

# **STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

## **INQUIRY INTO WORKSAFE**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 2 OCTOBER 2017**

### **SESSION ONE**

#### **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 10.32 am**

**Mr SIMON RIDGE**

**Acting Deputy Director General, Safety, Department of Mines, Industry Regulation and Safety, sworn and examined:**

**Mr BILL MITCHELL**

**Acting Director, Policy and Education, Department of Mines, Industry Regulation and Safety, sworn and examined:**

**Ms SALLY NORTH**

**Acting Director, Service Industries and Specialist Directorate, Department of Mines, Industry Regulation and Safety, sworn and examined:**

**The CHAIR:** I welcome representatives from WorkSafe to the second hearing in relation to this inquiry into WorkSafe. On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witnesses took the oath or 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 are also being 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 please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. 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. Would you like to make an opening statement before the committee? I appreciate that a statement has already been made, so I am happy to go straight into it. Mr Ridge, would you like to make a statement?

**Mr RIDGE:** The only thing I would say—the committee is aware of this—is that I am in an acting capacity and have been for a very short time. It will mean that I will be deferring to my colleagues on most issues, I would imagine.

**The CHAIR:** That is fine. That is not a problem. Thank you very much. When we left off at the last hearing, we were dealing with the third term of reference, “adequacy of WorkSafe’s training, oversight and accountability processes”. Does WorkSafe provide any training to inspectors in dealing with traumatic injuries or fatalities? What is the nature of that training?

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**Ms NORTH:** Is this the training in respect of how the inspector deals with it, or how we investigate it?

**The CHAIR:** How he copes with —

**Ms NORTH:** How we deal with that?

**The CHAIR:** Yes.

**Ms NORTH:** People are made aware that the employee assistance service is available and that people who are dealing with these kinds of matters need to make contact with that on at least an initial occasion, and more so if necessary, and that if they have any issues or concerns with that, to raise that with their manager. We have also had courses that staff and management have attended. I cannot remember the exact title, but it is in relation to dealing with issues that are of this nature.

**The CHAIR:** A lot of people are notoriously bad at admitting that they need help or are struggling. What sorts of measures do you have in place to ensure that people are making use of the counselling service that is provided?

**Ms NORTH:** It is important that we keep it a confidential service, so we basically just check in with the person to make sure that they have made contact with the provider, and we leave it to the person at that point. Having said that, when we are investigating such matters, we do case manage them and we have a series of meetings around them there. I would expect that people would see, to the best of their ability, how people appear to be coping when they meet with them in that context as well.

**The CHAIR:** Do those case management meetings occur on a monthly basis?

**Ms NORTH:** Yes, and more often if needed.

**The CHAIR:** Given the nature and the volume of the work that the inspectors have to undertake, what sort of training is provided in terms of stress management?

**Ms NORTH:** I do not know that we do anything specifically on stress management, other than the awareness of what is available to support staff.

**Hon KYLE McGINN:** Are you aware of any stress-related lost time from work at WorkSafe?

**Ms NORTH:** Yes, I think I can—of one.

**The CHAIR:** The fourth term of reference is “adequacy of administrative processes, including complaints, investigations and prosecution processes”. Can you please explain how WorkSafe’s case management system operates? What medium does the system use, and how do the members of an investigation team communicate using the system? Is it a paper file-based system, or is it electronic?

**Ms NORTH:** We have a guidance document that sets up what the case management system does. We also have a tool that is basically just a document that tracks the progress of the matters, the meetings, the outcomes and the next actions and so forth. That is just basically a Word document. Then the matters themselves that are part of the investigation are recorded in the WISE database and also in the Objective document management system.

[10.40 am]

**The CHAIR:** Just to recap, is every complaint that is received by WorkSafe put into WISE?

**Ms NORTH:** Yes.

**The CHAIR:** Is the complainant recorded in WISE, and are categories of complaints recorded?

**Ms NORTH:** Complainants are usually included in there. Occasionally, a complainant expresses a strong view that they would like their name not to be recorded and it is put down as anonymous,

but we certainly encourage complainants to put down their name on the basis that we will treat them confidentially in any event. Yes, we categorise complaints that come in according to a level of seriousness, and we also categorise the nature of the complainant in terms of whether they are an employee, a member of the public or a safety and health representative.

**The CHAIR:** Is there a higher priority for investigation given to complaints made by a health and safety rep or a union representative?

**Ms NORTH:** The priority is generally around a couple of things—certainly, how close the person is and how reliable the information is thought to be. Where a person has firsthand knowledge, it is thought to be more reliable. Sometimes it is a person has told the person et cetera and that is less reliable. That is one of the factors. Another factor is the breach or dangerous situation that has been described and how serious that is. I would say that those are really the two main things. The other one about safety and health reps is that if a safety and health rep is at a workplace and the complainant has not used the consultative system yet—if they have come straight to WorkSafe rather than raising the matter with their safety and health rep or safety committee—then we encourage them to use that process before lodging this with WorkSafe. Within our call centre, who takes a lot of these matters, they would encourage them to do that first and come back to WorkSafe if they have not been able to resolve it. It is important that we try to get people to use that internal mechanism.

**The CHAIR:** Where there is no health and safety committee, it obviously cannot be referred to the committee. What consultative process is the health and safety rep required to go through before lodging a complaint with WorkSafe?

**Ms NORTH:** If it is something that has already come to the safety and health rep's attention, normally they would be liaising with the employer or a representative of the employer about having that resolved. We would hope that they would do that before coming to us. But if they have done that and they have not been successful, then they can certainly come to us with it.

**The CHAIR:** You also indicated that some types of complaints are likely to get priority for investigation over others. Can you give us an indication of what the nature of those complaints might be? Would it be likelihoods of fall from height or that sort of thing?

**Ms NORTH:** Sometimes we get reports of a breach that may have occurred sometime in the past and may not be currently a breach. It might not be going on anymore. That is a lower priority. Where something is currently presenting a hazard, that is a higher priority. Where the hazard could potentially have serious or fatal outcomes—as in a fall, for example—that would be a higher priority as well than something that might have a lower consequence.

**The CHAIR:** If WorkSafe got a complaint about a breach that could result in a fall from height, that would definitely warrant an immediate investigation?

**Ms NORTH:** It would go to the team manager and the team manager is the one that will make that decision. They would also, presumably, have to consider what else was happening and perhaps where it was located. I think we talked about that previously. So there is a range of things that they would consider, but I would think it would be pretty likely to be investigated, yes.

**The CHAIR:** Are employees at WorkSafe authorised to give reasons to a complainant for why their complaints were not investigated?

**Ms NORTH:** An inspector would not actually make that decision. That would be made by the team manager. It would not ever have gone to the inspector if it was decided that we would not investigate it. A person that was concerned that their matter was not investigated or was maybe ringing back—when someone rings and makes a complaint, they are given a reference number. They

can ring back with that reference number and say, “What’s happening with that?” The team manager would be the one, where that decision has been made, that may speak to the person and say why we are not investigating it.

**Hon KYLE McGINN:** When you call back with a reference number, are you saying that the person is then told the status of their complaint?

**Ms NORTH:** Probably what they would be told with the reference number is that the appropriate person would call them back. If it has been categorised as not for investigation, the appropriate person would be the manager who gave it that classification, so then they would be the one that would follow up with that.

**Hon KYLE McGINN:** What would you say if I said people were told to apply for freedom of information?

**Ms NORTH:** At that point, that would sound, probably, a little early. What would probably happen is that if they did call and speak with an officer in that area, that officer would have a look at our WISE database and they would tell the person, “I can see there isn’t an investigation associated with this complaint because it has been marked as not to be investigated.” Then they would ask the person, “Do you want any documents?”, bearing in mind they will probably tell them that there are going to be very few documents here, “It is pretty much going to be your complaint and as it is entered on our WISE system. Would you like to apply for that document under freedom of information or have you got enough information knowing that this is how it has been handled?”

**Hon KYLE McGINN:** So you would not agree with the statement that people that call up with a reference number are being told to apply for freedom of information without any other information on their complaint?

**Ms NORTH:** If they are telling you that, then I would not dispute it, because there are a lot of people in the organisation. But I think that they could certainly find out more by speaking to someone in that freedom of information area without actually having to lodge a freedom of information matter, with the associated fee and all of that.

**The CHAIR:** Can I just clarify something? You have just said that they would be able to speak to a freedom of information officer. But if they are phoning with the complaint number, initially, as I understand from the evidence that has been given to date, they would be put in contact with the team leader who made the decision on whether or not to carry out an on-site investigation in relation to the complaint. They would not be put through to a freedom of information officer. They would be put through to the team leader. If the team leader is giving advice that they would need to lodge an FOI in order to get an answer to their question, is that not of concern to WorkSafe? What sort of measures do you have in place to be able to monitor whether that is happening?

**Ms NORTH:** This is in the category of ones that we are not investigating. If it is the category of ones that we have investigated, it may go through to an inspector initially. For the ones that we have marked as not to be investigated, I would expect that to go to a team manager and I expect the team manager to be able to say whether we have investigated it or not investigated it—what its status is—to the person, not necessarily giving a lot of detail, but giving them some information. Then if they require any documents in relation to the matter, that is when they might be referred to FOI. In terms of what processes we have, I suppose the processes are that, as with most government agencies, if people are not happy with what they are hearing, then they can escalate their concerns, whether within WorkSafe— they can lodge a complaint within the department’s complaint system—or they can also take complaints externally to the Ombudsman. We get a small number of matters that come through in those ways.

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**Hon KYLE McGINN:** Can I just go back a step? When someone makes a complaint to the hotline, they get given a receipt number. If they then call back three or four days later—this is the category of not being investigated—and quote the reference number, would you agree that some people, when they ask for feedback at that stage, are not being told that the complaint is not being investigated and that they must apply for freedom of information to get any information on that complaint?

[10.50 am]

**Ms NORTH:** I am not aware of that being the case.

**The CHAIR:** The committee has heard evidence that that is the case and that that problem has been raised with WorkSafe on numerous occasions and nothing has been done about it. That concerns me because, first of all, the practice does not seem to fit in with the procedure that you have outlined that WorkSafe employees should be following and then when that complaint has been raised with WorkSafe, it does not appear to have been addressed because it is continuing. I suppose the question then becomes: what checks and balances does WorkSafe have to ensure that its employees are following the procedures that have been put in place by WorkSafe?

**Ms NORTH:** In a general sense, we have got some procedures in place around that. We looked at what are our risks in terms of knowing what people are doing and what quality of work is being done. We considered that risk was more significant when it is a person working on their own in workplaces. We have put in place a system where we make contact with a certain amount of people at workplaces and follow up with them after a WorkSafe inspector has visited to find out a little bit about how that went. We have done it in that way. In terms of people, though, in this particular instance, other than the complaints and escalation mechanisms, I do not think we have got anything specific on that matter. Certainly, there is a lot of correspondence in parts of WorkSafe because I see it. We write to some people as well. Some of the types of complaints we actually put in writing, “Okay we’ve decided not to investigate this matter for these reasons.” I certainly know that does happen, but if it does not always happen, I take your advice on that.

**The CHAIR:** At the point that the complainant makes that follow-up phone call to ask, “What’s happened with my complaint?”, that interaction would be recorded in WISE?

**Ms NORTH:** Usually, yes. In WISE we make a record of when people get in touch with us, so the call centre would have a record that they have called back and that it has been referred to a person within WorkSafe, usually the manager in that case.

**The CHAIR:** Would that manager be required to enter into WISE the response that he provided to the complainant?

**Ms NORTH:** That is an interesting one because normally what we do with calls that we make, it is normally where there is an investigation open and with this one there is not an investigation open, but we do have a field a manager can use to make that record. We have a field attached to a complaint that is called “an internal note”. So it is possible that they put an internal note on there that they have spoken to the complainant on this. Whether that is always the case, I am not sure.

**The CHAIR:** WISE is supposed to be a tracking system so that you know what is happening with any complaint that is received. You have the complaint number logged into WISE; the complainant rings back wanting to know whether there has been any action on their complaint, so that is recorded in WISE but the response that is provided to the complainant is not necessarily recorded in WISE?

**Ms NORTH:** I would think it would usually be, but again whether that is something that we have audited to make sure it is always happening, I am not sure that we could say that, but I would think it would generally be the case.

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**Hon KYLE McGINN:** When someone calls back, is there ever a case when it is not referred to the team management, where the person on the hotline would be the one responding to the complaint; and, if that is the case, is that recorded in WISE?

**Ms NORTH:** They do make a record of all the calls that come in, so their actions arising in the call centre would be recorded. I think, normally, they would be referring that kind of query to the team as to what has happened with a matter, because that decision is made in the team. It is not a decision that the call centre will be able to really discuss with a person because they can only see what they can see on the system and if the person wants to discuss it, I think they would normally be transferring them or asking the team manager to call them back that matter.

**Hon KYLE McGINN:** If the complaint had been decided by the team that it would not be investigated, that would be recorded on WISE?

**Ms NORTH:** Yes.

**Hon KYLE McGINN:** Which would be accessible to the hotline operator when the complainant calls in.

**Ms NORTH:** Yes.

**Hon KYLE McGINN:** Are you saying that still at that stage, it should be referred to the team manager to give the response?

**Ms NORTH:** I would have thought so, just because the rationale behind that—the team manager is in a better place to know that than the call centre. The call centre will see the status, which will say, “Not to be investigated” and there will be a drop-down box of reasons—so they are not very detailed reasons—about why that is. Because that is not a lot of information, I would have thought that in most cases they would get in touch with the team manager about that. What they can see is that it is not to be investigated. It is possible that they might pass that on, but they cannot put a lot of context behind it, so I think it would normally go to the team.

**Hon KYLE McGINN:** You would say that the reasons behind why the investigation is not going ahead would be said to someone who makes a complaint prior to freedom of information?

**Ms NORTH:** There is a little bit of information that is available there, but I know that people do inquire about why and do speak to team managers about it. From what you are telling me, it sounds like they are not always getting an explanation but certainly I know in some cases they are getting an explanation. Often, we find people do not agree with the explanation as well, which is where they might go down some of the other mechanisms of making a complaint of some sort. Yes; I know there are those discussions.

**Hon KYLE McGINN:** Just to be clear, you would say that everybody who made a complaint that was not being investigated, would have the opportunity to talk to the team manager prior to having to request through freedom of information to know reasons why the investigation is not going further?

**Ms NORTH:** I would have thought that they would have the opportunity to talk to a team manager about that, but what I am hearing from yourselves is that you have had submissions to say that that is not the case. But I would have thought that was the way it would normally work. When they do speak with a freedom of information officer, they also explain what they can see on the system and give the person an opportunity to make a decision as to whether or not they want any documents because they explain what documents would be available.

