you aware of that, and what would your comments be on that advice?

**Ms A.J.G. MacTIERNAN:** As I understand it, most of the lead actually accumulates in sludge. Perhaps I could get Michael to comment on that.

**Mr T.K. WALDRON:** Yes, that is fine.

**Mr Jackson:** Obviously, where we found that the levels of lead in rainwater exceeded the drinking water guidelines that was not fit for drinking; but we did not consider - this is the health department - that the draining of the rainwater onto gardens represented a significant risk to public health or to the environment. However, if householders were worried about the discharge of that water onto their gardens, they had the option of not only the sludge but also the water being taken away, and that option has remained. So that if people are not happy about discharging it onto their gardens, then the whole lot is taken away.

**Mr T.K. WALDRON:** But you do not see a problem with it?

**Mr Jackson:** No.

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**The ACTING CHAIRMAN:** Mr Jackson, can I just inform you that the toxicologist that you just recently had with you down in Esperance told us yesterday that she thought that was very poor practice.

**Mr Jackson:** And the toxicologist was?

**The ACTING CHAIRMAN:** What is her name?

**Mr Jackson:** Alison Jones?

**The ACTING CHAIRMAN:** Yes; a professional disagreement then.

**Mr Jackson:** That is fine.

**Ms A.J.G. MacTIERNAN:** Can I just explain the rationale? There is a rational basis for this. What the health department advised to the community was that as most heavy metal sediments would have settled on the bottom of the tank, the priority is to remove that material and the sludge. So what they were saying was not to drain all water; in fact they said to drain water within a certain number of centimetres, 10 to 15 centimetres. So they were recognising that you would have the concentration in the sludge at the bottom, but also this 10 to 15 centimetre band. I mean, that is just the nature of the lead; it will sink to the bottom. That seemed to be quite a sensible and rational approach that was taken by the health department.

**The ACTING CHAIRMAN:** Just that it is possible that -

**Ms A.J.G. MacTIERNAN:** I do not know when you spoke to Alison whether or not you put it to Alison - Dr whatever her name is - whether or not you distinguished, whether or not you perhaps made it clear, that they were only talking about the water, not the bottom 10 centimetres of water.

**Mr T.K. WALDRON:** No, it was the water we were talking about.

**Ms A.J.G. MacTIERNAN:** Yes, but was it the bottom? You see, the health department advice was that it was the water 10 to 15 centimetres from the bottom; right? They were saying that that bottom band you keep in with the sludge. So, I mean, we would have to see whether or not that was the same proposition that you actually put to -

**Mr T.K. WALDRON:** Okay.

**The ACTING CHAIRMAN:** I am just going to go through some questions that we had that were prepared just to get specific ideas on certain issues. One is the role of departments, minister, and we had evidence from the Director General of the Department for Planning and Infrastructure that their department had no role in the lead contamination of Esperance. Do you agree with that statement?

**Ms A.J.G. MacTIERNAN:** Yes, that is correct.

**The ACTING CHAIRMAN:** So the question is: why did you apologise to the Parliament for the role that your department played in the lead contamination of Esperance?

**Ms A.J.G. MacTIERNAN:** I think I might have used the word, I would have meant agencies. I think I said "agencies".

**The ACTING CHAIRMAN:** I do not have it with me.

**Ms A.J.G. MacTIERNAN:** That was my understanding, that I used the word "agencies". I mean, why would I? I have many agencies and one of them is the Esperance Port Authority.

**The ACTING CHAIRMAN:** So the department said they provided advice when you asked. Did you ever ask them for advice?

**Ms A.J.G. MacTIERNAN:** That is not the sort of thing that they provide advice on. The way the port authorities legislation has been established is that you have these port authorities and the board and they answer directly to the minister; they do not answer via the department. The department



provides a certain amount of advice largely on the financial matters and ensuring that they fulfil the actual administrative and financial requirements to government. So the monitoring that the department does of the ports is really to ensure that they are lodging the documents that they are required to lodge under the Port Authorities Act; that they are dealing with the sort of dividend processes; and they also coordinate to some extent the budget applications that are made by the port authorities. So that is their role. The port authorities legislation is very clear that these are set up as commercialised entities that answer directly through a board.

