

# **STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

## **INQUIRY INTO WORKSAFE**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 11 SEPTEMBER 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 10.23 am**

**Mr ROBERT BENKESSER**

**Safety Officer, Construction, Forestry, Mining and Energy Union, sworn and examined:**

**The CHAIR:** The microphones are live, so we are now in public session. I welcome our witness and thank you for your forbearance and apologise for the fact that the committee was running a little late this morning. There are a few formalities that I need to go through but before I start that, I will introduce myself. My name is Adele Farina and I am the Chair of the Standing Committee on Public Administration. To my left is Hon Kyle McGinn. Hon Darren West is an apology today. To my right is the deputy chair of the committee, Hon Jacqui Boydell; and further to her right is Hon Ken Baston. We are the members of the committee. On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask that you either take the oath or the affirmation. As I understand it, Bob, you are the only witness before us, and Chris is here in a support capacity.

[Witness took the affirmation.]

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

**Mr BENKESSER:** Yes.

**The CHAIR:** These proceedings are being reported by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and be aware of the microphones. Try to talk into the microphones and ensure that you do not cover the microphones with papers or make a 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. Before you give that evidence, just indicate to the committee that that is evidence that you believe needs to be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

I also would like to put on the record that the committee has redacted various personal items of information that form part of the CFMEU’s submission to the committee. I have handed you a redacted copy of that submission, so when answering any questions, please be mindful not to refer to people by name or in any way that might identify them, because it is likely that that has been redacted from the document. I ask members to be mindful of that in asking any questions. I also indicate that there is a capacity to go into private session at the end of the public hearing to cover any matters that may be of a sensitive nature.

Before I start, Bob, would you like to make an opening statement to the committee?

**Mr BENKESSER:** If I could please. Just to set the scene, I have been in the industry for 37-odd years. I have worked as a labourer, a dogman, a scaffolder, and in rigging teams. I have worked for management for nearly 12 years as a safety advisor, coordinator and manager, so, really, the evidence I want to give is based on working on both sides of the fence and dealing with WorkSafe

from both sides of the fence. I believe I will be able to give a fair assumption of how I see the industry and how I see WorkSafe affecting the industry.

**The CHAIR:** Thank you. Section 45(2a) of the Occupational Safety and Health Act requires an employer to notify any relevant safety and health representative of the presence of a WorkSafe inspector at a work place. Can you tell me whether this happens?

**Mr BENKESSER:** Our belief is that it is very rarely. I talk to workers—health and safety reps—all the time as part of my role and I have asked them that question many times. If they issue a notice they should advise the safety rep or the HSR that they have advised it, even verbal directions. I have not had an HSR yet tell me that that has happened.

**The CHAIR:** That leads into the next question that I was going to ask. In relation to the first part of that question, in terms of the safety and health rep being advised of the presence of the inspector on site, section 45(5) of the act provides that the failure by the employer to do so is an offence. Are you aware of any situation in which WorkSafe has taken action against an employer for failing to advise the health and safety rep that an inspector is on site?

**Mr BENKESSER:** The short answer is no.

**The CHAIR:** Section 45(3) requires WorkSafe inspectors on completing a WorkSafe inspection to notify the relevant safety and health rep or the safety and health committee of any action he has taken and any further action he requires to be taken as a result of the inspection. Does this occur?

**Mr BENKESSER:** Again, no.

**The CHAIR:** In relation to the incident reported at page 4 of the CFMEU's submission, I draw the attention of members and the witness to redacted information in relation to the employee's name and the name of the company and the workplace and ask everybody to be mindful of this in responding to the questions, and for members in their follow-up questions. Was there a health and safety rep on this site?

**Mr BENKESSER:** No.

**The CHAIR:** Is there a reason why there was not?

**Mr BENKESSER:** Probably by nature of the employer. What you will find is that probably 80 per cent of projects do not have a safety rep or a safety committee on site.

**The CHAIR:** I take it then that there was no safety committee established for this site either.

**Mr BENKESSER:** That is right.

[10.30 am]

**Hon KYLE McGINN:** Just a question with the HSRs. Are you aware of any proactive advertising from WorkSafe to these two sites on HSRs and committees? Establishing a HSR or OHS committee?

**Mr BENKESSER:** No, I am not. Actually, I see that as one of the major flaws, because under duty of care, that is one of the main areas where they can consult and cooperate with their workforce, which is a major part of health and safety. I have had arguments with WorkSafe over this that they do not promote that when they go onto projects. They do not promote it with the employees or the employers.

**The CHAIR:** Bob, were the dangers that have been identified in the submission raised with the employer? What was the employer's response?

**Mr BENKESSER:** They were raised with the employer. Two of our organisers went out to that project after they received a complaint. That was raised with the employer. This is pretty standard for us.

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When we go out, we face a lot of negativity, even being able to get access to sites to deal with safety issues. The employer in this case is quite a hostile employer and they did everything in their power to restrict our access to be able to deal with the issues properly. Then when the issues were raised, that was sort of a contemptuous response, basically, from the employers.

**The CHAIR:** The CFMEU submission stated that the CFMEU notified WorkSafe of danger concerns at that workplace on 9 August 2016 and that, to the best of the knowledge of the CFMEU, WorkSafe did not investigate the complaint and about six weeks later an employee fell from a height, resulting in serious injuries. Is it the CFMEU's submission that had appropriate fall prevention measures been engaged at the workplace, the fall could have been avoided?

**Mr BENKESSER:** Definitely.

**The CHAIR:** Is it the CFMEU's submission that had WorkSafe investigated the complaint and issued improvement notices and possibly prohibition notices on the employer, the fall could have been prevented?

**Mr BENKESSER:** Yes.

**The CHAIR:** Is it the CFMEU's submission that WorkSafe's failure to appropriately respond to the complaint with an immediate inspection and appropriate action put the health and safety and lives of workers at that workplace at risk?

**Mr BENKESSER:** Yes.

**The CHAIR:** Would you say that WorkSafe's failure to act on the complaint, if established, amounts to gross negligence on the part of WorkSafe and a failure to carry out its functions in accordance with the OSH Act?

**Mr BENKESSER:** Definitely.

**The CHAIR:** The CFMEU's submission stated that sometime after this incident another worker was injured at the same workplace. Was this also as a result of a fall from a height?

**Mr BENKESSER:** I believe so.

**The CHAIR:** Also, page four of the submission stated that another complaint was lodged with WorkSafe following that second injury. I take it there was no capacity to refer that matter to anyone else because you did not have a health and safety rep on site and there was no committee established.

**Mr BENKESSER:** That is right.

**The CHAIR:** Is this workplace still a workplace?

**Mr BENKESSER:** No.

**The CHAIR:** Were any of the dangers that were identified by the CFMEU addressed following the second accident?

**Mr BENKESSER:** I cannot confirm that. I have not been to site to actually see for myself, so I cannot confirm it.

**The CHAIR:** Section 14(1)(d) of the OSH act provides that it is a function of the commission —

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;

The CFMEU's submission indicates, with detailed examples and supporting documentation, that WorkSafe's conduct falls well short of this. I refer to annexures 3 and 9.1 of the CFMEU submission,

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which are email exchanges. Are these typical responses that CFMEU officials receive from WorkSafe?