**The CHAIR:** Can I just clarify: What instructions are given to the call centre operators? Are they instructed that if the complainant comes in with a second call wanting to know the status of the complaint, they can open up whatever they have access to and know that they can see that a

decision was made not to investigate? Are they authorised to communicate that decision and whatever reason is ticked in the drop box? Are they authorised to give that to the caller?

**Ms NORTH:** I do not know if that is something that we have been explicit about. I would not have a problem if they did want to tell the caller that. The only issue I have with it is if the caller then wants to discuss that, the call centre operator is not really in a position to discuss it because they were not party to making the decision. I would not have a problem if they wanted to tell them the information that they could see, but I do not know whether we have specifically given an instruction on it.

**The CHAIR:** Can we take that as question on notice 1, just to get clarification of what instructions are issued to the call centre operators about what information they can provide in those circumstances? It seems to me that if they have got access to that information, they would be able to provide that information at first instance and then if the complainant wanted to dispute or query that further, then they might be put through to the team manager to follow that through.

**Hon KYLE McGINN:** May be also in respect of the policy that team managers talk to the complainant about why the investigation is not going forward—if that is a policy, can we see that?

**The CHAIR:** We will take that as question on notice 2 in relation to any instructions or directions that are in place for team managers or team leaders —

**Ms NORTH:** Team managers.

**The CHAIR:** — in terms of communicating decisions not to proceed with an investigation to the complainant.

Is there a process in place to inform the complainant of a decision not to investigate or is it really reliant on the complainant making contact with WorkSafe again?

**Ms NORTH:** The latter.

**The CHAIR:** Are you able to provide the committee with statistics on the breakdown of the types of complaints received over the past 10 years; for example, how many were for hazards, diseases, injuries, serious incidents or deaths?

[11.00 am]

**Ms NORTH:** We have a few broad categories. We have categories for dangerous incident and injury, for example. There are a few categories, but not a huge number.

**The CHAIR:** We will take that as question on notice 3—that is, can you provide the committee with a breakdown of the types of complaints that have been received in each of the last 10 years?

**Ms NORTH:** I think a bit of that has already been provided in the further questions. We have provided the category that we call a complaint, which is the type of dangerous incident, plus the type of injury. We have added those two together and they are in the further questions, but we can separate them.

**The CHAIR:** That would be great; thank you.

**Hon KYLE McGINN:** Is there a category of data on things that have not been investigated?

**Ms NORTH:** We would have numbers on the ones that have not been investigated, but I think we have provided those in the further information as well. There is graph that shows the total of the type “dangerous situation” plus the type “injury”, and next to the total is the number that we did investigate, and the balance of that figure is the ones that were not investigated.

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**The CHAIR:** Just to explain, committee members received that file very late and we have not had an opportunity to go through it all in detail. We thank you for your clarification of where that information may have already been provided.

**Hon JACQUI BOYDELL:** I want to go back to your answer to a question from the Chair about what happens when a complainant has lodged a complaint with WorkSafe and a decision is made not to investigate. Is there no communication back to the complainant unless they call?

**Ms NORTH:** That is right.

**Hon JACQUI BOYDELL:** Do you think WorkSafe should be responsible for getting back to the complainant, because it ensures that you are following process?

**Ms NORTH:** We explain to people when they lodge a complaint how it works—that is, we are not going to contact them with feedback either way, and it is up to them if they want to get feedback. We make that process known to them at the beginning, and that is how we have done it.

**Mr MITCHELL:** If I could also just add, the other important thing to note is that when an inspector goes to a workplace, it is quite a public event. Often they will go in a high-vis shirt that says WorkSafe on the back. So when an inspector goes to a workplace, people at the workplace can obviously see what they are doing.

**Hon JACQUI BOYDELL:** Yes. I accept that; thank you. I was probably more considering when a complainant has called the call centre on an issue and then a decision is made not to investigate. I would suggest to you that some of the evidence that the committee is hearing is that people never know what has happened after they lodge a complaint. They do not know what the follow-up has been. The reason for my question was to confirm that you do not get back to people and tell them what you have done unless they call back at some point.

**Hon KYLE MCGINN:** To add to that response, the concern I have as well is about regional areas where inspectors have been withdrawn and an increasing number of complaints are being made over the phone. Do you feel as though you are keeping OHS education going by not giving that feedback? I highly doubt that visits by WorkSafe inspectors wearing high-vis shirts with WorkSafe on the back are happening as regularly in regional areas as they are in the metro areas.

**Mr MITCHELL:** WorkSafe puts a lot of time and effort into educating people about workplace safety. Visits to workplaces is just one of those aspects.

**The CHAIR:** This will probably need to be a question on notice, so I will number it question on notice 4. In relation to serious and fatal incidents, for each of the last 10 financial years and for each investigation initiated in each of the last 10 financial years, can you provide the average time from the date of the incident to the completion of the investigation, and the longest time from the date of the incident to the completion of the investigation? Also, for each investigation initiated in each of those years, can you indicate whether the investigation took longer than 12 months to complete; and, if so, the length of time taken?

**Mr RIDGE:** I think a lot of that information has been provided in answers to previous questions—in the tables.

**The CHAIR:** I do not think it would have been provided in the format that is being requested.

**Ms NORTH:** It would probably not have been, no.

**The CHAIR:** This will be question on notice 5. For each of the last 10 financial years and for each investigation initiated in each of those years, what is the average length of time from the completion of the investigation to the date the brief is provided to the legal team; and what is the longest time that has taken?

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**Ms NORTH:** I think we might have provided that information.

**The CHAIR:** Perhaps we could take it as a question on notice, and, if it has already been provided, you can just refer to the fact that it has already been provided.

**Ms NORTH:** It is number 49 from the previous information.

**The CHAIR:** I think my next question will also need to be a question on notice. For each of the last 10 financial years and for each investigation initiated in each of those years, what was the average length of time from receipt of the brief to provision of advice on whether there was sufficient evidence for a prosecution; and what was the longest period of time that took? Question on notice 7 is, for each of the last 10 financial years, for each investigation initiated in each of those years, what was the average length of time from issuing a charge to either a conviction or acquittal, and what was the longest period of time taken, so that we can get an understanding of whether there is a problem with the court process as well?

**Ms NORTH:** I am pretty sure we have that data in this file as well, but we can refer that number.

**The CHAIR:** Are there any limitations to the data that WorkSafe can provide with WISE; and, if so, what are those limitations?

**Ms NORTH:** I am sure there are.

**The CHAIR:** Just to give some context, at page 53 there is comment about some criticisms that have been received about WISE. We are trying to understand the nature of those criticisms and the limitations of WISE.

**Ms NORTH:** It is a system that we have had in place for some years, and we have refined it largely for operational purposes. We are sometimes asked questions by others, and we cannot always anticipate what they will be, and WISE has not been designed to generate reports on all matters. For example, during this process, we were asked about enforcement work done by different regional offices in the state, and we have not set up WISE to actually do that over a long period of time. We could do it for a current financial year, but it has not been designed to capture that information over a long period of time. That is an example. It is really hard to anticipate all the things that we might be asked, and, from time to time, we find it does not cater for it well.

**The CHAIR:** You mentioned earlier that WorkSafe does notify a complainant regarding the outcome of a complaint. Did I understand that correctly?

**Ms NORTH:** On request, when they contact us, they can get some advice about whether or not we are investigating, we have completed an investigation, or an investigation is in progress.

**The CHAIR:** Why would a standard letter not go out from WorkSafe to say that in relation to a person's complaint, you have investigated it and a decision has been made not to take it any further?

[11.10 am]

**Ms NORTH:** Sorry; this is one where we have investigated?

**The CHAIR:** Yes. Let us deal with where you have investigated.

**Ms NORTH:** No. Again, if we have investigated, we do not get back to the complainant on a routine basis. If we have decided not to investigate, I am aware that, with the psychosocial matters, because of their particular nature, we do usually write to the complainant and explain that we are not progressing with a matter in those psychosocial hazard areas. But when we have completed an investigation, we do not normally get back to the complainant. If they are at the workplace, they will be aware of any visits and actions arising; and, if they are not at the workplace, we have advised them that they need to contact us.

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**The CHAIR:** WorkSafe's submission refers to the various activities recorded by WorkSafe inspectors during an investigation. Could you please provide the committee with a breakdown of the number recorded in WISE for each activity for the period from 2007–08 to 2016–17?

**Ms NORTH:** So this is the number of each activity in all of the investigations, so in terms of things like visits, phone calls, meetings et cetera. Is that the nature of your question?

**The CHAIR:** Yes. I understand that the activities that can be selected are visit, inspection, meeting, phone, correspondence, support, research.

**Ms NORTH:** So the totals for that?

**The CHAIR:** If you could give a breakdown of the number recorded in WISE for each of those activities, and we will take that as question on notice 8.

**Mr RIDGE:** That is specifically related to investigations?

**The CHAIR:** Yes.

**Mr RIDGE:** Because a lot of those categories will be other activities as well. This is related to investigations of complaints?

**The CHAIR:** Yes.

Page 53 of the WorkSafe submission refers to a recent audit of the quality investigation system in WISE which was undertaken by the Office of the Auditor General. Could you provide the committee with a copy of the audit and its findings? We will take that as question on notice 9.

What is the legal basis for not providing external parties with information regarding the status of an investigation? I think you touched on that towards the end of the last hearing, so perhaps you could expand on that.

**Ms NORTH:** We can give a status, as in the status is under investigation or not to be investigated et cetera. So we can give a status. In terms of where it comes into getting documents and things like that, there can be commercial interests at a workplace. There can be sensitive matters that an inspector has investigated at a workplace, so in terms of getting documents, we believe it is appropriate to use the freedom of information process where we have a trained officer who can determine what is something that can be fairly released through that process or what parts might need to be redacted for individual confidentiality or commercial confidentiality.

**The CHAIR:** I am just going to refer to a media release, and I might just ask the clerk to provide you with a copy of that. It is a media release dated 17 February 2017 regarding the death of a truck driver. Can I check: is it a media release or media story? It is a media story in relation to a truck driver, Clayton Miller, and WorkSafe are reported in that story as stating that the law states that three years is a timely investigation. Would you be able to point the committee to where that is provided in the law?

**Ms NORTH:** I do not think the law uses that term. The law provides a statute for us to complete investigations, which is a three-year statute. So three years is legally acceptable and the courts will accept it. I do not think the term "timely" is used.

**The CHAIR:** Is that the statute of limitations?

**Ms NORTH:** Yes.

**The CHAIR:** I understand that it is a policy of WorkSafe that investigations be completed within 12 months of the first case management meeting, and any extensions need to be agreed by the director of the case management team, who needs to inform the commissioner that that is the case.

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Are you able to advise the committee whether most investigations are being completed within that 12-month policy period?

**Ms NORTH:** I think we would need to get some statistics to give you an accurate answer on that.

**The CHAIR:** Can we take that as question on notice 10? For the last 10 years for each investigation that that has been initiated, in each of those 10 years was that investigation completed within the 12 months; and, if not, what were the reasons for the delay?

In attachment 5.8 of the document provided by WorkSafe at the beginning of the inquiry, there is a reference to a response policy, but that has not been provided to the committee. Would you be able to provide that to the committee, please? I will take that as question on notice 11.

During investigations of fatalities, are the next of kin kept regularly updated about what is happening with the investigation?

**Ms NORTH:** Yes.

**The CHAIR:** How regularly are they being kept up to date?

**Ms NORTH:** I understand it is as significant issues occur and it is in discussion with them about, basically, when things are moved along that they are updated. They have also been given a contact within WorkSafe, so that if they have got queries in between times, they can make contact themselves.

**The CHAIR:** I am not clear about what that means. Does that mean that if an investigation is started, the next point of contact with the next of kin will be when a decision is made whether or not to prosecute?

**Ms NORTH:** No; it would be done sooner than that. We make decisions to continue doing it as well. I do not have a time frame, but it would be reasonably frequently, and if they feel that they are not up to date or if they feel that they require an update, they have been given someone's direct contact so they can get in touch.

**The CHAIR:** What level of information would be provided to the next of kin during the investigation process?

**Ms NORTH:** Basically, while we are still investigating it, usually if it is a serious and fatal matter, we are still doing that with a view to seeing if there is a possibility of prosecuting, so we would be advising them that there is that possibility. The other thing that we need to advise people is just around people are usually new to this process and it is about explaining what the law is for and what it does, and sometimes there is concern about things like the level of fine affecting the seriousness and that kind of thing. We also explain that things like the fine are set through the court process and not something that we influence directly. We would just let them know while we are progressing towards a possible prosecution that we are continuing to get that evidence. If we have got any estimates of time frames, we may provide an estimate.

**The CHAIR:** Just to clarify, it is standard practice for the next of kin to be given the name of a contact person and a phone number to contact.

**Ms NORTH:** Yes.

**The CHAIR:** After an improvement notice or prohibition notice has been issued, what procedure does WorkSafe have to ensure that notices are complied with?

**Ms NORTH:** With a prohibition notice, a prohibition notice requires that a particular activity is stopped at a workplace because it presents a serious and imminent risk and the inspector remains on site until it is stopped, so then we know at that point that it has been complied with. With an

improvement notice, an improvement notice is agreed and they are given a period of time to comply. So the form for an improvement notice actually contains a part where a person at the workplace who knows about the status of that matter can sign off when the matter has been completed and they are required to notify the WorkSafe commissioner that they have addressed the matter. We receive that information and we enter that into our system. Where we have not received that back by the date on the notice, we generate some letters to follow up with people at the workplace and remind them that we have not heard from them on this matter. Where we still have not heard from them on the matter, it is given to an inspector to revisit and check it. In addition to those ones where we are not notified, on the ones where we have been notified, our WISE software randomly selects some of those ones for an inspector to go back. That is where they have signed off that it has been done and we are randomly checking a number of those.

[11.20 am]

**The CHAIR:** So the improvement notice system actually is largely dependent on self-regulation?

**Ms NORTH:** Yes. It goes in the system, and we can always look at it in the future if we need to or if any other issues are raised about it. It is in the system as to when it was issued and who signed off that it has been done and so forth, and we keep that in the system so we can look at it if needed. But there are a large number of people where we do rely on somebody having signed that off as being an assurance that something has been done with that.

**The CHAIR:** Would an improvement notice be issued in the case of a safety breach that could result in a fall from height?