**The ACTING CHAIRMAN:** So who provides advice on issues to do with ports to you?

**Ms A.J.G. MacTIERNAN:** It depends on what sorts of issues you are talking about. If you are talking about financial issues, then we get advice -

**The ACTING CHAIRMAN:** No, more on the issues to do with export; for example, the lead export. I mean, obviously that is what we are relating to. Were you involved in any way in the decision by the Esperance Port Authority to export lead?

**Ms A.J.G. MacTIERNAN:** No; only to the extent that they advised us that they were going through the processes to export lead and that that would then have various financial consequences and that they would need to have a new multi-user storage facility and rail spur and that the product would require strict dust control. Now, we understand that the ports are required to be licensed; that if they are bringing in new product through the port, then they need to get their licence amended to do that. So we obviously were aware that they would be applying for an environmental approval to amend their licence and that they would not be able to do that unless they were able to satisfy the environmental agencies that they were going to be able to do this in a safe way.

**Mr P. PAPALIA:** Minister, we have received submissions criticising personnel on the port authority board and their actions. With regard to that, the evidence of the Director General of the Department for Planning and Infrastructure to this committee was that the department had provided only an administrative role irregularly in relation to your legislative power to appoint members to the boards of port authorities for a number of years. Do you agree with that evidence?

**Ms A.J.G. MacTIERNAN:** Absolutely; that is right. It is not the role of the department, not within their range of abilities, I suppose, to provide really advice on that.

**Mr P. PAPALIA:** It was advised to us that all paperwork relating to this inquiry is held by the Esperance Port Authority, but there is nothing in the paperwork provided relating to the appointment of board members to the Esperance Port Authority.

**Ms A.J.G. MacTIERNAN:** No, and I will tell you why; very strong reasons. One of the things that I was very concerned about when I came into government was the fact that CEOs were recommending who could go on boards. Now, I thought, given that the boards are there to monitor the CEOs, I certainly am not happy about the principle, the practice, of CEOs putting forward board appointments.

**Mr P. PAPALIA:** That is good because it leads me to my question, which is: what was the basis, in particular what assessment of the expertise did you rely upon in making appointments to the board?

**Ms A.J.G. MacTIERNAN:** I looked at the sorts of skills that we needed. From time to time I would have discussions with various personnel within DPI that had involvement in shipping and port issues. Basically, I guess, this is an issue I would really like to canvass because it is an important one. When we came to government, I was very concerned about the standard of port administration and the standard of advice that I was getting from boards. It was a very real concern to me. Here you had these very large commercial operations dealing often with international and multinational companies, and, by and large, that had been run by a farmer or a real estate agent or a publican, just small businesspeople from the local community; and that was basically the case more or less across the entire seven regional ports. Quite frankly, my assessment was that almost without

exception the CEOs ran the show and the boards - there was a sort of tea and biscuits in the chaplaincy sort of thing about board meetings. So, I went out with a very deliberate policy of trying to persuade very senior business figures in the twilight of their careers to do a great community service because the amount of money that was on offer was, let us put it, bugged all to take on the role of chairs. Quite frankly, not looking at anyone in particular, there were certain people from country districts that criticised us for doing that, criticised us for putting in people. If you look at it, we put Ian Burston in, for example, ex-general manager of KPMG who is up there in Broome; we have Peter West who came out of a very senior position with BP and has taken on Dampier; Ian Williams from Hamersley has taken on Port Hedland; and Alan Birchmore in Albany. It has been difficult to find these people that bring this seniority and experience and strategic thinking into the ports, and the last one that we did was Esperance. I would say I wish I had done it earlier, but one of the difficulties that we had was actually finding enough people to do this, and also Esperance appeared on all accounts to be doing well; in 2003 it won a much lauded award as port of the year. So that was probably the last port that we took to put in place a different board chair. In terms of the members of the port authority, I really want to use this as an opportunity to raise an issue of great concern to me that I think has the potential to affect the legitimacy of the hearings that you are undertaking. I agreed, as you know, with the desire to set up a parliamentary committee because I think parliamentary committees should have an important role.