**Mr BENKESSER:** Yes.

**The CHAIR:** This is representative of the way WorkSafe inspectors correspond with CFMEU officers?

**Mr BENKESSER:** Not WorkSafe inspectors, more the hierarchy of WorkSafe. We do not actually get contact with inspectors, which is another failing of the system.

**The CHAIR:** This is senior management at WorkSafe?

**Mr BENKESSER:** Yes.

**The CHAIR:** Were you satisfied with the response that you received in both of those email communications?

**Mr BENKESSER:** No.

**The CHAIR:** Did you want to expand on that in any way?

**Mr BENKESSER:** Let me take it a step further back. I actually approached the commissioner at the end of 2015 because I had just recently come back and started work with the union and I noticed the standard of safety was actually shocking out there in the field, in general. I approached him with the intent—I actually worded it this way—to establish a consultative and collaborative relationship to try to improve the standard of safety in the industry. The response to that was to set up quarterly meetings, which is nowhere near enough to establish what we need to improve it. Those meetings themselves were basically—I got no more information or assistance or cooperation other than what goes out into the public arena. I just believe that from all the hierarchy I deal with in WorkSafe, the response is almost like you get the opinion that they do not consider us relevant in the industry. They do not want to deal with us. It is almost like there is a contempt for us. Whenever we raise anything with them and one person in particular, the response is always, I suppose, negative and also combative.

**The CHAIR:** Is it your view that providing the CFMEU with feedback on its complaints would be consistent or, indeed, necessary for WorkSafe to comply with its function as stated in the OSH act?

**Mr BENKESSER:** Yes.

**The CHAIR:** You have talked about this strange relationship between CFMEU officers and senior management at WorkSafe. Can you just give an indication of the nature of the relationship between the CFMEU officers and inspectors?

**Mr BENKESSER:** We do not have a relationship with the inspectors. You will see with some of our evidence—I have raised this with the leadership of WorkSafe—that in every other state in Australia you can directly contact an inspector and get them out onto a job. They issue their business cards that has their direct mobile and their direct email address. Western Australian inspectors have nothing on their card other than an office number and a standard email address. On the back of their cards, they even have a disclaimer that just because they have been to a site does not mean it is safe.

**The CHAIR:** Oh, really?

**Mr BENKESSER:** Yes.

**The CHAIR:** Do some WorkSafe inspectors provide more feedback than others or is it standard that no feedback is ever provided?

**Mr BENKESSER:** We have no contact at all with inspectors.

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**Hon KYLE McGINN:** Just working from the complaint on 9 August, that came from the CFMEU to WorkSafe.

**Mr BENKESSER:** Are you talking about the—

**Hon KYLE McGINN:** It referred to the notification date of 9 August from CFMEU.

[10.40 am]

**Mr BENKESSER:** The letter; yes.

**Hon KYLE McGINN:** The CFMEU made the complaint. Did you get any feedback before the incident happened in September?

**Mr BENKESSER:** To be honest, I cannot remember. We did get a response but whether it was before or after, I am not sure. I would have to read through, but if I am on the right one, the response was basically, “We’ve had a look and we don’t find there’s any issue to deal with.”

**The CHAIR:** Just to be clear, Bob, Hon Kyle McGinn is referring to the incident in the CFMEU’s submission at page 4. The submission indicates that on 9 August, the CFMEU issued a Notification of Complaint to WorkSafe about the danger hazards at that workplace and, at the time, CFMEU was not advised as to any outcome to its complaint and nor was the complaint investigated, to the best of the CEO’s knowledge, is what is stated in the submission. On 20 September there was a fall from a height?

**Mr BENKESSER:** There was no response.

**The CHAIR:** In relation to the two incidents referred at page 4 of the CFMEU submission, has the CFMEU lodged an FOI application to obtain any information about any investigation that may have been carried out?

**Mr BENKESSER:** No.

**The CHAIR:** Would you pursue an FOI in some other cases to obtain information?

**Mr BENKESSER:** The reason you do not pursue an FOI is because the information they give you back in the FOI—I have been advised this by WorkSafe—is that they can give only limited information and our experience with them is limited information is only what goes into the public arena.

**The CHAIR:** When the CFMEU lodges a complaint with WorkSafe, how does the CFMEU know whether WorkSafe has investigated the complaint?

**Mr BENKESSER:** We do not. We follow up on jobs and look for notices on the jobs—whether a notice has been issued or not. I hate to say that I have seen very few notices issued, but we do not get any feedback other than if we talk to an employer they might say that WorkSafe was here. The response is pretty disgusting from the employers. It is that WorkSafe has been here, everything is okay. They consider that we are picking on them. Because they have been allowed to get away with what they are doing for so long, it is considered normal practice.

**The CHAIR:** At the bottom of page 4 of your submission, you indicate that the CFMEU consistently has problems contacting WorkSafe inspectors and that their refusal to provide direct contact information is a primary problem and that if CFMEU had direct contact details, this would ensure an immediate response to an incident. How would this aid a more immediate response to the incident if the WorkSafe inspectors are just not making themselves available?

**Mr BENKESSER:** If they were available, we would be able to deal with issues directly with someone with some enforcement behind them. If you go back a number of years where the department of labour and industry—DLI—and the change to WorkSafe, we were always able to contact the inspectors. We would get them down and they would arrive within the hour. We would go and have

a look at the issues we had concern with on the job. We would talk to the safety reps on the job and the inspector would as well. We would talk to the managers on the site and we would deal with the issues and get them sorted out. Nowadays you do not have that ability. We can go to a job and maybe get an issue sorted out there and then, but then we go away and they will deal with it for that specific situation and then when we come back again, we will have the same issues all over again. Employers have no fear because inspectors are not out there enforcing. I am not blaming individual inspectors. To me it is a far bigger problem. You have to have an ethical commitment from the top of the organisation that ensures that goes down the line. I think that even the morale of inspectors has been damaged because of that lack of commitment.

**The CHAIR:** You have explained a very different culture between DLI and WorkSafe that is quite marked. WorkSafe would say that it has limited resources and the reasons why they are not able to undertake the number of inspections that people would like them to is simply because they do not have the resources to do that. Would you agree with that statement?

**Mr BENKESSER:** Look, I believe they need a lot more funding and resourcing, but by the same token, compare it to a football team. It is up to the coach given the team he has got to make sure that their plan is executed and they deliver on that plan. This does not happen with WorkSafe. Even if you look at the fatalities in the last, say, 12 months, what have they implemented and then enforced their inspectors to go out and do about that? Have a look over the last seven or eight years, where I see the major deterioration probably within the last decade and have a look at what strategies they have sort of put in place. Have they even reviewed the situation—looked at their own stats—and put strategies in place to deal with that? We do not see it.

**The CHAIR:** WorkSafe would argue that there is benefit in all the requests to attend to go through a main contact point, a central office, so that effectively there is a capacity to triage the request to attend so that those that are identified to be more serious can be attended to immediately and those that are not considered serious can be left to a later time for an inspection. Do you see any benefit in that model at all?