**Ms NORTH:** If it is a serious and imminent risk, where let us say there are people working at that height at that time, they are near an edge and they do not have a fall injury prevention system in place, or they are about to go up and do that in the opinion of an inspector, then the prohibition notice would be suitable. If it is not imminent and is something where they might say, "Oh, look, occasionally we'll do that; we're not planning to do it soon; we're not going to do that for some months" et cetera, the inspector might think, "Right, that doesn't meet the criteria for imminence, so I cannot write a prohibition notice and I'll write an improvement notice on that matter." They have to use the framework of the law as it applies to the two types of notice.

**The CHAIR:** If an improvement notice has been issued for a breach that could result in a fall from height, is there not some process in place at WorkSafe where you would immediately check on whether that improvement notice has been complied with within the timeframe specified?

**Ms NORTH:** The framework for checking is the same for all improvement notices; it is not dependent on a hazard.

**The CHAIR:** So it may or may not be followed up, depending on whether it is picked up?

**Ms NORTH:** Yes; it is the same as any other improvement notice.

**Hon KYLE McGINN:** Just to pick up on what you were saying before about prohibition notices—that is, it gets corrected and someone signs off on it—is there some way within your system where if a further complaint is made, either via the hotline or the internet, about the same site with the same breach, you can pick up on that and respond?

**Ms NORTH:** I think so. Firstly, we do not sign off on the prohibition notice; we have a signing off —

**Hon KYLE McGINN:** Sorry—so the site does?

**Ms NORTH:** Yes. Well, no-one actually signs a prohibition notice. The inspector has to stay there until that activity ceases. So there is no requirement for that to be signed off as such. The inspector will just stay there until they stop doing it, because it is something that must stop.

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**Hon KYLE McGINN:** Do they have to give a commitment that they will not do that again when the inspector leaves?

**Ms NORTH:** I suppose all the notices have an educational component to them, and it is understood that with a prohibition notice, that activity is not permitted—it is prohibited—and that certain controls need to be put in place in order to do that safely. I think there is a very strong discussion, and it is normally very clear, I think, to the people receiving a prohibition notice about what is acceptable and what is not. In terms of the second part of the question about the system for finding out about the same type of breach at the same place, before an inspector does an inspection, it is practice to check WISE to check the history of that workplace. You can check the history in terms of the address, which is useful particularly for things like construction sites where you might have a lot of different entities working, so rather than checking each entity, you can say, “Okay, what’s going on at that address?” You can also check it by the entity, so by the company, or it might be by an individual, and you can see what actions have occurred with them recently. If they have had a notice or a prohibition notice for, let us say, working at height, and we have a complaint about the same entity, then we have that as background before we go out, because that can inform how it is handled on that occasion.

**Hon KYLE McGINN:** I do not think you have answered my question. If the inspector has already gone there and done that and left the site—so, an inspection has been done recently—and another complaint is made that they are doing the same as what they have always been doing and they are in breach, is there a way that it is highlighted to ensure WorkSafe goes back there?

**Ms NORTH:** It would be allocated to an inspector and the inspector is expected to look on the system to see the history before they go. If the history is that they have had this problem, then the inspector getting the next job is expected to be aware of that before they go to the next job.

**Hon KYLE McGINN:** So it will only be captured if they go in to inspect that site?

**Ms NORTH:** As I said, it can be by site or it can be by entity. The inspector can look it up by address, if they have a complaint at this address, and they can look it up by the entity. So, if the complaint is against a particular company, they can say, “Right, what’s the history of that particular company over a period of time”, and they can look that up. I would expect the inspector to be informed of that history when they go and do a subsequent job.

**Hon KYLE McGINN:** I might be asking the question wrongly.

**The CHAIR:** Can I perhaps try to rephrase that?

**Hon KYLE McGINN:** Please.

**The CHAIR:** At the time a complaint is received, my understanding is that it goes to the team leader, and the team leader makes the decision about whether or not to investigate. I suppose the question is: if a second complaint is received about the same type of breach to one where a prohibition notice has been issued previously, the team leader would be able to access that information at the time that that second complaint was received and see that a previous complaint had been received for the same sort of breach and that a prohibition notice had been put in place and that the problem was obviously corrected while the inspector was there and the prohibition notice was lifted. If there was then another complaint for exactly the same type of breach, would that prompt the team leader to send an inspector there immediately?

**Ms NORTH:** Yes, and the team manager certainly has full access to that information as well, and because the team manager takes on matters from the same industry, it is probably the same team manager who saw the earlier one, so, again, they probably are aware of it if it is not too distant in time. It does inform our approach. If we know that we have recently done a prohibition notice on a

matter and the complaint is on a similar matter, it is something that we would use to inform the approach the second time.

**Hon JACQUI BOYDELL:** So, the team manager gets the second prohibition notice. How do they become aware of that? Does WISE generate a daily report where you can see that a situation is flagged and so the team manager gets a report from WISE and says, "Okay, we've had two incidents reported; this needs to be escalated"?

**Ms NORTH:** No, WISE does not flag repeated complaints.

**Hon JACQUI BOYDELL:** Do you think it would make it easier if it did?

**Ms NORTH:** Not necessarily, because some entities operate over a period of time, and the larger the entity, I suppose, they are operating in more places with more people, so it might just be for that reason. What I think is most relevant is for the inspector to be aware, because they are the ones who have to deal with the particular visit they are doing. To be aware of what are the most appropriate enforcement options, they need to be aware of the history at the workplace. I think that is the person who it is most important that they are aware of it.

**Hon JACQUI BOYDELL:** Can you just explain how, when more than one incident is recorded on a prohibition notice —

**Ms NORTH:** You just look up the address; you look up where you are going. Before they do the job, because we are fairly mobile with the laptop, whether they are in the office and about to go to the job or whether they are in the field and about to go to the job, they can access WISE on the system.

**Hon JACQUI BOYDELL:** I think the question is: how do they get to know to do the job?

**The CHAIR:** As I understand it, the complaint is lodged by the call centre, and the complaint is then sent across to the team leader, and the team leader is notified of that complaint and then needs to make an assessment about whether or not to investigate, and if a decision is made to investigate, it then gets allocated to an inspector.

**Ms NORTH:** Yes.

**Hon JACQUI BOYDELL:** Yes, so to go back to the original question, if there is more than one incident on the same site with the same employer and the same complaint is lodged, how does the team manager know that, without having to manually go through the prohibition notices and work out that there are two, to then go to the inspector?

**Ms NORTH:** Just to clarify, have we got two complaints that are coming in on one matter at one point in time, or have we had one complaint with a notice and then a period of time and then another complaint?

**Hon JACQUI BOYDELL:** I think both.

**Ms NORTH:** Okay. If we get two complaints that come in at the same time, again, they will go to the same team manager and they will go, "Okay, I think this is about the same thing", and what we do is we send them to the same inspector and say, "Can you check out both of these things? They look really similar." We then tie those to one investigation if that is appropriate and they are, indeed, about the same thing. Where they are separated in time, it is a matter of having a look at WISE and at the history relevant to the workplace or the entity. It is not something that WISE will flag and say —

**Hon JACQUI BOYDELL:** They are manually doing it?

**Ms NORTH:** Yes, it is a search.

[11.30 am]

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**Hon JACQUI BOYDELL:** That is all I wanted to get, thank you.

**The CHAIR:** But that is not a complicated search—it is just a matter of keying in the subject matter?

**Ms NORTH:** Yes, you put in the entity and a date range, or you put in the address and a date range, and it is up.

**The CHAIR:** Do members have any more questions on this issue?

**Hon DARREN WEST:** For me, that begs the question: is there a flagging system, or should there be a flagging system, so that you know if you get repeat complaints about a job? I guess, like a lot of circles, it is probably a fairly small school of people who know. Inspectors know, but it seems a little bit strange to me that if you are getting multiple complaints from the same site it would not set off some alarm in your system and perhaps prompt more likelihood of an investigation?

**Ms NORTH:** The team manager would be well aware if we were getting a flurry of things on a particular site. They would be well aware.

**Hon KYLE MCGINN:** I am more concerned about if it is after a prohibition notice—so, it is not a prosecution, and there has been no financial loss to the employer—but then there is a complaint about the same breach in prohibition, and that is not flagged. I cannot understand how that is going to deter an employer if immediately following a prohibition notice there is a complaint about the same issue, but WorkSafe is not being flagged to it.

**Ms NORTH:** Again, I think immediately following that, the team manager would be aware and the inspector that is doing it will know, having looked at the system, what the history is, and they will know that this has been issued. I do not feel that we are unaware when that has happened.

**Hon KYLE MCGINN:** I understand how it is targeted to some employers to do inspections, and for some reason you go to some employers. But after you have done an inspection, and there is no intention to go back to that site until the next time it comes up in the process, if WorkSafe receives a complaint about that breach in prohibition, would WorkSafe then re-attend that site, because it is known to have been done before?

**Ms NORTH:** You are giving an example where we have had a prohibition notice, and now we have a complaint that there is noncompliance on the same matter. I would definitely have flagged that for a person to go and visit.

**Hon KYLE MCGINN:** So you would be very confident that, if there was a complaint about the same prohibition notice, WorkSafe would attend the site?

**Ms NORTH:** It would obviously have to be that the breach had re-occurred and that they had started to do that activity again, but in those circumstances certainly I would allocate an inspector to visit that, yes.

**The CHAIR:** In the case where a complaint is received and the team leader makes a decision and says, “All our inspectors are busy; they have a backlog of investigations of complaints they need to look into. We don’t really have the resources. So I’ll just pick up the phone and talk to the principal contractor on that site to raise the issue with them and get them to deal with it.” They have a telephone conversation, and the principal contractor says to you, “Look, I’ll sort it”, and they leave it at that. If there is then a subsequent complaint on a similar or the same type of breach, will the team leader then definitely send a WorkSafe inspector to that site?

**Ms NORTH:** It is hard to be definite, but I would certainly say that you would have an increasing likelihood.

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**Hon KYLE McGINN:** I think, just for clarification—we touched on this last time—there is no number of breaches or prohibition notices that would prompt WorkSafe to prosecute?

**Ms NORTH:** In our prosecutions policy, we explain some of the factors that go into making that decision, and one of the factors that goes into making that decision is where issuing notices has not been found to improve compliance. So, if you have an entity where you have given them notices on one or more occasions and it has not assisted them in becoming compliant, then that is one of the factors that we will use in determining whether it is appropriate to prosecute. There certainly have been occasions where we have issued prohibition notices and then noncompliance has continued, and it has eventuated in prosecution.

**Hon KYLE McGINN:** In that circumstance, would you agree that that is the case not just for a site but for the employer as a whole? As you said, they start up and they go to another site and it starts again. Do they then restart according to how many prohibitions they get at that site, or is it taken on board that they have been doing this breach across many sites, so you do not just restart it at that new site?

**Ms NORTH:** The notice is issued to a legal entity, so it might be a business or a proprietary limited company, and we expect that the business at that level is aware of notices that have been issued to that entity. If they are a large business and they are running that proprietary limited business at a number of locations, we expect that they would have a system in place to inform other sites. Let us say they are running a series of shops under a legal entity, then clearly if they are getting a notice about the problem at one shop, we would expect them to be sharing that information so that they can become compliant at the other sites, because we would consider that we have already issued that entity a notice. Let us say we then went to another site. From our point of view, it is not starting from square one. That entity is aware of that issue.

**Hon KYLE McGINN:** If an entity was known to have a history of breaches of prohibition notices, and it started a new site and it was found again to be happening, would you then prosecute? I am failing to understand how the prosecution goes forward. Do we have a copy of the prosecutions policy?

**Ms NORTH:** I think so.

**Mr MITCHELL:** It is in one of the attachments—I do not know which one, but it is there.

**Ms NORTH:** That is certainly one of the factors. The fact that they have had notices before, presumably on a similar matter, is one of the factors that goes into making a decision about prosecution. The fact that they have now had the breach at a different location is not a material factor if the same entity has had a similar notice before. That is material.

**The CHAIR:** Can I just indicate at this point that the prosecutions policy is an internal document, and we would probably need to go into private session if we want to continue asking questions about that policy, which I am happy to do. I just seek members' indication of whether we want to proceed with further questioning on the prosecutions policy at this point in time, or leave that to the next time we meet with WorkSafe, because I think we need to go into private session on that. I will adjourn the meeting so that the committee can discuss this matter, and we will call you shortly once we have had an opportunity to consider this matter.

**Proceedings suspended from 11.37 to 11.43 am**

**The CHAIR:** The hearing has now resumed.

**Mr RIDGE:** Madam Chair, my colleagues inform me that the prosecution policy is a web document and is therefore public. That is what I am told.

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**The CHAIR:** In any event, the committee has resolved that we would like to have an opportunity to explore that further but we will do so on another occasion because we would like an opportunity to review it in a bit more detail ourselves before we go too far down that path.

Hon Kyle McGinn had a question that he wanted to get some clarification on.

**Hon KYLE McGINN:** Yes, just in the context of a complaint that is not being investigated. If a union made that complaint and then called back to get feedback, does the team manager then tell them why the investigation is not going further?

**Ms NORTH:** I would be thinking it would be pretty similar to any party that would ring up with their complaint reference number. They could speak to someone about why it was not being investigated.

**Hon KYLE McGINN:** I suppose it comes back to a question I asked last time about feedback to unions, to which you responded that you had legal advice that the act restricted you from doing that.

**Ms NORTH:** At a high level, to say something is under investigation, it has been investigated or it is not for investigation, there is a certain kind of high level of information that we are able to provide. Then we go to freedom of information if people are after documents or details and they can then talk through with the freedom of information officer what documents may be available.

**The CHAIR:** In the case where a decision has been made to investigate a matter and a complainant calls back to find out the status of their complaint and they are put through to the team manager and the manager says, “The matter is being investigated”, is that all the information that the manager will give the complainant?

**Ms NORTH:** Yes, that is normally all they would be given at that stage.

**The CHAIR:** Two months later, a further phone call is made and the matter is still being investigated. Is that all the information that would be given?

**Ms NORTH:** If they have a knowledge of when they think it might be finished, we might say, “We expect it to be finished around this time if you’d like to call back then.” Otherwise, while things are under investigation, we do not say much about them.

**The CHAIR:** Six months later, a further phone call from the same complaint saying, “What is the status of the investigation?” If it is still being investigated, what level of information are team managers permitted to provide?

**Ms NORTH:** If it is still being investigated at six months, I think they would just be told it is under investigation.

**The CHAIR:** And at 12 months, a further phone call saying, “Where is the investigation at?” and if it is still being investigated, what information is the team manager permitted to disclose at that point?

**Ms NORTH:** It does not change. Basically, while it is under investigation, we will say that it is under investigation.

**The CHAIR:** Are the team managers instructed to say, “It is under investigation and if you want further information, lodge an FOI”?