**The ACTING CHAIRMAN:** I hope you are not going to take this opportunity to impugn the membership of any member of this committee, because frankly I do not believe this is the appropriate time for that.

[11.45 am]

**Ms A.J.G. MacTIERNAN:** This question has been raised in this committee, impugning the appointments to the board.

**The ACTING CHAIRMAN:** Certainly it is not my understanding that that has happened in a public manner by any member of this committee.

**Mr P. PAPALIA:** That was not the intention.

**Ms A.J.G. MacTIERNAN:** Most of the boards were strongly represented by many farmers. We believe that farmers certainly have a big role to play in the grain port, and we were always very keen to ensure that there was at least one farmer on the board. However, we thought that there was a good case for having a more diverse set of skills on the board. One of the government's first appointments to the Esperance port was Toni Hawkins. I had met Toni through the Esperance port because she had chaired the very good community relations group, which was a general community stakeholder group. I met her at a presentation that she had made.

**The ACTING CHAIRMAN:** I am sorry, minister, but you need to give us a chance within the hour to ask some questions.

**Ms A.J.G. MacTIERNAN:** This matter has been raised. Frankly, approaches were made to me even before the inquiry started to sack the board members and to replace them with other persons known to particular people in Esperance.

**The ACTING CHAIRMAN:** I want to ask you a question about the board members when the decision was made to export lead through that port. I presume that the minister was told at that time of the potential medical health implications of the export of lead through the port, particularly for this type of lead, which is lead carbonate. Is that so?

**Ms A.J.G. MacTIERNAN:** Was I what?

**The ACTING CHAIRMAN:** Were you advised that lead carbonate -

**Ms A.J.G. MacTIERNAN:** I was not advised of that but I was well aware that lead is a product that needs to be dealt with with a great deal of care. I understood that the process was that the port

needed to get an environmental licence. It could not export lead without an environmental licence. I quite properly relied on those processes that had been set up because we obviously had experts in the agency who would assess what had to be done, and those conditions would be imposed on the port authority. Certainly this was a relatively minor export from the port. I was not told that I would need to change the composition of the board.

**Dr G.G. JACOBS:** In selecting the port authority board members, what mixture of input were you looking for in expertise regarding achieving informed board decisions? We have noted the minister's comments about the composition of board members and the expertise that they bring. Would the minister recognise that there is a need to have some people on the board of the Esperance port who have a commercial background and environmental and operational expertise? We have heard from others in this forum that there were concerns about what the board knew and whether it was able to act on matters and participate in some major decisions because the port has gone from a grain terminal to a multibillion dollar export port.

**Ms A.J.G. MacTIERNAN:** It was a multibillion dollar export port when we came to government. It comprised a number of farmers and small business people such as real estate agents and a gentleman who operated a fuel franchise. What we tried to do was to keep some representation of farmers on the board. One of our appointments was Ian Mickle, who had been the president of WALGA and also had been a shire president. He was highly respected in not only the local community but also throughout Western Australia as a very competent operator as the head of local government in the state. It was our view that, compared with some of others who had been on the port, he could bring not only a farming background to the board, but also a greater degree of strategic thinking because he had actually operated at such a high level. Toni Hawkins had been on the Goldfields-Esperance Development Commission for many years and was a local business proprietor. It is because of the role that she had in chairing the community steering group that we thought she would be a useful voice on the board. It is a case of continuous improvement. When we see that there is a problem with a port authority, we bring the skill sets in to deal with it. As I said, I have been trying to do that for some time. I had been aware that perhaps the board and the management of the port perhaps had not been as strategic as they could have been, and I knew that some of the board members were concerned about that. I had been looking for some time for a new chair and found Jim Matijasevich, who was prepared to take on the role.