**Mr BENKESSER:** Not at all. I just think it as a bureaucratic roadblock, myself, to ensuring that that does happen. I just do not see that system being effective and of any benefit to anyone. In the end, the whole idea of the system is to protect workers at work, and you will not do that by taking four or five days to decide, “Well, this is priority; we’ll go and see it.” It is already done and dusted by that time and that specific work task has been completed. They will go out to a job and say, “We’ve had a complaint.” It will be one of our complaints. They will go and look; there is nothing there. To them there is no issue. We have given them evidence there is an issue. They should be in there and enforcing that and prosecuting the builder for not complying in the first place. It is like having a cop on the beat, if they were enforcing based on the evidence they are given, employers would be more inclined to comply with their legislative requirements. It is just not happening.

**The CHAIR:** What evidence does the CFMEU have to support its view as stated in its submission that there is an adversarial culture at WorkSafe and an unwillingness to quickly and responsively act as opposed to WorkSafe merely being under-resourced to meet the demands of their service? You are indicating that it is more than just under-resourcing; there is a cultural issue?

**Mr BENKESSER:** Yes; I believe there is. One of our ex-organisers—I would not say mates—had a sort of relationship with an inspector. I asked him if he could get that inspector to meet with me so I could talk about the issues and see whether I could get some assistance. Basically, he was too scared to come and meet with me because if the hierarchy of WorkSafe found out that he had met with me, he would be in trouble. To me that just says there is a fear amongst inspectors to do their job and to do it effectively.

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**The CHAIR:** I refer now to page 5 of the submission and annexure 6. In the CFMEU's submission, it stated that the WorkSafe inspector told you to contact the relevant council who had jurisdictional responsibilities for roads and associated traffic management in that particular incident. Was that response provided in relation to all the matters contained in the complaint at annexure 6 or just in relation to the traffic management components of that complaint?

[10.50 am]

**Mr BENKESSER:** That was in relation to the traffic management component, but that was conveniently used to ignore the rest of it. It was not a WorkSafe inspector; it was someone high up in the organisation.

**The CHAIR:** Is it the case that it is local government's jurisdictional responsibility once you are on a road?

**Mr BENKESSER:** With traffic management plans, it is the local council's jurisdiction to approve safety management plans. There is another issue with that, because they deal with traffic flow, not safety of pedestrians, traffic and workers. But it is a workplace; it is part of the workplace, and it is our belief that it comes under the WorkSafe jurisdiction.

**The CHAIR:** Has that ever been raised with the commissioner in terms of providing some direction to WorkSafe as to whether or not that should be considered as a WorkSafe jurisdiction or does that remain a matter that is left up in the air?

**Mr BENKESSER:** No, I have raised it, and I have also raised it with people just under his level, and they still argue that it is not the jurisdiction and it is not a workplace as such.

**The CHAIR:** Does that position hold even if the road has been closed off for the purposes of conducting the work on site? Often, especially in the CBD, on the worksite, they build on every square inch of the lot, so by necessity the worksite has to extend onto the road for particular operations and often when cranes are being used. Is it not then part of the worksite if the roads are cordoned off and closed?

**Mr BENKESSER:** We believe it is. It is part of the workplace. You have got people working there; they are conducting work. That is the argument I have been given; that is, it is not actually work. It is actually work. They are doing what they do to help work progress on the site, and if it involves being outside the fence, it is still work being conducted.

**The CHAIR:** So, WorkSafe hold a different point of view, and that is that it is not their jurisdiction if it is on a public road?

**Mr BENKESSER:** Yes.

**The CHAIR:** Have you got that in writing from WorkSafe?

**Mr BENKESSER:** I will have a look; I may have something like that.

**The CHAIR:** We will take that as question on notice 1. In the event that you are able to identify it, it would be good to have something in writing if it exists.

**Hon KYLE McGINN:** They referred you to the council. Did you then go to the council or did they provide a response saying it was their jurisdiction?

**Mr BENKESSER:** In all these situations now we also send a submission or a complaint to the council, and, again, the issue we have with the council is that they deal specifically with traffic flow, not safety.

**Hon KYLE McGINN:** They have advised that it is not the jurisdiction?

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**Mr BENKESSER:** By phone. I would have to again have a look at whether I have got anything. I think I may have an email that says something along that line.

**The CHAIR:** We will take that as question on notice 2.

On the question of WorkSafe's failure to provide information about investigations to complainants, WorkSafe says that under the legislation its role is that of a regulator and the provision of information by inspectors to complainants is inconsistent with its role as a regulator and its responsibilities under the OSH act. What is your response to this?

**Mr BENKESSER:** It is as I said before: all information is good information. We get information off the regulator. We can share learnings from that with the workplace. We can also use that in our discussions with management to try to implement better work practices. Not having information from the regulator, whether it be in relation to an incident or an inspection, is negative to the whole process of consultation and cooperation.

**The CHAIR:** Would you also agree that it continues to place workers at risk, because if you are not getting an immediate response to inspection about a hazard and that hazard continues, then workers continue to be put at risk?

**Mr BENKESSER:** Definitely. Look, we do not have the power to enforce like the inspectorate does. They have the power to enforce; they have the power to make positive change for workers. At the moment, even workers do not have the confidence in the regulator; they are a bit of a joke to workers.

**The CHAIR:** At page 6 of the submission, the CFMEU indicates that from their point of view, WorkSafe should actively promote and enforce mandatory requirements to ensure that safety supervisors have training and certification in the specific disciplines that they are supervising. This seems extremely sensible to me and I am surprised that it is not a requirement. Has there been any discussion about this in the broader industry and is there resistance? Is this why it has not been enforced?

**Mr BENKESSER:** I sit on a committee that meets once a month. It is called the Western Australian Construction Safety Alliance. That is most of the main players in the industry—the Multiplexes, the Cooper and Oxleys; most of the main companies.

**The CHAIR:** That is okay, you are using it in a general sense; that is fine.

**Mr BENKESSER:** Yes. WorkSafe attend that. I have raised that there many a time, and at the moment I am in the process of pushing it, because the main concern with this is that you have got a workforce out there that is being supervised by someone who does not understand the high-risk work that they are doing; they do not understand the legislative requirements, the Australian standards and the codes of practice. They are not trained in understanding human behaviours, which is very important in the construction industry, because people are under stress and pressure to get a job done. They do not understand simple things like fatigue management or manual handling. These are all things that supervision should know if they are going to managing a workforce or members of a workforce. They are just putting people out there and making decisions that affect those people—not the supervisor, but those people—and it could potentially end up with someone being severely hurt or worse.

**The CHAIR:** So, you would agree with the statement that you do not know what you do not know and that training is absolutely critical so that you actually gain that knowledge?

**Mr BENKESSER:** Yes—proper training.

**The CHAIR:** Is there resistance to this proposition?

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**Mr BENKESSER:** There is, because there is a cost associated with it. This is from the employers' side; there is a resistance. At the WACSA, they all agree, but what I find with that is that a lot of safety advisers and safety managers have good intentions, but when they go back to talk to management, management are all by a budget, not by what is safe out there. The reason the budget overrides is that safety is not being policed and enforced, so there is not pressure on them to actually control and manage their safety. In the old days, especially when I first started working, and then even when I went to a management position, companies were considered risk managers—now they are risk takers, and there is a big difference, and it is not them that are affected until they are prosecuted for a fatality. Even with the relevant fines, they are not a deterrent.