**Ms NORTH:** Yes, because usually the fact that something is under investigation does not answer the person’s questions, so that is when we explain about the freedom of information process and they can then speak to an officer. They will confirm that it is under investigation and they will say, “At this point, there are certain documents or information that may be available under freedom of information.” They would probably also explain that if they applied at this time, that is what they could potentially have access to but as it is under investigation, further documents or further

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information may be added as this progresses and if they wish to get all of them under one application, they could call back at that time and do it that way.

**The CHAIR:** That response surprises me because FOI officers, under the act, do not provide that assistance. They tell anybody who contacts them, “If you want to lodge an FOI application, you can lodge it. These are the requirements under the act” and they leave it at that. You then lodge the application and then you often get told to narrow the scope of the investigation if the scope is quite broad, or to specifically identify the document that you are seeking access to, which can be very difficult when you do not know the name of the document. It makes it very difficult to identify the specific document. I am a bit curious as to your response that the FOI officers at WorkSafe actually provide advice on what information can be accessed at any point in time.

**Ms NORTH:** Yes, that is my understanding. They are in a different section to me but I understand that they do basically provide some assistance to people as part of that process.

**The CHAIR:** So they would identify what documents are available to a person who was seeking to access documents?

[11.50 am]

**Ms NORTH:** Yes. Firstly, they assist with confirming whether the matter is still under investigation or not because that affects whether a person needs to put in one or maybe two claims. If they put in one and they do not get all the documents and they later want the rest, they have to put in two, so they talk them through that and explain that to them. They talk to them about what is currently available. In some cases—say, for example, a matter that we did not investigate—all a person might get back might be their own complaint. To explain that to them and say, “You can put this in but all you will get back is your complaint because we have not investigated it”, they can make that decision.

**The CHAIR:** Is it not the case that if an FOI application was received to access documents during an investigation before a decision was made in relation to whether or not to proceed with prosecution and whether or not there was a breach under the act or the regulations, all those documents would be exempt documents under schedule 1 of the FOI act because they were documents that were brought into existence for the specific purposes of the decision-maker making the decision?

**Ms NORTH:** Our advice section is managed by our director of legal services. That person would make sure that if there are any sensitivities around something that is potentially going to be a prosecution, if that is the case, we would not release them but if there are any documents that do not fall into that category, again, that person would be aware.

**The CHAIR:** Can you take this as question on notice 12. Can you advise the committee what documents would be available under an FOI application while an investigation is pending other than the initial complaint?

**Ms NORTH:** One category might be an investigation that might not be a potential prosecution. It might be one of our routine investigations of either a proactive or a reactive nature and we may not be intending to put that forward as a potential prosecution. So, they might be under investigation but we are not necessarily taking it further.

**The CHAIR:** Yes, but if you are investigating a matter, you are investigating whether there has been a breach or not under the act and the information that you gather during the course of the investigation is for the purposes of making a decision as to whether or not there is a breach. That is a decision by a decision-making body under the schedule 1 exemption to the act. I find it hard to understand what information would be available to an applicant at that point in time during an investigation before that decision was made. So, I would just like to have some clarification through

question on notice 12 as to what documents one could access through a freedom of information application made while the investigation is pending.

**Hon KYLE McGINN:** Just picking up on the comments you made earlier in respect of there might be a time where someone goes to apply for a freedom of information on something that is not being investigated and the only thing that would be there would be their complaint. How would that situation come about that there would not be a reason there for why the investigation has not gone forward, not saying that the team manager had to purvey that, but would it not be on record to grab through freedom of information why WorkSafe has made the decision not to investigate a matter?

**Ms NORTH:** What you would get is you would get the complaint as it shows on WISE. So there is some basic information about the entity that they are making the complaint about. There is the reason that they have put forward for the complaint and then on that screen, if you like, within the software, there is a category that says “not for investigation”. So that would have been selected. And then there is a drop-down with some reasons as to why it is not investigated and one of those reasons would have been selected. It is kind of a pre-prepared reason, if you like. There is only a small number of categories. So, they will not get a lot of context about the reason but they will get some. But that is all they will get. Sorry; I call that as part of the complaint because it sits on that within the system—the complaint, the decision about not investigating and a selection from that drop-down as to the reason—and that is what would be available.

**Hon KYLE McGINN:** Would the reasons also provide in there the policy or the committee that is making that decision that it will not be investigated or are you just saying it is a standard response—not investigating because of such and such? Does it refer to an internal policy or committee that makes that decision?

**Ms NORTH:** No, it does not. That decision is made by a team manager and it just provides some of the reasons that we might not investigate and one of those will be selected.

**The CHAIR:** So it is a drop box that is in the WISE system and they simply tick off the most relevant box.

**Hon KYLE McGINN:** And then the person who made that decision is the team manager solely?

**Ms NORTH:** Yes.

**Hon KYLE McGINN:** Not subject to policies?

**Ms NORTH:** Yes, subject to—there is a whole heap of things—basically our operational frameworks and those kinds of reasons for not investigating and our processes of prioritisation. But, yes, it is down to the team manager to make that decision.

**Hon KYLE McGINN:** Is it possible to see the reasons that are in that drop box?

**Ms NORTH:** I believe we have provided them.

**Hon KYLE McGINN:** I will have a look.

**Ms NORTH:** I think they are in this first submission document.

**The CHAIR:** We might just move along here. The committee is interested to get an understanding of the workload that an inspector would carry at any point in time. So, how many cases could an inspector have at any point in time?

**Ms NORTH:** There is a big variety of things that fall under the category of cases or investigations. So, if a person was working on something that was a potential prosecution of a serious and fatal matter and it was a complex one, then they might only be dealing with that matter and maybe potentially

one or two other smaller matters that might occur during that time. It also depends on the phase of the investigation. So, in the beginning and the middle phase, they are perhaps more focused on that but towards the end of it there might only be a smaller a number of tasks left so they might pick up a couple of other jobs as well. If, however, an inspector is not doing a matter of that complexity and that scope, they might have on hand anything, I suppose, between a couple of jobs up to a person that has been given quite a few jobs; they might have up to, say, 10, including some that have come in that they have not started and some that they are working on and some that might be in the tail end where they are just waiting for a little bit of information to finalise them.

**The CHAIR:** Is there a policy in place at WorkSafe for the maximum number of cases that an inspector can have at any point in time?

**Ms NORTH:** There is not a formal policy on that because there is a big variety of amounts of work that can be involved. Some of those matters might be just a straightforward visit that can be done in a short space of time. So, you can obviously cope with a lot more of those than you can of the large-scope jobs. So, it is really difficult to compare all the jobs in a fair way.

**The CHAIR:** If an inspector had visited a site, issued an improvement notice and was waiting to receive the clearance on the improvement notice, would that still be listed as a case that was being managed by the inspector?

**Ms NORTH:** No, once the inspector has finished their actions at the workplace, they have visited, they have issued notices, if there is nothing else they need to do at that time, they will what we call “complete it” on WISE. So the job sitting there is a completed job. The notice of compliance slip kind of happens in the background. We have got administrative staff that, basically, put the details in when we receive the details of it being completed by the employer; and, if it is not received in that time frame, then there are automatic systems to escalate that. If they do not respond to the reminder letters—which are, again, kind of automatically handled—basically, a new job comes to the inspector and it says, “You have got a noncompliance verification to check on” and it comes in as another separate job for them to go and do.

**The CHAIR:** What is the policy surrounding the improvement notices? So an improvement notice is issued. They have got a period of time with which to comply and if that compliance has not been implemented within that time period, how much time is allowed to run before some action is taken on the noncompliance?

**Ms NORTH:** I do not use that all that much because it is automated, but my understanding is that there is a letter that goes out within a day or two of the date passing, the first reminder letter.

**The CHAIR:** That is all handled electronically?

**Ms NORTH:** Our admin people dispatch the correspondence, but WISE will generate the letters that are required, itself. Yes, within a day or two of the date passing, the first letter, then I think in two weeks they get a second letter, and I think possibly one or two weeks, they get a third letter sent. At the third letter stage, the inspector is notified at the same time and a follow-up visit generated through WISE.

[12 noon]

**The CHAIR:** Could you take that as question on notice 13, just to clarify with us those time frames that you have spoken about off the top your head, so that the committee is clear exactly what those time frames are. It is unreasonable to put you on the spot to recall all of those time frames, and we want to make sure that we have it right.

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Do you have any record of how frequently an inspector is being asked to do a return visit to a site due to noncompliance with those follow-up letters in relation to improvement notices?

**Ms NORTH:** It is probably something we could get out of the system.

**The CHAIR:** Could you provide that information for us, on an annual basis for the last five years, how frequently an inspector has had to revisit a site because of non-certification of compliance with an improvement notice—is that the correct language?

How many investigations into fatalities does each inspection team work on at any time?

**Ms NORTH:** We have just done an organisational restructure within operations. All of the serious and fatal investigations are going to be done in the one directorate now. Prior to that, it was really a bit dependent on the rate of fatalities in the relevant industry because we are set up for industry teams. If you had a number of fatalities occurring in the transport industry, for example, that team would be handling them, so it would depend on what was going on.

**The CHAIR:** Does WorkSafe record the total number of suicides and attempted suicides on work sites or workplaces?

**Ms NORTH:** No.

**The CHAIR:** Is there a reason for that?

**Ms NORTH:** We do not generally get the data. We are advised of some suicides. Where police attending might believe there is a work-related factor, then we might be informed of that. Some employers may report those to us, but they may not all come to us.

**The CHAIR:** Why is there not a requirement that any suicide or attempted suicide at a workplace be reported to WorkSafe?

**Ms NORTH:** I think the legislation has work relatedness as a factor. Of course, a suicide may or may not be work related.

**The CHAIR:** Is it not work related if it occurred at a workplace?

**Ms NORTH:** In terms of the rationale behind it, not necessarily.

**The CHAIR:** But there is a nexus with the fact that it has actually occurred at the workplace.

**Ms NORTH:** Yes, it is location-wise, but in terms of the reason it may or may not be.

**Hon KYLE McGINN:** Should that not be investigated to find out the reason to do an investigation, like any other fatality that happens at a workplace?

**Ms NORTH:** If it is reported to us that there is some concern about that, then that is something we would make inquiries into, but it is not a default setting, if you like, that they all are reported and all investigated.

**Hon KYLE McGINN:** Sorry, I am failing to understand. A fatality at the workplace that is under WorkSafe's jurisdiction, up until you have investigated how can you deem there is no nexus?

**Ms NORTH:** A fatality is there for work-related accidents, basically. Those kinds of fatalities are the ones that are reportable. There are many fatalities that happen at workplaces that are not within our jurisdiction. We cover aged care; we cover hospitals. There are a lot of fatalities that are not work related that occur at the workplaces. Where they are thought to be due to work-related accidents, they are reported to WorkSafe for investigation.

**The CHAIR:** Would a heart attack be reported to WorkSafe?

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**Ms NORTH:** It sometimes is, but it is not necessarily—a natural cause of death is not investigated by us. When it is confirmed as natural causes, we would not investigate it further. Employers, if they are not sure initially of the cause, may report it to us just to make sure that if it turns out there were any other causal factors, that they had done their duty in terms of reporting. But when it is confirmed as natural causes, we would not investigate further.

**The CHAIR:** It is left to the employer's discretion as to whether or not they notify WorkSafe in relation to what may be a natural cause of death, or a suicide or an attempted suicide?

**Ms NORTH:** They have a duty to report the work-related ones to us. They make the decisions about how they do that. If they feel that a matter is natural causes, then it is not reportable. That obviously can be confirmed when the medical information is available.

**The CHAIR:** By that stage the information or the evidence could be gone as well. If we wanted all suicides and attempted suicides at a workplace to be reported to WorkSafe, that would require legislative change to specifically specify that that was required?

**Ms NORTH:** I believe so.

**Hon JACQUI BOYDELL:** I have some questions around this issue, particularly in relation to FIFO camps. This is a grey area and probably legislatively not in your jurisdiction. However, there is growing evidence by a number of bodies that suicides at work camps on FIFO sites probably are related to the work environment. Making the determination is the difficult bit, as to whether WorkSafe gets involved. Whether that is a police investigation—is that what you are saying? Who makes that investigation to determine whether that suicide is work related or not?

**Ms NORTH:** We have sometimes been advised by police where they have had that concern. I suppose police are generally going to be responding to those suicides. That is where we have sometimes been advised of that concern. It is possible that other parties could raise that with us as well. They could contact us if they had any information about the reasons for the suicide. Obviously with FIFO camps, as you said, the other thing would be to clarify whether it was a WorkSafe jurisdiction because some of them are and some of them are not.

**The CHAIR:** Has WorkSafe investigated the suicides of paramedics and volunteers with St John Ambulance?

**Ms NORTH:** I believe we have done some work in terms of looking at psychosocial hazards there. Whether we have looked at specific cases, I cannot say.

**The CHAIR:** Can you take that as question on notice 15 and get back to the committee in relation to what, if any, suicides of St John Ambulance paramedics and volunteers over the past 10 years have been investigated by WorkSafe?

**Hon JACQUI BOYDELL:** Could we ask the same in relation to FIFO work camps?

**The CHAIR:** Yes. That will be question on notice 16 in relation to FIFO workers on work camps.

Do you want that distinguished between if it happens at accommodation and if it happens at the workplace?

**Hon JACQUI BOYDELL:** Yes, please.

**The CHAIR:** I understand there is a distinction. If it happens at the accommodation, it is not considered the workplace, but if it happens at the workplace then there is a question about the discretion applying as to whether or not a referral is made to WorkSafe. That is the reason for the distinction.

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Would any of those be referred to WorkSafe or would they come under one of the different investigatory bodies in terms of WorkSafe's jurisdiction?

**Ms NORTH:** FIFO it is possible, because some residential facilities may come under our jurisdiction but others would not.

**Hon KYLE McGINN:** Just to get some clarification on that: a camp site where workers are staying off shift on their roster—that is not inside the mine site gates, so it is across a road, separate—would that be a WorkSafe jurisdiction for the workers in that work camp who are providing the cooking, cleaning, laundry services et cetera? Would that be a WorkSafe jurisdiction?

**Ms NORTH:** I think potentially that could be. Is that everyone else's understanding?

**Mr RIDGE:** Yes, potentially.

**Hon KYLE McGINN:** Probably the question would be: who else would be covering that if it was not WorkSafe because it is outside of a mine site; it is a workplace?

**Mr RIDGE:** If it is related to the mining operation, it might be well under the Mines Safety and Inspection Act. If it is on an oil and gas facility in the north west, it might well be WorkSafe's, depending on who the jurisdiction falls under.