**Dr G.G. JACOBS:** Mr Matijasevich - I have trouble with his name - was appointed in August 2006 by the minister. Do you believe that the present board has the commercial, environmental and operational expertise to take Esperance and the port forward from here?

**Ms A.J.G. MacTIERNAN:** It is certainly a stronger board than the one I inherited. Whether it is the optimum board is something that I could consider. I am very disturbed by the requests that were made to me that certain board members should be sacked and be replaced with other local identities.

**The ACTING CHAIRMAN:** I think you have said that, minister.

**Mr P. PAPALIA:** The minister might be a bit concerned because, based on some of the evidence that we have received from current board members in Esperance, it appears as though they relied to a large extent on the CEO for the process of determining what the port would export and how it went about it, particularly in relation to the decision to go ahead with the export of lead. When we asked them about it, their response often was that their field of expertise was in environmental matters or in something else and, as a result, they relied on the CEO. Would you like to comment on that?

**Ms A.J.G. MacTIERNAN:** There has been a problem with the nature of how the boards have viewed themselves in the past. As I said, when I came into government, I could see that in every port, to some extent, the ports had operated as local fiefdoms. There was very little cooperation because they were there looking after their fiefdoms. This is why we wanted to bring in a totally new style of management. We wanted people who had experience of running listed companies and

who understood what a board was supposed to do and who would be prepared to challenge a CEO. I regret that I left it perhaps too long to put that same structure in place in Esperance, but there were two problems: the first was that the port appeared to be doing reasonably well and was winning awards, and the second was it was difficult to find a suitable person who could take on that role and do it at that level. We have seen a great turnaround in the other ports. Those boards now think of themselves differently. They make demands of the CEO and they understand that they are there as an accountability mechanism.

**Mr T.K. WALDRON:** Minister, you made a statement earlier that CEOs in the past have run the ports. Do you think that has changed?

**Ms A.J.G. MacTIERNAN:** It has certainly changed.

**Mr T.K. WALDRON:** Has it changed or is it changing?

**Ms A.J.G. MacTIERNAN:** I think it has changed in the other regional ports and I know that it is changing in Esperance. It is good for the CEOs. To have senior people on whom they can rely for advice helps them to do their jobs. A lot of CEOs felt that they wanted to completely run the show and they did not want the chairman to interfere and ask difficult questions. Once a CEO understands the operating rules, it is much better for them because they have a support. Instead of working from an isolated centre and trying to run a very complex business, they have people that they can refer to who will help them. If a port is negotiating with a large multinational mining company, the CEO is not there by himself; he has the support of a chairman who is able to help the CEO navigate these complex tasks.

**The ACTING CHAIRMAN:** Would it surprise the minister to know that the minister's new lauded chairman, upon his appointment in September, did not seek a briefing from his chief executive about key issues to do with the export of lead through the port? He was not informed that there had been episodes of major problems with lead dust when loading ships. He was not informed that there had been three separate episodes over a year when the dust monitors in the town showed significant elevations of lead. He was not given a briefing and he did not ask for a briefing when he started in September. He sat through the next three board meetings when all those things were going on and he did not know about them. His response when asked why he did not know was that he was not informed and that that is not his area of expertise.

**Ms A.J.G. MacTIERNAN:** I would have to say that many issues confront a person coming into an organisation like that. I know that he was very engaged in seeking to modernise the management structure. I think he started in October.

**The ACTING CHAIRMAN:** September.

**Ms A.J.G. MacTIERNAN:** September. You simply cannot necessarily get on top of all those issues at once. I have not heard that evidence. I know that he was spending a lot of time down there and he was really concerned that the management structure was not fit for its purpose and that far more expertise was needed in the management of the port. He was attempting to put that restructure into place.