**Hon JACQUI BOYDELL:** I want to ask, Bob, whether you could clarify something. You said that safety supervisors should have proper training. What do you mean by that?

**Mr BENKESSER:** By proper training, I do not mean calling the office for an hour and doing a little training session. I believe that if they are supervising people who are doing crane lifts and crane work, as a minimum there should be a basic rigger and they should have some basic training—so they have done a course. If they are working with tower cranes or hydraulic cranes, they should have the relevant training to understand how they work, what is required and the hazards that are applicable to them.

**Hon JACQUI BOYDELL:** Does the CFMEU have a safety standard training practice that is best practice that you would be able to supply the committee?

**Mr BENKESSER:** I am not really sure what you are asking for.

**Hon JACQUI BOYDELL:** I know there are lots of different areas of construction et cetera. Do you have a standard that the CFMEU works by in terms of what you would call proper training for different areas?

**Mr BENKESSER:** For ourselves or what we expect management to do?

**Hon JACQUI BOYDELL:** I think they are probably one and the same.

[11.00 am]

**Mr BENKESSER:** Put it this way, with our organisers, we employ organisers who have those high-risk work licences, and we do different little packages—and when I say little packages, they are training sessions on manual handling, fatigue and things like that. They are sort of done through the organiser training. But I think supervision need it even more so because they are directly responsible for the work crews. I do think there is a lot more pressure on supervision. They are expected to do a lot more than, say, their senior management. There is more responsibility on the supervision themselves. It is almost like if something goes wrong, the manager can say that that is the supervisor's responsibility. That is why I think they need the training. There are WorkSafe qualifications for all high-risk jobs, like licences and everything.

**The CHAIR:** So we will be able to get that information through WorkSafe.

**Mr BENKESSER:** Yes.

**Hon JACQUI BOYDELL:** And you recognise that as proper training?

**Mr BENKESSER:** Yes, definitely. There are other issues with the training, but I am sure I will get asked some questions about that a bit later.

**Hon KYLE McGINN:** So WorkSafe do have the staff there to promote that, but are you saying that is not taking place?

**Mr BENKESSER:** In regard to supervision, definitely not.

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**Hon KYLE McGINN:** So they have the programs in place but they are not enforcing them?

**Mr BENKESSER:** No. WorkSafe has recognised training that is conducted through RTOs for high-risk classifications. In the act, it says that employers must provide supervision and training relevant to what the scope is.

**The CHAIR:** As I understand it, Bob's submission is that if you are a safety supervisor and you do not have the training in that particular activity, how can you be adequately supervising that activity, because you do not have the base knowledge that you would have obtained had you got the certificate in that particular activity. Is that correct?

**Mr BENKESSER:** I could not have put it better myself.

**The CHAIR:** Bob, can you just clarify for me, is there a safety supervisor at every workplace?

**Mr BENKESSER:** They are not safety supervisors. Supervisors are supervisors. Safety advisers are a separate thing. A safety adviser's role is not to manage the safety on the site; it is to facilitate the supervision to be able to manage the safety. That is where a lot of confusion happens. People think that the safety advisers are there to control all the safety and everything. It is not. They are there to help the supervision, with training, with assistance, with knowledge, with information on the standards, the codes, the legislation.

**The CHAIR:** How many workplaces would have a safety adviser, or is it the company that has the adviser, and they are not on site?

**Mr BENKESSER:** Most of the majors—I am talking probably four companies—would have safety advisers that are on site. The rest of them do have safety advisers, most of them, but they are not specifically on the site. They sit in the office and when they are required, they go to the site. They manage the company safety system.

**The CHAIR:** The submission refers to safety supervisors. So really you are saying that anyone who is a supervisor on a site supervising a particular activity should have a certificate in that activity in order to be able to actually supervise and understand what is going on and what the likely risks are?

**Mr BENKESSER:** I believe so. If you look at the legislation, the legislation talks about the company providing training for its employees. A supervisor is their employee, with a huge responsibility to ensure the safety of the workers in the workplace. Not understanding the scope of work that those workers do, with its hazards and the risk involved with it, is a major disadvantage for the employees—no-one else, for the employees. This whole legislation is to protect workers. It is to protect the company, to an extent, but the company uses the legislation, and their safety systems are designed so that they protect themselves, not the workers. All this documentation and everything is a ticker box to say we have done this, we have done that, we have done that. It does not protect workers.

**The CHAIR:** At pages 6 and 7 of the submission it refers to a "hierarchy of control". Would you please briefly explain what that phrase means?

**Mr BENKESSER:** The hierarchy of control is basically you identify a hazard, and then implement your controls. The hierarchy of control talks about eliminating the risk, substituting the hazard. If you have got engineering, for example, if you have got noise, you can put up screens to block out the noise. If you are using tools that are noisy, you can buy tools that have got noise-dampening systems on them. Companies do not do that. They give you a set of ear muffs or a set of ear plugs and say use your PPE. They do not even train people properly in the use, the maintenance and everything else with PPE. But PPE is at the bottom of the hierarchy of control. So what it is talking about is you are trying to eliminate the hazard, substitute the hazard, engineer the hazard out. Then you have

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got your PPE and your administrative controls, which are at the lower end of the scale. You are supposed to try and implement the highest level of control possible.

**The CHAIR:** For the purposes of the record, PPE is personal protective equipment?

**Mr BENKESSER:** Yes, and that goes as far as harnesses and things. Employers do not look at fall risk systems or harnesses and lanyards and things like that as PPE. They treat that as a control measure. But it is PPE. They consider it engineering. It is not.

**The CHAIR:** So in the submission where the CFMEU say that the hierarchy of control is not being used as intended in Western Australia, is that what you are referring to—the fact that they see a lot of measures as PPE?

**Mr BENKESSER:** Yes. What I am saying is they implement controls at the bottom end of the hierarchy of control.

**The CHAIR:** Rather than looking at other options that would actually provide a safer outcome for all concerned?

**Mr BENKESSER:** It takes time and costs money, and projects these days are based on quick time frames and really tight budgets.

**The CHAIR:** How often would WorkSafe inspect a construction site?

**Mr BENKESSER:** That is a really good question, because I cannot even really confirm that. Really, it is only if the safety rep says to me there was a WorkSafe inspector here today, or a worker rings up. I have had a worker ring me up and say, “Can you come and have a look? We had a WorkSafe inspector here 20 minutes ago, and nothing has changed”, and they are concerned about falls from heights. This was a real example. I went out to the job, followed up on it, and he said, “Look, the WorkSafe inspector sat up on the level up there”, which was four floors above the ground, leaning on a crowd control barrier which was at the edge of the live edge, which is illegal. They have got to be at least two metres back if they are not a secure structure. He said, “It just looked like he was up there joking with the boss, and then he left the site.” That is why they called me, because there we still the falls-from-heights issues, there was water all over the job, because it was winter and it had been raining, so access and egress was just a mess. They had scaffold around the building. I do not know if you understand this, but scaffold is a form of access and working deck. If you want to load things on your scaffold, there have got to be purpose-built loading bays. They use the scaffold to load stuff on, and people have to climb all over materials and building gear and plant and stuff that is just left there and stored there. So this inspector saw all this, did nothing and left the site. That is why I got the call.