**The CHAIR:** Who makes that decision on jurisdiction?

**Mr RIDGE:** It is in the regulations and the acts under the definition.

**The CHAIR:** What happens if each of the bodies has a different point of view or interpretation about the legislation and the regulations? Who makes a decision as to who has jurisdiction? Can both bodies investigate?

[12.10 pm]

**Ms NORTH:** If something happens and we need to start investigating it and at the beginning it might not be clear, then both parties can have an involvement until it is clarified and then the party that has the jurisdiction can continue. Obviously, we try to clarify things as early as possible where there may be more than one jurisdictional possibility.

**The CHAIR:** Is there negotiation between the various bodies?

**Ms NORTH:** And legal advice.

**Mr RIDGE:** We have had several of those sorts of things happen between WorkSafe, the then Department of Mines and Petroleum and AMSA. Essentially, what happens is that the site is quarantined, the investigation starts, there are representatives of all the regulators, and then legal advice is provided as to who actually has the jurisdiction.

**The CHAIR:** It is quite likely that that legal advice will differ as to who has the jurisdiction, because each body will get its own legal advice?

**Mr RIDGE:** We have had an instance where there was some doubt and we have actually co-badged. In the old Department of Mines and Petroleum, we had our investigators badged as WorkSafe inspectors as well, and then the investigation was done, so all of the evidence would have been admissible depending on which piece of legislation was used to prosecute, and that was successful.

**Hon KYLE McGINN:** I need some further clarification. I understand your comments about where the camp site is inside the mine's gates—that is, inside the workplace of the mine. However, where a work camp is across the road, not inside the mine site operation, and no swipe cards are required for entry, that would be in WorkSafe's jurisdiction, would it not?

**Mr RIDGE:** It might be on a miscellaneous lease, so it would certainly still be related to the mine.

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**Hon KYLE McGINN:** But the work being performed on a work camp is, let us say, cleaning, for example, and the camp is not inside the mine itself but is separate?

**Mr RIDGE:** It is not as simple as just being inside the camp.

**The CHAIR:** Could you please explain the criteria that would determine whether or not it is within WorkSafe's jurisdiction?

**Mr MITCHELL:** Have you got a particular site in mind?

**Hon KYLE McGINN:** No. I know there are some sites. Cape Preston, for example, has a camp site on the opposite side of the road, separate to the mine itself.

**Mr RIDGE:** It is opposite north west highway. Yes, I know that one.

**Hon KYLE McGINN:** It is actually on the left hand side. The mine site is on the right. It is a good 15 kilometres, by guess, from the gate to gate

**Mr RIDGE:** That particular one, I would have to check, but I believe it is on a miscellaneous lease. It still considered to be part of the mine.

**Hon KYLE McGINN:** It is considered to be part of the mine site?

**Mr RIDGE:** Yes.

**Hon KYLE McGINN:** In respect of WorkSafe's jurisdiction, or in all respects?

**Mr RIDGE:** No. In that particular instance, I think it falls under us. But I would have to check.

**The CHAIR:** When you say on a miscellaneous lease, could you explain what you mean?

**Mr RIDGE:** Miscellaneous licence.

**The CHAIR:** What does that mean?

**Mr RIDGE:** There are exploration licences and there are mining leases, prospecting leases and miscellaneous leases. For some activities associated with a mine, they need to have access to a piece of land, and it is not actually for digging a hole or drilling holes, but it is actually a bore field. A bore field would be on a miscellaneous licence. Similarly, a camp may be on a miscellaneous licence. It is still access to a piece of land provided by the mining legislation.

**The CHAIR:** Under those circumstances, would it fall within WorkSafe jurisdiction?

**Mr RIDGE:** It would probably fall under the Mines Safety and Inspection Act. Again, these things can be varied.

**The CHAIR:** It is not specified in the mine safety legislation whether a miscellaneous licence will —

**Mr RIDGE:** It talks about the activities associated with a mining operation.

**Hon KYLE McGINN:** So I would be correct in saying that during the construction phase of that camp, it was under WorkSafe's jurisdiction?

**Mr RIDGE:** It could have been, the same as the construction at the mine might have been as well, depending on whether an instrument of declaration was made or whether the work was being done prior to it being used for mining purposes.

**The CHAIR:** Just to clarify, what is an instrument of declaration?

**Mr RIDGE:** Under the Occupational Safety and Health Act and the Mines Safety and Inspection Act, the two regulators can agree that the particular activity is going to be conducted under the mining legislation or the general OSH legislation.

**The CHAIR:** And is it the normal practice that that be determined before the activity commences?

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**Mr RIDGE:** The activity, yes. It is not used so much anymore. It goes back to a time when the construction expertise was not in the department of mines, so then when the construction was happening, there would be an agreement between the ministers and the regulators that that phase of the operation would be conducted under the OSH act.

**The CHAIR:** And you are now indicating that there is construction expertise —

**Mr RIDGE:** There is construction expertise now within the department, since I would say about 2008 or 2009 when we did a big change in the recruiting practices and we brought in that expertise, so there was less of a necessity to have an instrument of declaration in construction.

**The CHAIR:** So we have a doubling up of two agencies with expertise to carry out investigations in relation to construction?

**Mr RIDGE:** On a mine site, yes. I would not say it was doubling up, but we have the capacity to do so.

**Hon KYLE McGINN:** I sort of understand what you have said about the miscellaneous, but in what situation would a FIFO camp come under the jurisdiction of WorkSafe?

**Mr RIDGE:** For other activities, like oil and gas, the occupational health and safety is managed by WorkSafe. On the Burrup Peninsula, Woodside's Karratha gas plant's occupational health and safety regime is under the Occupational Safety and Health Act, so any camps associated with that would be associated with it.

**Hon KYLE McGINN:** The lease decides which act the site is subject to?

**Mr RIDGE:** The activity and the land access, yes. Again, if someone built a camp in the middle of town, that is probably going to fall under WorkSafe as well, because it is under a different land tenure.

**The CHAIR:** Would the land tenure not have been provided, as it is associated with the mining activity?

**Mr RIDGE:** No, not inside the town boundary.

**The CHAIR:** In October 2014, WorkSafe employees were examined by the Education and Health Standing Committee of the Legislative Assembly. Evidence was provided that WorkSafe has a dedicated team that looks at psychosocial hazards such as bullying and mental health in the workplace. Does WorkSafe still have a team that specialises in psychosocial hazards in the workplace?

**Ms NORTH:** Yes.

**The CHAIR:** How large is that team?

**Ms NORTH:** It is a team that actually covers two main types of hazards, because it is a human factors and ergonomics team. It covers both ergonomics of a physical kind, like musculoskeletal disorders, as well as psychosocial disorders. There are seven inspector-scientific officers in the team.

**The CHAIR:** They would investigate allegations of bullying within a workplace?

**Ms NORTH:** They do.

**The CHAIR:** Could you provide the committee, as question on notice 17, since the establishment of the team, details for each financial year of how many investigations have been conducted by WorkSafe into bullying and mental health issues in workplaces? Also, in 2014, evidence was given to the Education and Health Standing Committee that WorkSafe could provide data on how many bullying and harassment cases WorkSafe has investigated since establishing the psychosocial

hazards team. I think we have covered that, because I have just asked you to provide that information, so I will leave that as question on notice 17. Can you also explain to the committee what WorkSafe's view is regarding self-regulation of industry? Is it a necessary evil? Does it work well?

**Mr MITCHELL:** I guess we do not really have an opinion; it is a government policy. The other thing I would say is that it is not self-regulation. The act is quite specific in terms of the allocation of duties et cetera.

[12.20 pm]

**The CHAIR:** There is a fair bit of self-regulation that goes on.

**Mr MITCHELL:** They all have certain duties that they must comply with. Whether you want to call that self-regulation or not is another matter. It is quite specific that the employer has the main duties in relation to workplace safety.

**Ms NORTH:** We certainly advocate voluntary compliance, which is perhaps one way of looking at that. Part of what we do is put out information and guidance to stakeholders to encourage voluntary compliance because we can reach a lot of people through information and education. Voluntary compliance has been a big part of the improvements we have seen in occupational safety and health performance over the years.

**The CHAIR:** The committee has heard evidence that cranes used to be inspected at building sites every 12 months, but now WorkSafe relies on employers to undertake that inspection. Is that information to the committee correct?

**Ms NORTH:** Quite possibly.

**The CHAIR:** Do you know yes or no?

**Ms NORTH:** Cranes—I am not sure. But can I just say that with plant more broadly, there used to be a role where WorkSafe, because of the group of high-hazard plant, which includes cranes, WorkSafe used to have a team of plant inspectors that would actually conduct plant inspections for stakeholders. We moved to a system where the stakeholder was to engage a competent person to do those inspections and to maintain the records that that has been done and that kind of thing. That is the framework that we are currently using.

**The CHAIR:** How do you know that the employers are actually engaging a competent person to undertake those inspections?

**Ms NORTH:** We have a reasonable bit of industry knowledge in our plant and engineering team. They are aware of persons working in the industry. Obviously, we can ask for the records of what has been done in relation to particular items of plant to see what has been done and who it has been done by.

**Hon KYLE McGINN:** Do they require a license to perform that work that comes under WorkSafe?

**Ms NORTH:** Not necessarily a license, but I believe there are expectations around qualifications.

**Hon KYLE McGINN:** When WorkSafe performed the work, they were accredited by WorkSafe to do the inspections and subject to WorkSafe's policies et cetera. What are the new inspectors subject to?

**Ms NORTH:** They have to be a competent person for the purposes of that type of plant.

**Hon KYLE McGINN:** What defines "competent"?

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**Ms NORTH:** In many cases with plant, it is going to be an engineering qualification. I would say that with pretty much most plants, it is going to be a relevant engineering qualification. The other thing with the definition of a competent person is a person that not only has the qualifications, but also has the relevant experience and knowledge to do that task. You would expect that somebody who is working with a particular type of plant has experience with that plant as well as the underlying qualification.

**Hon KYLE McGINN:** Who would ensure that that is enforced, if not WorkSafe?

**Ms NORTH:** If people are not meeting that requirement and are not having the plant properly maintained, WorkSafe is the regulator for that and the organisation would expect to receive some kind of enforcement action, like a notice or something, to have that done.

**The CHAIR:** How would WorkSafe become aware of whether or not it has been inspected by a competent person?

**Ms NORTH:** Like with other hazards at workplaces, it is a combination of proactive and reactive work. We have done proactive work where we have looked at a range of particular types of high-hazard plant—one a few years ago on lifts, for example. We also get complaints or concerns about types of plant or particular items of plant which are then allocated for an inspector to have a look at.

**Hon KYLE McGINN:** Has WorkSafe performed any proactive investigations since the inspections have now been outsourced?

**Ms NORTH:** Yes.

**Hon KYLE McGINN:** Can you provide them?

**The CHAIR:** Can you provide us with the information of when those proactive investigations were undertaken and what was the outcome of those proactive investigations? How many were found to be noncompliant?

**Hon KYLE McGINN:** Also any reactive investigations.

**The CHAIR:** Any reactive investigations that have been undertaken in relation to high-risk equipment.

**Ms NORTH:** I am not 100 per cent about accessing that information on the reactivities because there is not a drop-down necessarily that says, “This is on a high-hazard plant”, but we will see what we can do on that one.

**The CHAIR:** We will take that all as question on notice 18. With the latter part, you can advise us whether you are able to provide that information.

Are there any other areas that WorkSafe has stopped regularly inspecting, like the compliance with the cranes? Are there other aspects that you have stopped inspecting on a regular basis?

**Ms NORTH:** This is going back many years—probably to around the very early 2000s or earlier—there was friable asbestos removal work where WorkSafe inspectors used to do the check on the enclosures for the asbestos removal. We moved to a competent person framework for that as well a long time ago.

**The CHAIR:** What does that mean? Does it require it to be an independent person to do that assessment or can the person conducting the work actually do the assessment themselves?

**Ms NORTH:** With friable asbestos removal, there is a requirement for certain work to be done by an independent competent person, such as an occupational hygienist. With friable asbestos removal, there has to be air monitoring, clearances, and usually the enclosure is checked as well by that

competent person because there is airflow, smoke testing and that kind of thing that is generally something that they would do.

**The CHAIR:** Could you take question on notice 19 to advise the committee how many proactive investigations have been made in relation to that activity with compliance in the asbestos removal area since WorkSafe stopped undertaking those inspections itself?

**Ms NORTH:** Can I advise that they mostly will not come up as proactive because there is a requirement to notify WorkSafe of that type of work. I think they will generally show up in our system as reactive because we get notified by the duty holder that they are about to do the work. If we visit that workplace, it will be linked to that report, so it would probably be showing as a reactive one.

**The CHAIR:** So you will be able to give us that information in relation to reactive investigations. We will take that as question on notice 19. What was the outcome of those investigations, in particular, was there noncompliance that was identified? Are there any other areas that WorkSafe has stopped regularly investigating?

**Ms NORTH:** Not that come to mind.

**The CHAIR:** Can we take that as question on notice 20 so that you can double-check whether there are any other areas that WorkSafe has stopped regularly investigating?

Members, are there any further questions in relation to term of reference 4? We might just move on to term of reference 5, which is the adequacy of WorkSafe's audits of training providers delivering OSH training. Does WorkSafe monitor the registered training organisations that provide high-risk work licenses?

**Mr MITCHELL:** In relation to high-risk work, we regulate the assessors, not the RTOs. The registered training organisations are regulated by the training accreditation council and ASQA.

**The CHAIR:** When you say that you regulate the assessors, are the assessors employed by the training organisations?

**Mr MITCHELL:** Yes.

**The CHAIR:** And they are the ones who undertake the training?

**Mr MITCHELL:** They may undertake the training, but they also undertake the assessments, which is what we audit.

**The CHAIR:** And that is the assessment of the training?

**Mr MITCHELL:** That is correct.

**The CHAIR:** At page 20 of the WorkSafe submission, it is stated that WorkSafe conducts audits of high-risk work license assessors. Does WorkSafe have figures on the number of audits conducted on high-risk work license assessors?

**Mr MITCHELL:** I think that is on page 66.

**The CHAIR:** Are we looking at table 12?

**Mr MITCHELL:** Yes.

[12.30 pm]

**The CHAIR:** We have got in this table the number of audits of registered high risk with licence assessors conducted from about 2011–12 through to 2016–17 and the number of audits of registered asbestos licence holders over the same period and the number of audits of registered demolition licence holders over the same period. Is it possible to get feedback from WorkSafe as to

the outcome of those audits and whether there was any noncompliance identified and what action was taken to address the noncompliance?