**Mr T.K. WALDRON:** Minister, are you now confident that under the current board members and the chairman that that will change in Esperance?

**Ms A.J.G. MacTIERNAN:** I think we will see a modernisation of the management structures in the port. We have certainly seen that happen in all our other ports. A different style of CEOs has come in and there are different and perhaps more modern management arrangements in place.

**The ACTING CHAIRMAN:** We have run out of time, but we will go over time to finish the questions we have.

**Mr T.K. WALDRON:** The Port Authorities Act states that the authorities are to function under the act in accordance with prudent commercial principles and endeavour to make a profit. Do you

believe that this requirement would impact on the capacity of the ports to take into account issues such as public health in the absence of strict legal requirements and an effective enforcement regime?

**Ms A.J.G. MacTIERNAN:** Absolutely not. Just as with any private company that seeks to make a profit, it must be done within the framework of the legal responsibilities. Part of the legal responsibilities is to control the pollution and contamination that might emanate from the activity. I see absolutely nothing at odds with that at all. A private port would probably be more at risk of that. There is absolutely nothing, I believe, in conflict about being required to endeavour to make a profit and to discharge all the legal responsibilities, including the responsibilities in relation to the environment.

[12.00 noon]

**The ACTING CHAIRMAN:** The findings from a lot of studies that have been commissioned by the port into minimising dust escape from the port found that significant infrastructure requirements had not been put in place because the port did not have the funds to do that.

**Ms A.J.G. MacTIERNAN:** I do not think that is correct. You do not put those activities in place unless you are capable and you do not commence the exporting of lead unless you are capable of satisfying the conditions of the environmental licence.

**Mr T.K. WALDRON:** The evidence from the Department of Environment and Conservation was to the effect that because the port was a government entity the department expected the port to be open, responsible and accountable. However, there is also evidence that ports have been required to operate within a strong commercial orientation for some years. For example, the act governing the Esperance Port Authority was amended in 1987 to require that port to meet the annual financial target. Do you think the commercial orientation under that legislation has affected the capacity of ports to operate in a manner that might be expected of a traditional government entity?

**Ms A.J.G. MacTIERNAN:** Absolutely not. I agree with the first proposition of DEC, as the member outlined, but there is a rightful expectation that a government corporation acts with a high degree of transparency and I agree with that. I absolutely reject the proposition that being required to act in a commercial manner is in any way an excuse or has led to a reduction in environmental standards. The committee would find lots of companies around Australia that would be appalled at that suggestion - a lot of very respected Australian companies that operate in the resource area put great emphasis on safety and health issues. That is not, in my view, an excuse.

**Mr T.K. WALDRON:** Does the new board need to be under surveillance because in the day-to-day running of an organisation, sometimes things can happen?

**Ms A.J.G. MacTIERNAN:** Absolutely and the member is right. I will give an example. In one port we had appalling industrial relations and there was a great deal of grief. We brought a person with expertise in that area into that port for two or three years to ensure that the area was safe. Likewise in this issue, as it has emerged, there was a problem in terms of environmental monitoring. The port was not up to standard. We then put Michael Jackson on. This turned out to be such a successful appointment that everybody wanted him to work full time. We had to temporarily take Michael off the board to enable it to do this. I have made it very clear to the port that it has to lift its game. We wanted a full-time environmental officer. It is not something that can be done part time. It is quite clear that the port administration did not put enough emphasis on environmental matters.

**Mr M.P. WHITELY:** Dr Neale Fong gave evidence to the committee that the Department of Health should have a specific role in assessing resource projects. It is not surprising that the mining industry has expressed a view that the existing regulations are adequate. What is your view on this?

**Ms A.J.G. MacTIERNAN:** I would have imagined that the Department of Health already has a role. It provides advice to DEC. As I understand it, that happened in this case.