**The CHAIR:** After you got the call and you went out on site and had a look, were you able to do anything?

**Mr BENKESSER:** We were. We got the supervisor. At this particular site, I had just established the safety committee—the union had, not the builder. We established the safety committee. We had three safety reps on that job, and they would ring me constantly twice or three times a week and say, “What we dealt with yesterday is happening all over again today.” They had a safety committee there because the workers had asked for it. We had helped them set it up. We had helped them conduct meetings—this is the company and the workers—to try and establish the proper method for consulting and cooperating and improving the safety on the site, and they would just treat it as a non-event. As soon I would go, it would be back to normal.

**Hon KYLE McGINN:** I just want to get an understanding. The person who contacted you from that site, were they the HSR?

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**Mr BENKESSER:** Yes.

**Hon KYLE McGINN:** Did the inspector talk to them at all when they were on site?

**Mr BENKESSER:** No.

**Hon KYLE McGINN:** Did the inspector talk to any of the employees about safety concerns on that site that you are aware of?

**Mr BENKESSER:** My understanding is no.

[11.10 am]

**Hon KYLE McGINN:** Was any feedback provided to the HSR specifically about the inspection?

**Mr BENKESSER:** No.

**Hon JACQUI BOYDELL:** Would the health and safety rep, knowing that there is a WorkSafe inspector on site, not make themselves known to the inspector?

**Mr BENKESSER:** You have to understand the culture on sites these days—and it has changed a lot over the last seven, eight or 10 years—workers are really scared these days. A lot of them are labour hire. If the boss notices that a bloke is complaining too much, or he has raised too many hazards, or he has spoken to the WorkSafe inspector, the labour hire company, at the request of the employer, will make sure that that employee is not there the next day. It is a shocking culture out there.

**Hon JACQUI BOYDELL:** How does the WorkSafe inspector seek out the health and safety rep if the health and safety rep does not present themselves or make themselves known?

**Mr BENKESSER:** They are supposed to go to management and say, “Look, I want to talk to the safety rep.” In my mind, if —

**Hon JACQUI BOYDELL:** Do you think they are not doing that?

**Mr BENKESSER:** No, they are not.

**Hon JACQUI BOYDELL:** They are not asking that?

**Mr BENKESSER:** No, they are not.

**The CHAIR:** In fact, it is the act that places the onus on the employer to notify the health and safety rep that the inspector is on site as soon as the inspector comes on site.

**Hon JACQUI BOYDELL:** I think you noted that was not happening at the start of your evidence.

**Mr BENKESSER:** It does not happen.

**Hon JACQUI BOYDELL:** I get that, but I am trying to understand why, if the health and safety rep is appointed by the employer and he is known in that role —

**Hon KYLE McGINN:** Sorry, he is appointed by the employees.

**Hon JACQUI BOYDELL:** Sorry. If they are appointed by the employees but known by the employer to be the health and safety rep—you are expecting them to conduct the role as a health and safety rep—how are they not working in each other’s interests? I am not understanding that.

**Mr BENKESSER:** As I said before, the major companies have safety and health reps and committees. In most cases they do a reasonable job, but we can talk about that a bit later; I am sure there will be something about that. The companies I am talking about are those that are anything under that tier 1, say tier 3 or 4, company; it is just about every other company in town. They do not want safety reps or safety committees; so, even if they are established, they do not use them for what they were intended. They do not consult and cooperate effectively with them. It is a hindrance to their production and to their profit making I suppose, to be harsh and blatant.

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**The CHAIR:** Bob, on that, if a health and safety committee is established and an issue is brought before that committee and the committee resolves that it is a hazard and that it needs to be managed better, and actually recommends how it should be managed, does that recommendation then go to management, or is management part of that committee and the decision is made there and then at that committee?

**Mr BENKESSER:** Yes. A proper functioning committee has at least 50 per cent employees. You will find even in the major companies most of the time it is stacked with management, but they ensure that they have more management where possible. So decisions, say in particular in regard to a hazard, are thrashed out and controls are implemented at that committee stage and then the immediate supervisor for that particular area will go out and put those controls in place.

**The CHAIR:** If a matter is not satisfactorily resolved at a committee level, like the employees walk away and still feel very unhappy with the measures proposed to be implemented to deal with that particular hazard, if they as members of that committee contact WorkSafe to say, "Look, we request you to attend because this has gone to committee and we're not happy with the way it has been resolved at committee", does WorkSafe give a higher priority to respond to those requests to attend?

**Mr BENKESSER:** I do not really know, but maybe to answer your question in another way: the safety committee or the workers on the job usually will not contact WorkSafe because their experience is they do not get support.

**Hon KYLE McGINN:** I want to go back to a comment. A WorkSafe inspector goes onto site, in your opinion, under the act, whose obligation is it—the employer or the inspector's obligation—to advise the HSR they are on site?

**Mr BENKESSER:** My understanding of the act is it is the employer's—to let them know that the inspector is there—but it is the inspector's obligation to inform the HSR of any action he is taking.

**Hon KYLE McGINN:** Do you believe this is happening?

**Mr BENKESSER:** No, not at all; it is not happening. That is why there is no confidence in the inspectorate.

**The CHAIR:** It is not happening because the employees and the health and safety reps do not feel they are backed up by WorkSafe?

**Mr BENKESSER:** No; it is not happening because WorkSafe itself has not enforced the act; there are no consequences for the employer if he does not do the right thing, and the employees see that and they feel that there is no protection.

**Hon KYLE McGINN:** Are you referring to prosecutions not happening of breaches under the act?

**Mr BENKESSER:** That as well, but it is that no action happens.

**The CHAIR:** There is no prohibition notice, no improvement notice?

**Mr BENKESSER:** No real support of workers when they are asked. Even the employers will tell you—I get this all the time—that when they call WorkSafe, they do not give any advice; they just say, "You are not complying." We had an issue the other day. We went to a project and a company had incorporated some formwork deck into a scaffold as a working deck; you cannot in form components that are not proprietary components of that specific scaffolding system. We raised it with them, and they argued and complained about it and they said they were going to ring WorkSafe. I told them that if they rang this fellow—who is not an inspector, but is there to give advice—he will advise them on what sections of the act they should be complying with and what standards are relative, and all that. We gave him our opinion; he did not like it, so he approached,

or sent an email to, WorkSafe helpdesk. He basically sent the email that I had sent him of who to contact and what to do because I knew he would get the right help. I got an email from that person in the department's senior, which said, "This person is not an inspector. It's not up to him. You have to contact the helpdesk." They were just not helpful at all—if anything, they were negative towards us advising on how to deal with the issue and who to contact in WorkSafe.

**The CHAIR:** I assume that staff at the helpdesk would not have the qualifications or the expertise to provide that sort of advice?

**Mr BENKESSER:** No; they have the knowledge. If I want information, I will ring this particular person at the desk if I cannot get an inspector, and he will give me more help than if I were to ring any of the four hierarchy who are in place in WorkSafe. He is probably going to get a slap over the wrist for it, which is my fault unfortunately.