**Mr RIDGE:** It should be possible.

**Mr MITCHELL:** Yes; it should be possible. I am not sure what sort of detail we are going to get.

**The CHAIR:** We will take that as question on notice 21. Specifically, in relation to the 559 audits conducted in 2016–17, can you tell us how many of those assessors were found to be noncompliant and, specifically, what action was taken in relation to that year but going right back to 2011–12.

Does WorkSafe have concerns about the lack of training for high-risk work licences; and, if so, what are those concerns?

**Mr MITCHELL:** The issue of training for high-risk work licences is a reasonably topical issue at present. In relation to high-risk work licences, it is important to note that the licences are in fact threshold qualifications. All that means is that people will be able to start work; it is not a reflection of their level of experience or on-the-job training or those sorts of things. It is merely a threshold qualification. We find that high-risk work licences are subject to a certain amount of criticism in terms of the quality of training. But often those criticisms are on the assumption that the high-risk work licences provide an indication about the level of experience. If you look at scaffolding as a good example, it talks about “Basic”, “Intermediate” and “Advanced”. Those three terms in relation to high-risk work licences mean that they have been trained in those particular areas. It does not necessarily mean they have basic, intermediate and advanced—I think it would be a nonsense to expect that a person who has done, say, a three-week scaffolding course was an experienced, advanced scaffolder. That is certainly not what the high-risk work licences are suggesting.

**The CHAIR:** Sorry; can I just stop you there to get some clarification on this. Is it possible to get a high-risk work licence based purely on a desktop computer course rather than practical experience?

**Mr MITCHELL:** No. There are three elements to a high-risk work licence in terms of the assessment. There is a questionnaire where they have to answer a number of questions, a calculation component and also a practical component.

**The CHAIR:** In order to get the advanced scaffolding licence, is it a requirement that they have a certain amount of experience?

**Mr MITCHELL:** No. The names, with the advantage of hindsight, are unfortunate. Anyway, those are the names that are there, but they are just the units that they will cover over the training time.

**The CHAIR:** The difference between a basic or a beginners and advanced would be what—the height of scaffolding that you are trained in?

**Mr MITCHELL:** The level of complexity of the scaffold and the type of scaffold that they might be using.

**The CHAIR:** Do you have concerns about whether that training is sufficient for the high-risk work licences that are issued?

**Mr MITCHELL:** The Occupational Safety and Health Act is underpinned by the principle that the employers have the duty to make sure that people are trained. The duty rests with the employers. It is up to them to make sure that they are trained. There are concerns about training that are expressed in general terms about high-risk work licences. But when they get the qualification, all they have done is, for example, one week. I think it is a two or three-day course in forklift, for example. All they are saying is that they have had some experience, some exposure to the operation of a forklift. The alternative to that might be where you have an open-class crane. Typically, a person will have gone through a whole series of classes before they get into an open-class crane. So there

is some on-the-job experience for things like, I suppose, the more introductory-type courses for a forklift, for example; generally, there is the course and that is all the experience they have for the workplace.

**The CHAIR:** An employer employing someone with a high-risk work licence, it would be reasonable for them to expect that person to be competent in the performance of that task?

**Mr MITCHELL:** No. All they are is trained to do the course. In terms of task training, that is something that should be done at the job. If someone comes to you and says, “I’ve just got this forklift ticket today”, the employer would have a duty to make sure they knew how to do the particular task, operate the particular item of plant or the particular forklift, because of course there are many brands of forklift, so those duties still remain with the employer. Alternatively, if someone has been driving forklifts for 10 or 20 years, of course, the employer still has a duty to make sure they are trained. But I suspect the level of training and supervision that person would require would be far less than for a person who comes with the ticket or the high-risk work licence card straight out of the course.

**Hon KYLE McGINN:** Are you referring to a VOC?

**Mr MITCHELL:** No.

**Hon KYLE McGINN:** As being competent to perform a role.

**The CHAIR:** Sorry; what is a VOC?

**Hon KYLE McGINN:** When you come on site, a VOC is a form of competency before they perform the task. They come in with a ticket and they get VOC-ed on a piece of equipment.

**Mr MITCHELL:** Verification of competencies. It is a jargon term, particularly in the mining industry. In terms of general occupational safety and health, it is not something that is in the regulations or within the act anywhere. It may well be used but it is part of the employer’s general duty to make sure that if someone comes to them and says, “I’m a forklift operator”, that forklift operator can in fact do the task they have been employed or engaged to do.

**The CHAIR:** What does an employer do if a person has a licence that says they have studied how to operate a bit of equipment and they have a licence. If someone has ticked them off as being competent to do the task and they employ them on that basis and then they do the verification process and find out that they are hopeless and they should never have been issued the licence in the first place, can they dismiss them?

**Mr MITCHELL:** I do not know about dismissing of them, but when a person engages a forklift operator, they should be verifying that they can do the task, or if they cannot do the task, be prepared to train them to do that particular task.

**The CHAIR:** I would have thought it would be reasonable for an employer employing someone with a licence to expect that person to be competent, otherwise they should not have been issued the licence.

**Mr MITCHELL:** I guess the distinction there is that if a person has done a two-day—it might be five days; I just cannot remember—forklift course, they have received some training; they have had to answer the assessment; they have had to drive the forklift in certain areas to get their qualification. It would be unreasonable to think that person having done that course could do any task they might be assigned to. Irrespective of whether it is a forklift or any work task, the employer has the duty to make sure the person is able to do the task; and, if not, provide the training and the supervision.

**Hon KYLE McGINN:** Who enforces that?

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**Mr MITCHELL:** It is the structure of the Occupational Safety and Health Act that the duty is on the employer. Presumably, if a person is not trained, they have the option to sort it out at the workplace—talk to their safety and health rep—or, alternatively, they can come to WorkSafe.

**Hon KYLE McGINN:** If they do not, are they breaching the act?

**Mr MITCHELL:** The employer?

**Hon KYLE McGINN:** Yes.

**Mr MITCHELL:** Presumably, yes.

**Hon KYLE McGINN:** That would be prosecutable by WorkSafe?

**Mr MITCHELL:** We have talked about the prosecution policy; it depends. I am not in the inspectorate area, but I will say is that if an inspector goes to a workplace and finds somebody is not adequately trained, the chances are they will issue them with an improvement notice.

**Hon KYLE McGINN:** The question was: who could prosecute? And it would be WorkSafe are in a position to prosecute that part of the act.

**Mr MITCHELL:** Yes.

**Hon DARREN WEST:** I just do find it a little unusual. I want your feedback and opinion on this. For instance, I hold a road train licence, and to get that road train licence, I had to be competent driving a car, heavy-rigid semitrailer, articulated—have done relevant experience in all those—and driven those for 12 months significantly and worked up and eventually you get yourself up to competency to pass the road train driving test. So I find it a little unusual. I understand the basic level of competency, for instance, on scaffolding and that. You would expect that someone who holds that basic level of competency would need some on-the-job training, but for someone to hold an advanced or high-risk level of competency, who need not have done any practical experience, does seem a little unusual to me. Do you think that that needs to change?

[12.40 pm]

**Mr MITCHELL:** As I explained earlier, the terminology has unfortunately created this expectation of basic, intermediate and advanced. The advanced name implies a person has advanced experience, but it is not advanced experience; it is just the name they have given that particular unit. They might have called it 1, 2, 3 or red, white and blue, if you wanted.

**Hon DARREN WEST:** All of that said, you know where the risky areas are in workplaces—heights and all those things, and certainly, the road is a very risky place as well. Do you not think it unreasonable for someone to have 3, C, or advanced—whatever you want to call it—without have some level of expertise at the practical side of what they do; and, if so, could that be useful in preventing workplace accidents?

**Mr RIDGE:** I think what you are saying is if you have done the beginners course, that you need to go and get some experience before you can apply for the other courses.

**Hon DARREN WEST:** Correct, yes.

**Mr RIDGE:** Having got that, then to become advanced, you would already have X number of years' experience of scaffolding.

**Hon DARREN WEST:** Yes, you have done six months work on building scaffolds. I wonder whether this could be a factor in improving workplace safety.

**Mr MITCHELL:** We can only deliver or, if you like, regulate the courses that we are presented with. The high-risk work licence scheme has been around for a long time. The units of competency are

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developed at the national level, through the VET sector. They have industry skills councils that are made up of industry representatives who develop the units of competency.

**Hon KYLE McGINN:** Does WA WorkSafe involve itself in all those committees and reviews of high-risk licenses?

**Mr MITCHELL:** Yes, we do, I guess, up to a point within our jurisdiction. In terms of the assessment instruments, that is something that is in the process of review now by Safe Work Australia and we will be intimately involved in that. The developments of the units of competency do not necessarily fall within our jurisdiction, but there is no doubt we will be providing some advice.

**Hon KYLE McGINN:** If reviews were taking place that had WorkSafe inspectors or people from other WorkSafe jurisdictions in Australia—the Northern Territory, Queensland et cetera—would WA be involved as well?

**Mr MITCHELL:** Are you talking about high-risk work licenses et cetera?

**Hon KYLE McGINN:** High-risk licenses, yes.

**Mr MITCHELL:** We are involved in it because, of course, we are one of the stakeholders within the Safe Work Australia system, with the other jurisdictions, and with employer and union representatives.

**The CHAIR:** I have had some complaints from training providers who tell me that in order to complete a high-risk work licence in a specific area with a particular training provider, it is a five-day course; yet, with another training provider, it might be a one-day course. They say that clearly the person who is being trained is not getting the same level of training in a one-day course that they would get in a five-day course and, obviously, the one-day course is also cheaper than the five-day course. That training provider who is providing inferior training is undercutting the provider who is trying to make sure that the person is adequately trained and, as a result, they would need to lower the product they are selling in order to compete in the marketplace. Does WorkSafe monitor that problem?

**Mr MITCHELL:** The training element is the responsibility of training accreditation at ASQA. We look at the assessment side of things. Your complainant needs to talk to ASQA or the TAC to make their concerns known to those agencies.

**The CHAIR:** If WorkSafe is ticking off on a one-day course—but you do not tick off on any of the courses?

**Mr MITCHELL:** No, not the courses.

**The CHAIR:** Do you just tick off on whether the person conducting the course —

**Mr MITCHELL:** I would not use the words tick off, no.

**The CHAIR:** Do you accredit whether the person who is conducting the course is competent or not to conduct the course?

**Mr MITCHELL:** Correct. They have to meet certain criteria; that is right. Sorry, it is to conduct the assessments, not the course.

**The CHAIR:** Is the assessment conducted at the end of the course?

**Mr MITCHELL:** Correct, yes.

**The CHAIR:** Do you have a role in reviewing how the course is provided in any way, shape or form?

**Mr MITCHELL:** As I said earlier, particularly in relation to the assessments, but we have had minimal involvement with the units of competency and their development over the years, primarily because

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they are not within our jurisdiction. But we have provided comment when we have been given the opportunity.

**The CHAIR:** This might be a difficult question to ask. In relation to any of the investigations that have been conducted by WorkSafe as a result of a serious injury or a fatality involving high-risk work, has that caused WorkSafe to make representations to ASQA about improving the quality of the training for that particular high-risk activity?

**Mr MITCHELL:** I cannot recall a particular instance but for us to make that connection, there would have to be, I suppose, a connection at the workplace. The point I made earlier was that the qualifications they get are threshold qualifications; they are not meant to represent the experience that a person might have. We have talked about this and no-one has come to us and said that a person did the qualification one day and on the next day they caused an accident. We have not been able to get that causal relationship between the qualification and the incident.

**The CHAIR:** But would you be looking for that because, from the evidence I have heard so far, you would only be looking at a causal connection between the incident and the verification of the person's competency, which was required to be undertaken by the employer.

**Mr MITCHELL:** Well, it depends. We never rule anything out, obviously, but, if we were to go to a workplace as a result of an incident, we would be looking at the circumstances and whether or not the employer met their duty in terms of training a person.

**The CHAIR:** In the view of WorkSafe in a particular incidence, if WorkSafe formed the view that the employer had not undertaken that task adequately, would the employer be prosecuted?

**Mr MITCHELL:** It would depend upon the prosecution policy, but they would, quite possibly.

**The CHAIR:** I will move on to term of reference 6, "timely implementation and public education of coronial inquest recommendations arising from a workplace death." Attachment 7.2 of the submission states that WorkSafe policy is to share documents with the coroner. The policy states that, wherever possible, evidence can be exchanged. The coroner has informed the committee that WorkSafe does not provide inspectors' reports even when the coroner requests those reports under section 33 of the Coroners Act 1996. Does WorkSafe provide the coroner with inspectors' reports; and, if not, why not?

**Ms NORTH:** If inspectors are looking at potential prosecution, they do not prepare a report; they prepare a request for legal advice and they prepare a brief of evidence. So there is a set of evidence and there is a document talking about evidence and requesting legal advice on the appropriateness of a prosecution. That is prepared for our lawyer and is subject to legal professional privilege.

**The CHAIR:** Is the WorkSafe inspector not required to prepare a report on whether there has been a breach or not of the act or the regulations?

**Ms NORTH:** No; they prepare this request for legal advice.

[12.50 pm]

**The CHAIR:** And so the legal team decides whether there has been a breach or not?

**Ms NORTH:** The inspector basically looks at what is required for a prosecution and puts forward the evidence and then the legal team look at it from there and they determine whether they believe there is a prima facie case and also whether the public interest test has been met, and take it from there.

**The CHAIR:** Does WorkSafe provide the coroner with the legal brief?

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**Ms NORTH:** The brief is a set of evidence, so I believe we provide the coroner with a list of what we have in terms of the evidence and then they can advise which items that they are interested in getting a copy of and then on a case-by-case basis, we can decide whether that is something that we can release to the coroner. But in terms of the overarching document the inspector has written requesting legal advice, we would not usually release that document.

**The CHAIR:** Why not?

**Ms NORTH:** Because it is specifically for legal advice. That is the purpose of that document—to request legal advice.

**The CHAIR:** But if it would assist the coroner in the coroner undertaking his or her duties under the Coroners Act, is there not an obligation for WorkSafe to provide that information to the coroner?

**Ms NORTH:** They would be able to get the same information, I suppose, that has been used to put that together. The information that the request for advice is based upon is the evidence, so it is referring to that evidence and it is that information that we make available.

**Hon DARREN WEST:** To whom is that delivered? Is it to the DPP or the police? Who is that information delivered to when there is a —

**The CHAIR:** To the WorkSafe legal team.

**Ms NORTH:** Yes. This brief of evidence is given to the WorkSafe legal team and it is our director of WorkSafe legal services who liaises with the coroner's office about information that they might request and is also in a position, I suppose, with that background—with the legal perspective—to determine what items there are something that can be released at a given point in time.