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**The ACTING CHAIRMAN:** They did not and that is the point.

**Ms A.J.G. MacTIERNAN:** That is right. However, the Department of Health has a role in providing that information to DEC. We might have found a breakdown in the way in which the system was regulated. I do not know whether there is a need to change it.

**Mr M.P. WHITELY:** Does it have an opportunity or a specific role and obligation?

**Ms A.J.G. MacTIERNAN:** My understanding is that DEC is required to seek its advice on these matters. It is right outside my portfolio area. I do not get involved in DEC. I know that, as a matter of form, the Department of Health provides advice to DEC and DEC frames the environmental conditions.

**The ACTING CHAIRMAN:** The Department of Health informed the committee that it is preparing a new public health act and part of that act will give a statutory requirement for the health department to be involved in that decision-making process.

**Ms A.J.G. MacTIERNAN:** I would have no difficulty with that.

**The ACTING CHAIRMAN:** It is part of the problem in this instance. Minister, a short while ago I asked you about the lack of funding for infrastructure that a port needs to export lead. I come back to that. The member on my left disagrees with me that that is the case and agrees with what you said. In June 2005, the board approved the export of lead; however, at the same meeting it was told that the infrastructure and policy was not yet in place.

**Ms A.J.G. MacTIERNAN:** I received a letter from the CEO in December 2004 which said that they wanted infrastructure to enable them to export lead. In February we put that up in an ERC minute and it went into the budget process and was approved in 2005-06.

**The ACTING CHAIRMAN:** What was that for?

**Ms A.J.G. MacTIERNAN:** That was for the shed. That is what it requested.

**Mr P. PAPALIA:** Did it request anything such as fully enclosing the conveyor belt on the wharf?

**Ms A.J.G. MacTIERNAN:** My advice is that what it required was a multi-user minerals storage facility and rail spur. We prepared the ERC submission and it got it.

**The ACTING CHAIRMAN:** The minister is saying that the board was told at the 2005 meeting that the infrastructure was not in place.

**Ms A.J.G. MacTIERNAN:** Then it should not have exported the product. If it did not have the infrastructure in place, it should not have exported it.

**The ACTING CHAIRMAN:** Could I finish my question? The point I am making is that the shed has still not gone up. It is in the process of being built now, but that is neither the minister's nor the government's fault; there has been a problem with getting contractors to do the work. Other requirements were not in place at the time and further independent environmental assessments indicated that other infrastructure, particularly the enclosure, was required.

**Ms A.J.G. MacTIERNAN:** I want to make this clear, because I do not want this to be vague. Are you saying that one of the terms of the environmental licence was that before lead could be exported they need to have a different shed to the one they stored it in. Is that what you are saying?

**The ACTING CHAIRMAN:** No.

**Ms A.J.G. MacTIERNAN:** What are you saying?

**The ACTING CHAIRMAN:** I am saying that they were aware of deficiencies in their infrastructure prior to accepting the exporting of lead through that port.

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**Ms A.J.G. MacTIERNAN:** Can I see the evidence of that? If you cannot get the money to do the job safely, you do not do the job. You do not say, "We have not been able to get the funds, but we are going to do it anyhow."

**The ACTING CHAIRMAN:** The minister will get that information when it is presented -

**Ms A.J.G. MacTIERNAN:** I would certainly like to see it. It is not very fair to be asking me questions about -

**The ACTING CHAIRMAN:** Minister, if you let me finish the question, you will be able to hear the question and make a comment. The question was not about whether the government was provided - I am asking you to comment on whether you were ever asked by that board for funding to put that infrastructure in place. I assume the answer will be no, but I want you to say that.

**Ms A.J.G. MacTIERNAN:** The advice I have is that the only request that was made to us was for a minerals shed. I repeat, if you cannot get the money to do the job properly, as would be the case in any business, you do not do the job.