**Hon KYLE McGINN:** Are you referring to the hotline?

**Mr BENKESSER:** Yes; the call centre.

**Hon KYLE McGINN:** To make a complaint?

**Mr BENKESSER:** Yes.

**Hon KEN BASTON:** What is the time frame? How long has this been going on? Has this culture just crept up over time?

**Mr BENKESSER:** As I said to you, I came back in August 2015, and I noticed it straightaway, just talking to people on jobs—even talking to management, I was getting the same feel. I can guarantee you it has been going on for over two years. I even noticed it in the resources industry. I was up in the Pilbara for nearly 12 years and never saw a WorkSafe inspector. I would see a mines inspector maybe once a year; I never saw a WorkSafe inspector. I never saw one in 12 years on the job up there.

**The CHAIR:** Bob, would you agree that WorkSafe attend all construction sites at least once?

**Mr BENKESSER:** No.

**The CHAIR:** Would you agree that WorkSafe inspect construction sites in response to a request to attend or a complaint?

**Mr BENKESSER:** We have no real way of knowing—they may, but we have no real way of knowing.

**The CHAIR:** Pages 7 and 8 of the submission refers to "safe work method statements" and I draw attention to some redacted identification of "workplace" on page 8. Is it a requirement that safe work method statements must be lodged with WorkSafe before the work is undertaken?

**Mr BENKESSER:** Not with WorkSafe.

**The CHAIR:** What happens with these statements?

[11.20 am]

**Mr BENKESSER:** Safe work method statements are when a builder does a job, they have an overarching risk assessment that they do. They call them a CRAW—a construction risk assessment workshop. That is the major risk assessment for the project. That is supported by SWMS. SWMS are done for all high-risk activity, so there is no requirement to do a SWMS for something that is not high risk. So we are talking about things where you need a high-risk work licence to do that task. When they do a SWMS, if it is done effectively, the best way I have ever seen it done is where the work group, their immediate supervisor and, if it is required, an engineer, are involved. They go out to the workplace where the task is going to be conducted and they identify all the job steps. Then

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the next column is to identify any hazards associated with each job step. Then you put in effective controls based on the hierarchy of controls. There are also two risk ratings in most SWMS. There are different formats and this is another problem; should be one, standard format. Some formats have an initial risk rating, which is the risk of harm or injury to a person without the controls, then they have a residual risk rating. They have scales of how you can reduce them by the controls. Some companies will even say if it cannot be reduced to this, you have to go back and reassess it before you start the task. The big problem with it is that most of them are generic; they are taken from job to job to job. They are not done by people in the field. They are not done in cooperation. An engineer or a supervisor might do the SWMS and give it to the workforce and say, "Read that. Sign it. Get on with your job." That is just not effective control of the hazards in the workplace for a particular task.

**The CHAIR:** How do we address this, Bob? Would it be too onerous a requirement to require of the safe work method statements to be provided to WorkSafe and approved by WorkSafe before that work was undertaken?

**Mr BENKESSER:** In their current state, I would not recommend it. I do think that is too onerous, to be fair. What I think we need is supervision with adequate training and the help of their safety advisers, and workers need to be trained in what is involved in developing a proper and effective SWMS.

**The CHAIR:** When a WorkSafe inspector undertakes an inspection on a site, would it be a matter of course for that inspector to review the safe work method statement?

**Mr BENKESSER:** I would have thought so. I actually asked this question and they do not unless it is a particular high-risk task where they find issues, and then they may review the SWMS.

**The CHAIR:** Is there no legislative requirement for them to do so?

**Mr BENKESSER:** I do not know if it is in their scope because I believe the inspectors are trained by the hierarchy to a scope that the hierarchy sees fit. As far as legislative requirements, I do not believe I have ever seen anything that says they have to. But you would think, if you are going on to a job to do an inspection, the first thing you would do is have a look at the high-risk activities and then have a look at the process the company has in place to manage them.

**The CHAIR:** At page 8 of the submission, it refers to safety management plans and the failure of WorkSafe to ensure relevant safety management plans are in place for the entire site as opposed to each subcontractor having their own safety plan. Can you explain why this is important and the difference between the safety management plan and the SWMS?

**Mr BENKESSER:** Yes. The problem with having all the different safety management plans is you have different levels of safety on the site. Now, the level of safety on site should be the best possibly achieved by all players on that site. In the past, a company's main contractor would have a safety management plan and everyone that came on worked to that safety management plan so everyone had the same standards. If you were doing a job over here for one company and another company there was doing a similar job, the same rules applied, with the same levels of safety. The benefit of that for workers was that they had support from each other. They could see that was how it was done and they were enforced to do it that way, but that has changed over the years to the point where the main contractor, as part of the tender process, will ask the subcontractor for their safety management plan. They will tick it off; it is another tick and flick to say they are complying, then it is, "Off you go. You've got the job; get it done." That is how it is. It sounds sort of like I am being a bit blasé about it, but that is how it is done.

**The CHAIR:** So there could actually be a safety issue in terms of the interaction of different work groups on site, but that is not being planned or managed at all?

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**Mr BENKESSER:** Most certainly, yes. Planning is a big issue. No proper planning goes into this. The risk assessments and safety management plans—your SWMS—are all part of a planning process but above that and before that, engineering and management are supposed to plan the tasks are coming ahead. A big component of it is change management. Part of the training in SWMS and risk assessment is, when you get trained in it properly, that if there is a change in the process, you stop immediately, reassess the task, and implement new controls to accommodate that change. Most of the incidents that happen, happen through a change in the process and it is not being planned and controlled properly.

**Hon KYLE McGINN:** Just in reference to what you were talking about with the safety management plans, are you saying that it is highly likely on some construction sites that the same task is being performed by two separate companies to a different safety standard?

**Mr BENKESSER:** Often; we see it often.

**Hon KYLE McGINN:** In your experience of the 37 years you have been in the construction industry, was there a period during that 37 years where—you referred to it earlier—the safety management plan was done entirely on site; how far back would that have been?

**Mr BENKESSER:** It still happens in the resources industry. When we do construction in the resource industry, they have an EPCM, which is basically a contractor between the resource company and the contractors that are going to build the resource project. That EPCM will have a safety management plan and they are usually very thorough and very well worked out for that specific project. Whenever a contractor comes to tender on the job, then part of that tender process is they must do a cross analysis between their safety management plan and the EPCMs. What happens is their safety management plan is not approved until it reflects the EPCM safety management plan so you are actually working to the same safety management plan. EPCM is engineering, procurement and construction management of a project.

**The CHAIR:** You very much for that, Bob. The committee understands from WorkSafe that WorkSafe has developed industry checklists for its inspectors. Do you know whether the safety management plans and the safe work method statements are on these checklists?

**Mr BENKESSER:** I believe, in most cases, they are. The checklists are more so for a company to make sure they are doing a task to the legislation and they are quite broad. Now, I cannot tell you if there is actually a checklist for the inspectors to go through for a SWMS. I would expect there is, but I do not believe they actually get done effectively. I am not going to cast aspersions on how it is done but I do not believe they are done effectively and I do not believe they are designed to get the best result and ensure enforcement.

**The CHAIR:** At page 8 of the submission, the CFMEU raises the view that WorkSafe forewarns the principal contractor when an industry inspection program is underway. WorkSafe's evidence to the committee is that they do not do that. Do you have any evidence to support the CFMEU's view?