**Hon DARREN WEST:** Is there a mechanism at all for the coroner to contact an inspector directly?

**Ms NORTH:** We prefer all information requests of this kind to go through our director of legal services. That is the process.

**The CHAIR:** Where a coroner requests information from WorkSafe, does WorkSafe automatically provide all the evidence collected during the investigation to the coroner?

**Ms NORTH:** I believe they certainly get a list of what we have available and then they can request the items that they would like to have, and we then make a decision on each item on a case-by-case basis and we release everything that we are able to release.

**The CHAIR:** Why is a decision being made on a case-by-case basis? If WorkSafe undertook an investigation and that evidence that was gathered through that investigation would help the coroner conduct his or her inquiry, why would that information be withheld from the coroner?

**Ms NORTH:** If it would impede a prosecution. If it would cause problems in a prosecution that was either commencing or about to commence. That would be the reason.

**The CHAIR:** Are you saying the early release of that evidence by the coroner?

**Ms NORTH:** If something has been provided for legal professional privilege, we do not want to relinquish that privilege because then you have relinquished it. If it is going to cause problems with the prosecution, that would be the main reason that we would not release the document.

**The CHAIR:** In those circumstances, is the coroner left with the position of having to postpone an inquest pending the outcome of prosecution action by WorkSafe?

**Ms NORTH:** I think that can happen.

**Mr MITCHELL:** Yes. That is the requirement. If there was a prosecution, the coroner has to wait.

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**The CHAIR:** And upon the conclusion of that prosecution, all of that evidence would then be made available to the coroner?

**Mr MITCHELL:** Presumably, all of the evidence presented to the prosecution would be available to the coroner.

**The CHAIR:** I am not interested in the evidence that was provided to the prosecution; I am interested in all the evidence that was gathered during the investigation.

**Mr MITCHELL:** In terms of WorkSafe providing information, we are guided by the State Solicitor's Office, so it is up to them—to legal advice—as to what we can release.

**The CHAIR:** So it is not the WorkSafe legal team that determines its position in relation to requests from the coroner. Does the WorkSafe legal team send that request to the State Solicitor's Office to provide advice?

**Mr MITCHELL:** I think what they do is they rely on the advice provided by State Solicitor's in terms of providing information that is subject to legal professional privilege.

**The CHAIR:** By that stage, it is no longer subject to legal professional privilege if the prosecution is completed.

**Mr MITCHELL:** Presumably, that is correct, yes. I do not know the ins and outs of what they can and cannot provide.

**The CHAIR:** Can we take that as question on notice 23 for the WorkSafe legal team to provide us with information on how they determine whether or not information will be disclosed to the coroner, both pre and post a prosecution?

If a prosecution was not successful, would that hinder access of information by the coroner to that evidence that was used for that prosecution?

**Mr MITCHELL:** We would not use the word "hinder", but we would go on the advice provided by our legal area. It is probably fair to say that WorkSafe was a bit surprised by the coroner's submission. Our understanding is that our legal services area and the coroner had a good working relationship, so we have been taken a bit by surprise.

**The CHAIR:** I would have thought a good working relationship would have been if you actually provided information the coroner required when it was requested.

I understand that section 33 gives the coroner powers to obtain any document and the refusal to do so is a breach of the Coroners Act. Has the coroner ever taken any action against WorkSafe for refusing to release documents?

**Mr MITCHELL:** Not that I know of.

**The CHAIR:** Can you take that as question on notice 24 to provide the committee with a response to that?

Also, question on notice 25: who are the solicitors at the State Solicitor's Office which WorkSafe use to provide advice on the release of documents to the coroner's office, so that the committee can talk to those individuals to understand the basis on which they make those decisions?

**Hon KYLE McGINN:** Is the decision being made to prosecute a breach of the act done by the inspector or the legal team?

**Ms NORTH:** An inspector will make a recommendation and they will request advice. They request advice and they work with the case management team to see whether the evidence, in their view, is supporting an investigation. But, at the end of the day, there are a number of legal criteria as well,

so a recommendation is made through our lawyers. We request advice that they could look at the possibilities and then they apply the public interest test and confirm whether we have a prima facie case before making that decision.

**The CHAIR:** What are the factors that contribute to the assessment of the public interest test?

**Ms NORTH:** I think we have got something in the prosecution policy on that as well, but things like sometimes there can be relationships between the stakeholders. So you might have fatalities where a family member is involved or another party that was involved. Things like that might affect it.

**The CHAIR:** Can you just clarify that? If it was a farm workplace incident, you would not prosecute the farmer if the person who had a fatal injury at that workplace was the son of the farmer?

**Ms NORTH:** That is one of the factors with the public interest test. There are other factors with the public interest test as well, like the need for general deterrence or specific deterrence. So there are other factors as well, but a family relationship would be one of those factors that our WorkSafe legal would consider.

**The CHAIR:** Are there any other factors?

**Ms NORTH:** I think there are, but I cannot recall them all, unfortunately.

**The CHAIR:** Can we take that as question on notice 26 to be provided to the committee—those factors that are considered in the assessment of the public interest test?

Your submission refers to WorkSafe aiming to complete its own enforcement and educative actions prior to the State Coroner holding an inquest and making any recommendations. I think it is page 69 of your submission. Could you clarify to the committee the reasons for this procedure and what is the basis, if any, for WorkSafe investigations taking precedence over coronial investigations?

[1.00 pm]

**Ms NORTH:** I think this is the advice we mentioned earlier about prosecution work, so that the prosecution work is done as a priority. In terms of the education work, that is just normally something that if we needed to do a safety alert or something like that, or maybe consider whether a proactive campaign was required on a particular hazard, that was something that because we aim to do our own work within a certain timeframe, normally those time frames would also support that that educational or awareness work could be done in the same time frame.

**The CHAIR:** In your submission you refer to WorkSafe's legal team working closely with members of the coroner's office on a regular and informal basis; I think that is at page 69. Could you explain to the committee what this regular and informal process consists of and how WorkSafe communicates with the coroner's office?

**Ms NORTH:** I think it is both in writing and by phone, so it is a matter of advising the coroner's office of things like fatalities that we are investigating and then if we have concluded the investigation or if we are looking at prosecuting and then if we have laid charges, so those kinds of milestones are updated there, and then at the conclusion they are updated as well.

**The CHAIR:** This is question on notice number 27. Could you provide the committee with, for each of the last 10 years, how many requests by the coroner's office for access to a document were refused by WorkSafe? The State Coroner has advised that inspector reports were provided to the coroner in the past but the practice was reviewed and the decision made to cease this practice. Could you please explain to the committee when and why the decision was made to stop giving the coroner access to the inspector's report? I suppose that was at the time they were made legal briefs rather than reports.

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**Ms NORTH:** Yes, that is what I am thinking as well. Basically, they are in the form of a request for legal advice currently. They may in the past have been in a different format that might have been subject to different legal views as to its accessibility.

**The CHAIR:** Okay. So you are not able to confirm to the committee that, in the past, the reports were provided to the coroner?

**Ms NORTH:** I am not sure; it is going back quite a way.

**The CHAIR:** Okay, we will take that as question on notice number 28: for you to come back to the committee to advise if, at some time, inspectors' reports were made available to the coroner; and, if so, when that practice stopped and the reasons why that practice stopped. If legal advice was relied on in making that decision, could you provide a copy of the legal advice to the committee?

Has WorkSafe received legal advice in relation to the conflict between section 33 of the Coroners Act and WorkSafe policy not to release information to any external parties; and, if so, can you provide us with that legal advice?

**Mr MITCHELL:** We will have to take that on notice.

**The CHAIR:** So that will be question on notice 29.

Why is it WorkSafe's practice not to permit the coroner to discuss investigations or evidence with inspectors?

**Ms NORTH:** WorkSafe legal is in a position to know what documents or what information may hinder or impede a prosecution, so they are in the best position to know that. It also provides a single point of contact because, for consistency purposes, if the coroner can have a single point of contact, they are going to get a more consistent response than having many points of contact.

**The CHAIR:** Okay, but the coroner is not going to get access to any of the evidence until after the prosecution has been completed; that is the evidence you have provided the committee. It is not a legal issue anymore at that point in time because the prosecution has been completed. The question is: at the time that the coroner then gets access to evidence and documents from WorkSafe and she or he forms the view that they would like to explore a particular aspect of that evidence further with the inspector who actually undertook the investigation, would the coroner be prohibited from having that discussion with the inspector?

**Ms NORTH:** I am not sure if they would be prohibited. The request would go through our legal services, though, to see if that would be appropriate.

**The CHAIR:** For question on notice 30, can you check with your legal team whether at any time during the last 10 years the State Coroner has requested an opportunity to discuss an investigation with an inspector and what was the response provided by WorkSafe in relation to that request?

The committee notes that the interactions between WorkSafe and the State Coroner appear to be overly prescriptive and bureaucratic, perhaps at the expense of the timely resolution of investigations. Could you please clarify for the committee the reasons why WorkSafe only communicates with the State Coroner at prescribed points in an investigation and why WorkSafe relies on template letters to the State Coroner?

**Ms NORTH:** I understand that the coroner is able to contact WorkSafe in addition to having updates at prescribed points during an investigation or prosecution, and that they are able to get in touch in between those times if they would like to.

**The CHAIR:** Do they get any answers to their questions?

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**Ms NORTH:** I am not sure whether I can answer that; that would probably be very much specific to the matter.

**The CHAIR:** Are there any questions that members of the committee have in relation to that?

Does WorkSafe consider there to be any ways that the working relationship with the coroner's office could be improved and more information provided to the coroner on a more timely basis? There are numerous media stories about family members waiting four, five or six years for an inquest to be held because the coroner is waiting for WorkSafe to conclude its business.

**Ms NORTH:** Family members are also usually quite interested in getting a prosecution forward as well, and it would be important to ensure that that was not put at risk in any changes to the protocols. Further, as Bill mentioned earlier, we were of the view that that relationship was actually in a reasonable place at the moment.

**The CHAIR:** Well, you have heard evidence that it is not, and you would have read the same media stories that we have read about family members being frustrated at the length of time it takes to get a decision on an inquest or an inquest hearing. Can you suggest to the committee any ways that information could be made available to the coroner's office in a more timely manner?

**Mr MITCHELL:** Having seen that letter, the commissioner has decided that he is going to meet with the coroner on his return with the director of legal services to attempt to resolve these issues.

**The CHAIR:** We might now move on to term of reference 7, legislative and jurisdictional issues. Does WorkSafe have jurisdiction over the health and safety at mining accommodation camps; and, if not, who does oversee safety and health at those camps?

**Ms NORTH:** I think we touched on this earlier. Where it is not part of the jurisdiction of the Mines Safety and Inspection Act, there are prospects that it is a WorkSafe jurisdiction, provided it is not one of the other jurisdictions that we do not cover, such as Comcare or something like that. But in general, where it is not under the Mines Safety and Inspection Act, there is a likelihood that it will be WorkSafe's.

**The CHAIR:** That is dependent on the nature of the lease?

**Mr RIDGE:** The nature of the tenure over the land.

**The CHAIR:** Does WorkSafe have jurisdiction over the health and safety of a mining site when it is still in the construction phase before mining begins?

**Mr RIDGE:** Only if it is under a declaration, and generally we do not do those very much anymore.

**The CHAIR:** Who issues the declaration?

**Mr RIDGE:** It is between the Minister for Mines and Petroleum and what used to be the Minister for Commerce and would now be the new minister for —

**The CHAIR:** A much larger picture.

**Mr RIDGE:** — a much larger picture, so it would be a simpler prospect now to do it. However, there is probably no necessity anymore.

**The CHAIR:** Why do you say there is no necessity?

**Mr RIDGE:** Because the resources and safety division has the expertise in-house for managing construction activity in terms of scaffolding, craneage, working at heights et cetera. The resources safety inspectors are able to manage the issues around construction on mine sites.

**The CHAIR:** Since July 2017 and the merger of the former Department of Mines and Petroleum and the Department of Commerce, who now has jurisdiction over mining worksites?

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[1.10 pm]

**Ms NORTH:** The laws have not changed, so it is as it was in terms of the people enforcing those laws.

**The CHAIR:** If there is a fatality or injury on a mining site, and there is some confusion about whose jurisdiction it is, how does WorkSafe resolve that confusion with Mines and Petroleum?

**Mr RIDGE:** We talk to each other and work out who it is. It relates to the activity on that site. You would be aware that roads run through mining leases et cetera, so it is a question of what was the activity and a judgement will be made on what the activity was and the location of the accident.

**The CHAIR:** Where there continues to be a difference of opinion, does that then get referred to the State Solicitor's Office for a legal opinion to be provided to both agencies?

**Mr RIDGE:** We would look for, at the end of the day, a referee to work it out, but meanwhile an investigation would be conducted, probably jointly or by co-badging, as we have done in the past.

**The CHAIR:** Is there an intention for WorkSafe and the former Department of Mines and Petroleum to be merged in the future so that there is only the one investigation body?

**Mr RIDGE:** This is under consideration at the moment. In fact, there is a deadline for the end of September for a new structure to be put up to the Public Sector Commissioner. At the moment it has not been finalised, but consideration is certainly being given to having a single investigations unit that covers those pieces of legislation.

**The CHAIR:** Is it problematic for WorkSafe that there are different jurisdictions for some worksites, such as mining camps and mine sites?

**Mr RIDGE:** It is a lot broader than that. A port is a good example, where you have AMSA involved—the maritime authority—and where the railway lines are covered partly by the national authority. You have Comcare sites; you have mining sites; you have oil and gas sites; and you also have general workplace sites. So it is a complication that makes life difficult in some instances.

**The CHAIR:** Do you think those problems could be resolved if there was one investigatory body?

**Mr RIDGE:** It would help, because these things would be less complicated, but you are still going to have the issues with people like AMSA and the railway authority.

**Ms NORTH:** There are several commonwealth agencies in here. We have got Comcare, NOPSEMA, AMSA and the national rail authority. They are the national ones. So even if we were to be more closely aligned at a state level, we would still have quite a number of jurisdictional interfaces to deal with.

**The CHAIR:** How much of WorkSafe's time is spent on resolving jurisdictional issues?

**Ms NORTH:** We have a reasonable understanding, and normally a phone call to the right person can clarify many issues. It is just that there are always going to be a few grey areas and some things that happen on a case-by-case basis, but where there has been an incident obviously we attempt to resolve them as quickly as we can. With Comcare, there is a list of Comcare licensees that are covered by them on their website, so that is something that they provide. I do not think it is hugely time consuming.

**The CHAIR:** Does WorkSafe want to make a submission to the committee in relation to jurisdictional aspects that could be clarified through legislation that would make your life easier?