**Dr G.G. Jacobs:** The shed is being built.

**Ms A.J.G. MacTIERNAN:** I understand that. That was approved in the 2005-06 budget.

**The ACTING CHAIRMAN:** I agree with you, minister. I wanted you to say for the record that you were not asked for funds to undertake those essential tasks that were recommended by an independent environmental assessment.

**Ms A.J.G. MacTIERNAN:** Certainly, the advice that I have today is that. We can certainly have a look to see whether there was any other request. You do not go ahead and do something if you do not have the approval to put in place the infrastructure that is needed. From my reading of the DEC licence, I understand that was not an actual requirement.

**The ACTING CHAIRMAN:** It was not DEC; it was an independent firm - Riseborough - that was contracted by the port to assess its facilities. The Riseborough report recommended significant changes that were never undertaken. I wanted to make sure the port had not asked the government for funding to do that. As it turns out, that is correct.

**Ms A.J.G. MacTIERNAN:** I will double check that. I do not have any evidence of that to date. This is the reason that we need to have a different culture. You do not take the job because you can get the job and that takes in the member for Wagin's point; that is, rather than the statutory requirement to make a profit it comes down to the enthusiasm that people have for their port and to get the product through and create new business opportunities. There was a lot of excitement amongst the ports about getting new product. Perhaps, if an efficient robust management structure is not in place, people's enthusiasm blinds one to some of the necessities.

**The ACTING CHAIRMAN:** The last question I have relates to the port licence that requires the Esperance Port Authority to ensure that visible dust does not escape the port. The key issue that has arisen is that it is certainly not visible dust that has caused the problem in Esperance. One of the properties of lead carbonate is that it consists of very fine particles of a low micron size that can drift in the air without being visible. If a recommendation were made to amend the legislation to take into account other forms of dust emissions from ports, would it have broader implications in the ability to export other or similar materials through other ports in the state? For example, we could recommend that the licence requirement should refer to just visible dust, but it is recognised that non-visible dust is just as important in some circumstances. If that requirement were changed by legislation so that it is not one of the licence conditions of the port, would it have a negative effect on other ports?

**Ms A.J.G. MacTIERNAN:** This is something that obviously I will need to take advice on. My understanding is that dust is emitted at every port. In most cases, dust is emitted when products are loaded. Obviously, the health risk that that poses varies greatly with the nature of the product.

Something like lead carbonate is a much more risky emission than some other substances. For example, talc might not present anywhere near the same problem. The same applies to woodchips and grain dust.

**The ACTING CHAIRMAN:** That is true.

**Mr T.K. WALDRON:** Are you talking about the visible dust?

**Ms A.J.G. MacTIERNAN:** No, the non-visible dust.

**Mr T.K. WALDRON:** The port regulations state that they cannot allow visible dust to get out.

**Ms A.J.G. MacTIERNAN:** The question is: how realistic is it to have non-visible dust? The idea of a catch-all is probably not the best way to go. We need to rank the product in terms of its capacity to affect human health. We would want a very different level for lead than, for example, talc.

**The ACTING CHAIRMAN:** That is exactly true, minister. We would not want to make recommendations, for example, that affect talc dust, but on the other hand, the port, through our understanding, has used this focus on visible dust to be less concerned about not visible lead dust escaping from the port, hence the dust deposition monitors, which by any standard were inadequate.

**Ms A.J.G. MacTIERNAN:** I think my reading of it is that we have problems at two levels: we had the way in which the licence was framed, in my view, it does not appear to be adequate for the task, and then secondly, the way that, I guess, the port felt free to handle this product; that there was not enough seriousness surrounding the nature of this product.

**The ACTING CHAIRMAN:** Thank you, minister, and Mr Jackson for attending. Minister, a transcript of this hearing will be forwarded to you for correction of minor errors. Please make these corrections and return the transcript within 10 working days of mailing. If the transcript is not returned within this period, it will be deemed to be correct. Thank you, minister.

**Hearing concluded at 12.15 pm**

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