**Mr BENKESSER:** Have a look at their media releases; it says in there.

**The CHAIR:** Thank you very much for that, Bob. Pursuant to the OSH act, an employer is required to notify the HSRs when a workplace inspector is present on site and it is an offence if the employer fails to do that. In the CFMEU's submission, it is stated that there is little or no interaction between WorkSafe inspectors and HSRs. Is that correct?

**Mr BENKESSER:** Yes.

**The CHAIR:** Has the CFMEU raised this question with WorkSafe and what has been their response because clearly, it is a legislative requirement that this be implemented and adopted?

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[11.30 am]

**Mr BENKESSER:** I have raised with WorkSafe that they should be acknowledging and discussing, making contact with the HSRs and dealing with them. His response is that they do, but when I talk to safety reps, they do not.

**The CHAIR:** In terms of the number of examples that been provided in the submission of fatalities on pages 9 to 11 of the submission—I am not proposing to ask any questions on these at this time because of some of the sensitive nature relating to those. However, it is quite possible that the committee may do so either in private session or at a future hearing. I might just check with committee members that they are okay with proceeding on that basis or whether there are questions that they feel that they can ask in public hearing in relation to those.

**Hon KYLE McGINN:** It would be better in private.

**The CHAIR:** Everyone is happy with that; okay. On the question of the length of time it takes WorkSafe to complete an investigation, WorkSafe has informed the committee that delays are due to the complexity of the investigations that they need to undertake, difficulty in accessing experts and the time it takes for the experts to then provide information to WorkSafe, and also management of resources; they acknowledge that resourcing is a problem. Would you say that this is a reasonable explanation for the length of time it takes to investigate an incident?

**Mr BENKESSER:** No, I do not. I believe that you can find out the contributing factors and root causes a lot quicker than they take to do it. If you conduct the interviews with the people involved as soon as possible, which is critical, before people get a chance to talk to each other, before people get a chance to be influenced by outside sources—or not outside, but sources that should not have an influence—if you do that properly and gather all your information and gather your documentation, and with the resources that they have to compel people to talk to them, there is no way they cannot. Specifically, there are a couple of the incidents when they could have had charges and everything laid in half the time. Another issue I have with it is that along the process of an investigation, there should be learnings coming out from WorkSafe as it goes along to prevent a recurrence happening, especially in the climate we have now and the nature of the industry we have now. In my past life working for management and doing incident investigations, we would always put out learnings before we had a result to the site. You would put it out as a toolbox and you would spread it throughout your company and with other companies purely to try to prevent it happening again. There is no reason why they cannot do that.

**The CHAIR:** Have they provided the CFMEU with an explanation as to why they do not do that?

**Mr BENKESSER:** No.

**The CHAIR:** At page 11 there is an example that has been provided by the CFMEU. The CFMEU states that it undertook an investigation in relation to a particular fatality and within a month they had pretty much concluded their investigation, yet it took nearly four years for the coroner's report to be handed down, and the coroner had been delayed because of the length of time it took for the WorkSafe investigation to be completed. Did WorkSafe ever release a report on that particular incident and investigation?

**Mr BENKESSER:** Not that I know. It is interesting to note that the union actually did its own investigation and had identified contributing factors and advised of adequate controls that would have fixed that, and we find nearly five years later, or whatever it is, that they are the recommendations that have come out of the inquiry. That is argument to say that the investigations can be completed a lot quicker.

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**The CHAIR:** This might be an unreasonable question to ask you, so feel free to decline to answer it. Can you advance any reasonable explanation as to why it would take WorkSafe three years to complete an investigation that the union was able to complete in one month?

**Mr BENKESSER:** I think it all comes down to ethical commitment, to be honest.

**The CHAIR:** Are you able to tell the committee whether any charges or prosecutions arose from that particular investigation and incident? You might want to take that question on notice.

**Mr BENKESSER:** Yes; if I can, please.

**The CHAIR:** I think that is question on notice 3.

At page 11 of the submission, the CFMEU states —

The fact that WorkSafe do not facilitate a cooperative approach means that in many instances, the opportunity to gather meaningful ... evidence is lost.

Could you please expand on that?

**Mr BENKESSER:** I am just trying to find it.

**The CHAIR:** It is just below midway down the page: “In this context”—that paragraph. The next line states —

The fact that WorkSafe do not facilitate a cooperative approach means that in many instances, the opportunity to gather meaningful ... evidence is lost.

**Mr BENKESSER:** Yes. This came out of a couple of those particular incidences. We were there on the scene, sometimes before WorkSafe, and we were able to gather evidence that would be helpful with an investigation. I believe if we could use both resources, both abilities and both knowledges, we would have a far quicker and probably more productive outcome. They are just not willing to cooperate like that. It has to be better for the industry.

**Hon KYLE McGINN:** I have a question in regards to regional WA, probably more specific to the north west where there are no inspectors. You said that in the metro area you have been there before WorkSafe. Are you aware of what happens in the case of an incident in a regional area as far as gathering evidence or evidence being lost? Are you aware of any procedure that WorkSafe has explained on getting to the site or maintaining that evidence base?

**Mr BENKESSER:** Officially, probably not, but I understand that someone has to fly out there and go and do an investigation, which is really impractical. If there was someone there, they could be there immediately on the spot. There would be a lot less chance of evidence and information being tampered with and, you know, removed, and you would eliminate the possibility for people to collaborate stories. It is critical, especially in a fatality; it is just critical.

**The CHAIR:** Is there anybody on a worksite who has responsibility to close down and protect a site in the event of an incident?

**Mr BENKESSER:** Everyone from the senior person on site for the company down to the workers involved in that incident. Everyone has a responsibility to secure the site, maintain it, obviously look after anyone who is affected by the incident, and to get witness statements and stuff. Even the company’s own safety management team, part of its role is to conduct an incident investigation straightaway.

**Hon KYLE McGINN:** By saying that, would you agree with the statement that that is taking place in regional WA when an incident occurs—that everyone is taking responsibility to ensure the scene is not being tampered with?

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**Mr BENKESSER:** No. Look, it has been proven in many situations where the scene is tampered with, for a start. It happens here in Perth. Say there is a crane incident. We have known of situations where the crane has been driven off down the road back to the yard, and it is a major piece of evidence in the incident that has occurred. It happens here in Perth, and it will happen even more so up in the regional areas.

**The CHAIR:** Moving along from, that because I think we might pursue that a little further in private session, can the CFMEU tell the committee what your members think about the information that WorkSafe provides to the public after an investigation has finished?

**Mr BENKESSER:** They know that there is no information out there, because we are always being asked what has happened about this and what has happened about that. People who have worked with victims of the incidents are always asking what is going on, and they are disgusted that there is no information that comes out. Everyone wants to know what happened. A lot of people know where the fault lies and they just want to see justice done because they know it is not happening when they are at work doing the work. Their normal gut feel is just to say, "They deserve this; they're going to get it." They think that the employer has killed that person and they want justice for it.

**The CHAIR:** What feedback is the CFMEU getting from its members about how WorkSafe is perceived on construction sites?