**Ms NORTH:** We highlighted one lack of clarity in our submission, which was the question between our jurisdiction and the AMSA jurisdiction. That is one that remains a little bit of a grey area at the moment, and that is probably the main one that we have that issue with at the moment.

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**The CHAIR:** Would you like to just expand on that and suggest to the committee what a likely resolution of that issue might be?

**Ms NORTH:** It is at the top of page 71 in the submission. WorkSafe and AMSA have different views about jurisdictional responsibility for loading and unloading of vessels to which the Navigation Act applies. We have had legal advice that the OSH act would not apply in that circumstance, and AMSA has alternative advice.

**Hon KYLE McGINN:** What currently takes place if any incident happens that captures this issue?

**Ms NORTH:** It would be a bit complicated.

**Hon KYLE McGINN:** I am assuming there are some instances that have happened.

**Ms NORTH:** Yes, if there is a serious incident, hopefully both parties would cooperate during an investigation, but at the end of the day we would need to have it clarified, if there is a serious incident and we need to consider further action, and we would need to have that done through the right agency. That is where we would really need to clarify it quite quickly if we had an issue.

**Hon KYLE McGINN:** I suppose it is a question on notice, but could we get a look at the circumstances where this has happened over the last five years?

**Ms NORTH:** Again, it is one of those things that we do not flag as to whether this was a loading and unloading issue, so it might be hard to get actual data on that.

**Hon KYLE McGINN:** So even though there is potential that you have jurisdictional coverage, and there is a disagreement between the two bodies, you do not flag that?

**Ms NORTH:** If you are asking about incidents that come to us of a particular type, that is not something that is flagged as a software-related thing. The software is well and truly older than this matter, so that makes it difficult to ensure that we could give you all of the matters of this type.

**The CHAIR:** The Navigation Act came into existence in 2012, so this issue has only been current since 2012. Is that correct?

**Ms NORTH:** Yes.

**The CHAIR:** AMSA is a commonwealth authority. How do you resolve a jurisdictional issue between a state and a commonwealth body?

**Ms NORTH:** We have written to them and made some suggestions.

**Mr RIDGE:** That was in 2014.

**The CHAIR:** Have they responded?

**Mr RIDGE:** No—three years.

**Ms NORTH:** No.

**The CHAIR:** Have you followed up that letter?

**Ms NORTH:** I am not sure.

**Mr RIDGE:** Not that I know of, no.

**The CHAIR:** Do you not think it might be a good idea to follow up a letter that you sent in 2014 seeking clarification of a matter that could arise at any point in time?

**Ms NORTH:** It may well be worth it.

**Hon KYLE McGINN:** Are you saying there is no way to know, since 2012, of instances that have occurred in this section of jurisdictional issues?

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**Ms NORTH:** I am not confident that we can get all of them. There are things that we can do with searching words—there are keyword searches and so forth—but because it is not a particular category in itself of complaint or incident, I am not 100 per cent sure how reliable that would be. I could search for the word “unloading”, for example, but then you could get unloading of trucks, so it is hard to be sure how effective that would be.

**Hon KYLE McGINN:** Correct me if I am wrong, but if a complaint comes to you and it is deemed to be not within your jurisdiction, would that not be put into a category?

**Ms NORTH:** As not to be investigated, along with many other things.

**Hon KYLE McGINN:** Not your jurisdiction.

**Ms NORTH:** Yes, but then again there are many other things that are not within our jurisdiction, so it is a large category.

**Mr RIDGE:** I think what is being said is that we can interrogate the data and we will come up with a list, but it might not be a complete list, because some of it might not be found very easily.

**The CHAIR:** Would you not be able to do a search of your database in relation to all correspondence with AMSA since 2012, and that might actually be a much faster search, because obviously you would have had to correspond with them if there was a jurisdictional issue, or would that have been handled verbally?

**Mr RIDGE:** We can try to do that and we can see what we come up with.

**The CHAIR:** We will take that as question on notice 31. Can you just clarify exactly what you are after?

**Hon KYLE McGINN:** I sort of think also the stakeholders would probably know—the employees in that jurisdiction.

**The CHAIR:** What is the question we are asking?

**Hon KYLE McGINN:** The question was how many instances, and what were the instances, have come into this jurisdictional issue of AMSA and WorkSafe since about 2012—from the Navigation Act?

**Mr RIDGE:** We will attempt to do that.

**Hon KYLE McGINN:** Is there a copy in the submission of the letter sent to AMSA?

**Ms NORTH:** Yes, it is attachment 8.2.

**The CHAIR:** Are there any other legislative issues—reforms—that WorkSafe believes should be considered by the committee in terms of improving the legislative framework under which WorkSafe operates?

[1.20 pm]

**Mr MITCHELL:** It is probably opportune to mention the work health and safety law. The government is reviewing the work health and safety law with a view to adopting the national model legislation. There is plenty of opportunity there for suggestions to be made as to how the legislation might be improved.

**The CHAIR:** Would you like to make those to this committee as well, because it is one of our terms of reference?

**Mr MITCHELL:** As public servants, we are obviously guided by the government, so where the government is conducting that review, they have engaged a ministerial advisory panel to go through that process.

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**The CHAIR:** Does not WorkSafe as an agency provide advice to the government on what those legislative changes might be?

**Mr MITCHELL:** We are participating as a member of the panel.

**Mr RIDGE:** We are supportive of the amalgamation of the various occupational health and safety statutes and components of other statutes to have a single piece of legislation covering occupational health and safety in Western Australia.

**The CHAIR:** What event triggered WorkSafe to conduct a capacity review of WorkSafe's investigative practices, and what feedback was received from staff during that consultation period?

**Ms NORTH:** I am not sure that there was an event. I think you review and you look at how you are going from time to time and opportunities to improve. In the background, the work health and safety legislation has assured us of that statute of limitations on work health and safety breaches. We are aware that if our laws change, we will have two years instead of three years to complete that work. That was part of the context of looking at how we are doing that. We got a variety of feedback from staff. I am not sure that I recall it all at the moment, but we did have participation from staff.

**The CHAIR:** Is that documented in a report that was compiled?

**Ms NORTH:** Yes.

**The CHAIR:** Are you able to provide that report to the committee?

**Ms NORTH:** Yes.

**The CHAIR:** That will be question on notice 32.

At the first hearing that we conducted, Ms North stated —

The information that we get under the OSH act during our investigation, we have acquired it for the purposes of the OSH act. That is the only purpose for which we have acquired that information. ... that is the only purpose we can use it for so we cannot be giving it to other people.

Is that the official position of WorkSafe?

**Ms NORTH:** Is this in terms of complainants coming to us for information, or other parties?

**The CHAIR:** Other parties.

**Ms NORTH:** I suppose the only detail I would add is that when a person makes inquiries with the freedom of information section, they are then given a bit of information about what is available, and that can help them make decisions about whether they want to pursue seeking freedom of information or what particular documents they might be interested in.

**The CHAIR:** What provision in the act is being relied on in support of that position by WorkSafe that you do not provide information to third parties?

**Ms NORTH:** Section 43 is headed "Powers of inspectors". To visit a workplace, I suppose you do not necessarily explicitly say, "I am here exercising the powers under section 43" et cetera, but it is certainly implicit that the reason that employers cooperate with WorkSafe inspections is because they understand that inspectors do have these powers under the OSH laws and can turn up unannounced and require a workplace inspection. They understand that we have the power, and that is why they cooperate with us asking them questions about their safety procedures at the workplace. It is obvious that we use that information for the purposes of determining compliance.

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**The CHAIR:** Could you just identify for the committee where in the act it states that WorkSafe's role as regulator means that it cannot provide information and findings of investigations to a complainant or a third party?

**Ms NORTH:** I do not believe it says explicitly that we cannot give it out, but we also have duties as a public sector agency that we are prudent in managing other people's information, because there is individual privacy. We get information from complainants. We get their name and number in most instances. We get their information that can identify them. We get information about practices at workplaces that might be commercial-in-confidence. It is incumbent upon a public sector agency not to divulge that other than appropriately and respecting those things that are confidential.

**The CHAIR:** Is it stated anywhere in the act that WorkSafe is only to provide information pursuant to an FOI application?

**Ms NORTH:** I do not believe so.

**Mr MITCHELL:** No, it is not.

**The CHAIR:** Is WorkSafe able to provide the committee for each of the last 10 financial years how many FOI applications were received by WorkSafe for each of those years and what were the total moneys received by WorkSafe from the FOI process for each of those years?

**Ms NORTH:** I think some of that is in the additional information, other than the costs.

**The CHAIR:** If you could just take that as question on notice 33.

Section 14 of the OSH act sets out the functions of the commission. Which of these functions provides the commission with the power to investigate?

**Mr MITCHELL:** The commission is not an investigative body; WorkSafe is. Its purpose is to provide advice to the minister.

**The CHAIR:** Which of the functions set out in section 14 provides the commission with the power to prosecute?

**Mr MITCHELL:** It does not have that power. WorkSafe is the regulator.

**The CHAIR:** Is there a requirement under the OSH act for inspectors to write a report on each investigation that they undertake?

**Ms NORTH:** No.

**The CHAIR:** Do you think that is a deficiency in the act?

**Ms NORTH:** Not necessarily.

**The CHAIR:** Do you want to expand on that response?

**Ms NORTH:** It is a matter of what you want from the inspections. Basically, we try to deploy inspectors in a productive way, where they maximise their visits and choose the workplaces where they are doing proactive work and the workplaces that most benefit from those visits in terms of the fact that they need to be improved in some way, and we issue enforcement actions as needed and generate improvements in workplaces. That has been the focus. If you add report writing, you will get less of that other work. That is why I say "not necessarily".

**The CHAIR:** Section 14(1)(d) of the OSH act states that the functions of the commission are —

to provide advice to and cooperate with Government departments, public authorities, trade unions, employer organisations and other interested persons in relation to occupational safety and health;

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Do you agree that this provision requires WorkSafe to provide information to unions and other government agencies, including the coroner's office, about investigations into a serious injury or a death of an employee on a worksite or at a workplace?

**Mr MITCHELL:** That relates to the commission, not to WorkSafe. It is a separate body. The commission is a tripartite body and it advises the minister. WorkSafe is the regulator.

**The CHAIR:** The commission does not have access to information about investigations conducted by WorkSafe?

**Mr MITCHELL:** Correct.

**The CHAIR:** Who issues the safety alerts?

**Ms NORTH:** WorkSafe.

**The CHAIR:** That is not done in performance of section 14(1)(j) of the OSH act—that it is a function of the commission to “collect, publish and disseminate information on occupational safety and health”?

**Ms NORTH:** The commission does a variety of other documents—codes of practice, guidance notes, posters and information products—but safety and health alerts are normally from WorkSafe.

**Hon KYLE McGINN:** Do you believe that if you did engage with unions and complainants a little bit more with feedback on the status of their complaint, that would be better for OHS within the industry—it would give a little bit more for the complainant to say, “Well, I made a complaint and they are doing something about it”? Do you think that you could be doing better in that space?

[1.30 pm]

**Mr MITCHELL:** The answer is that WorkSafe engages as much as it can within its resources. We have a system of work which balances our resources et cetera, so we do engage with industry as much as we can. In terms of the information that we might provide, there are limitations placed on us.

**Hon KYLE McGINN:** I suppose that is on a bigger scale. I am talking about on a scale of people who make complaints and do not get feedback. Do you think that that breeds a culture of not getting anything achieved through WorkSafe?

**Mr MITCHELL:** The premise that they do not get feedback I do not think is correct.

**Hon KYLE McGINN:** So you do not believe that people do not get feedback about their complaints?

**Mr MITCHELL:** Yes, we are generalising across a whole range of issues. As I said earlier, when an inspector goes to a workplace—we are generalising—they are very conspicuous. They are not there to hide. The inspectors are known at workplaces and workers can see what they do; they can talk to them if they wish to.

**Hon KYLE McGINN:** I suppose I am going more to when an inspector does not go to a workplace and someone makes a complaint. Again, probably more relevant to the regional areas, by the looks of what we have seen so far. It sort of seems from some of the questioning we have had before and today that there is a bit of resilience there on giving feedback on complaints, particularly to trade unions.

**Mr MITCHELL:** I guess you have said that, but we do not distinguish between trade unions or any other stakeholder. I do not accept that at all.

**The CHAIR:** If the committee wants to ask questions in relation to the functions of the commission, to whom should we direct those questions?

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**Mr MITCHELL:** You have Stephanie Mayman, who is the chair, coming to meet you on, I think, 11 October.

**The CHAIR:** Which provisions of the OSH act prevent or prohibit WorkSafe from publishing an investigation report into workplace serious injuries or deaths?

**Mr MITCHELL:** An inspector's report?

**The CHAIR:** Just an investigation report.

**Ms NORTH:** I do not believe anything prohibits us putting up some information. We do not prepare inspectors' reports so that would not be something that we would have, but we could prepare something by way of an alert and that happens in some matters.

**The CHAIR:** But there is nothing preventing WorkSafe from actually preparing investigation reports and publishing those reports?

**Ms NORTH:** I think you would have to get legal advice as to whether there were any legal impediments, because if a matter was still in an appeal period or something like that, there would be some legal impediments. But subject to that —

**Mr MITCHELL:** It depends what you want in the reports.

**The CHAIR:** But other investigatory agencies release reports.

**Mr MITCHELL:** Containing?

**The CHAIR:** The outcome of their investigations.

**Ms NORTH:** We do publish prosecution summaries on successful prosecutions and they are all available with the facts of the matters on our website.

**Hon KYLE McGINN:** You do not publish the unsuccessful ones?

**Ms NORTH:** I do not think so, no.

**Hon KYLE McGINN:** Why is that? Would that not benefit the industry to see how it was unsuccessful?

**Ms NORTH:** I am thinking that I probably should check that. But, basically, I was thinking it is probably where it has not been proved, it might not be appropriate that we put up the name of an entity when the allegations were not proved. It is bad publicity.

**Hon KYLE McGINN:** It would be public anyway because you prosecuted them.

**Ms NORTH:** Yes, but we then sustain it in perpetuity on our website, which might be inappropriate when they were found not guilty.

**Hon KYLE McGINN:** Would that feedback not probably be beneficial to the industry in respect of future prosecutions?

**Ms NORTH:** In a de-identified form it is something that perhaps could be considered. I just think that there is some concern about the fairness of doing it where it was an unsuccessful prosecution.

**The CHAIR:** I have got some questions that I would like to ask that we probably need to go into private session to ask. So, I am going to have to adjourn the hearing at this point to consult with the committee members in relation to the rest of these questions. We will call you back in once we have concluded our deliberations.

**Proceedings suspended from 1.33 to 1.42 pm**

**[The committee took evidence in private session]**

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