**Mr BENKESSER:** They consider them a non-event and ineffectual.

[11.40 am]

**Hon KYLE McGINN:** How many members does the CFMEU have on construction?

**Mr BENKESSER:** I could not tell you exactly, but it would be around 6 000—something like that.

**The CHAIR:** Do you want that as a question on notice?

**Hon KYLE McGINN:** Yes, could we put that on notice.

**The CHAIR:** We will make that question on notice 4.

Has the CFMEU asked WorkSafe why it takes three years for an investigation to be completed, and what was the response provided by WorkSafe?

**Mr BENKESSER:** We have basically got the same answers that you mentioned before.

**The CHAIR:** CFMEU has commented in the submission that it would take a cultural change from the very top for things to change. Can you please expand on that statement and explain to the committee what changes the CFMEU considers need to happen at WorkSafe?

**Mr BENKESSER:** We believe from the top down—this is not just my opinion; all of them. Even companies believe this—builders, employers—that from the top down there is not a commitment to perform the role they are given to actually enforce the law. Builders see it a bit differently from us. They see it as a free kick: "Let's get on and get done what we can and we'll take the risk, not manage it, and if we get caught, okay, it's not going to be too bad; the penalties aren't that bad." They know that there is no cop on the beat that will go out and watch everything they do and pull them up and there is no penalty or consequence for doing the wrong thing, so they continue to go ahead. That, to me, is a direct result of a culture or an attitude within WorkSafe of, "We don't really have to do our job as intended." They have got away with not enforcing legislation for so long that I truly believe that they think they are doing a great job and they can get away with it.

**The CHAIR:** With the use of improvement notices as opposed to penalties, do you have view on that? A lot of people would argue that providing an opportunity for improvement and addressing the danger quickly is more important than instigating a prosecution that could take quite some time.

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**Mr BENKESSER:** I do not see why you cannot do both—improve the situation straightaway or issue a penalty, because that is the point where people are not learning and they are not being forced to do the right thing. Unfortunately, it has got to a point where they need to be forced to do the right thing. Issuing improvement notices—issuing any notices—is a waste of time by WorkSafe because they only follow up on five per cent of them. They have told me this themselves. Say they issue 100 notices, they will have a follow-up on five per cent. For the rest they rely on the employer, so the culprit, to send them a notice back saying that they are compliant, which is a tear-off part of the document that they have been issued that says, “We fixed it all up. Everything’s fine”, and they will only go and follow up on five per cent.

**The CHAIR:** That is extraordinary.

**Mr BENKESSER:** It is shocking, because people are at risk every day; it is a high-risk industry.

**The CHAIR:** And it does not matter the nature of the risk, the nature of the improvement notice?

**Mr BENKESSER:** It is irrelevant; it does not matter.

**The CHAIR:** What sort of time do they usually offer for an improvement notice to correct the problem? Does the nature of the problem regulate the time?

**Mr BENKESSER:** The nature of the problem should, but because we see so few notices, I am not really sure. I cannot really answer that question.

**The CHAIR:** Would they issue more prohibition notices and shut down work until the problem is fixed than they do improvement notices?

**Mr BENKESSER:** No. Look, I do not believe there is a commitment to shut a work down if it is wrong. I believe that, along with that line of education and help—we are going to help people get better—it is done in that manner.

**The CHAIR:** They are going to help people get better but they do not tell them how to make it better?

**Mr BENKESSER:** No, and they do not enforce penalties if they do not make it better.

**Hon KYLE McGINN:** In your experience, Bob, would you say that if there is an employer that has a trend of improvement notices, that once it gets to a certain extent, WorkSafe do prosecute, if the same employer is doing the same breaches?

**Mr BENKESSER:** No, I do not. That is why I said earlier that I do not believe they have looked at their stats. I do not think they even care about reviewing and seeing what the situation is. I think they are quite comfortable with the way things are going. I just do not think there is a commitment to do it.

**The CHAIR:** The CFMEU has submitted that WorkSafe allows industries to self-regulate. The CFMEU has given an example that cranes used to be inspected every 12 months and are now not inspected regularly. Can the CFMEU provide any further examples of where WorkSafe does not inspect equipment or sites that used to be regularly inspected? You can take that on notice if you like, Bob, because that is a hard one.

**Mr BENKESSER:** Yes, that is probably easier.

**The CHAIR:** We will make that question on notice 5.

Would you like to comment generally on this principle of self-regulation? It seems to me that it is fraught with people just ticking boxes rather than actually addressing the problem.

**Mr BENKESSER:** It is. If you go and have a look—I would love to be able to take you for a day with me and just have a look out there. You really would be shocked. You can say that it is extraordinary and that it surprises you, but you would be shocked if you came and saw it. This is probably not right

to say, but it is like living in a Third World country going to some of these jobs. We used to look at bamboo scaffolds and stuff in Asia. Some of our practices are bordering on that. There is not bamboo scaffold, but the situations people are expected to work in, under the pressure of “If you don’t do this job, you haven’t got a job” is rife in the industry, especially with those down under the top-tier builders. At any level down below that, you will find it. I would love to take you out for a walk if you all want to come one day. You will see it for yourself.

**The CHAIR:** We will take that under consideration, thanks, Bob. That might be difficult to arrange.

The CFMEU has submitted that major noncompliances in regard to high-risk activities has become rampant due to the deregulated industry. You have touched on this. Is there anything more you want to say on this?

**Mr BENKESSER:** Basically, by a deregulated industry, what I am saying is that builders are allowed to go and do what they want and they regulate themselves. As I have said, there is no cop on the beat. There is no-one to say, “This is how you’ve got to do it. You’ve got one chance. You’re going to be penalised if you don’t do it properly. This is your legal requirement.” They do not get penalised, so they basically set their own standard, and each and every individual builder sets their own standard from the best tier 1 to the lowest of the lowly builder in town—and there are some.

**The CHAIR:** I understand that a number of trades in the construction industry, particularly in the housing industry, do not need to be licensed or registered. Are you able to provide the committee with a list of these trades that do not require licences or registration?

**Mr BENKESSER:** If you give it to us on notice, we will get you that.

**The CHAIR:** That is question on notice 6.

What is the CFMEU’s view on this practice? Personally, I find it extraordinary that you would have trades that are not registered.

**Mr BENKESSER:** Electricians can be electrocuted and it can be fatal. They do a four-year apprenticeship. Plumbers can have gas cylinders explode on them and be killed if they do not do something properly—a four-year apprenticeship. You look at people who are operating these massive cranes that fling loads all over the public, because at the moment they are able to do that. They are swinging massive weights around the place. They are operating pieces of equipment that, if they make one wrong movement, the results could be catastrophic, and they have to do a week’s course. Someone can work on a farm all their lives, or in a bank, and come out and do a week’s course and go out and start rigging. It is just preposterous. It is a recipe for disaster out there. If we do not do something about that, the fatality and injury rate is going to increase out of sight.

**The CHAIR:** Would you like to take this opportunity to comment on the closure of the Pilbara and Broome offices of WorkSafe? Was the CFMEU consulted prior to this decision being made?

**Mr BENKESSER:** We do not get consulted. The closure of both of those offices—in particular, Karratha—I have not got an explanation for it. You have got all the resources work. Okay, it might have been starting to slow down, but there were still major projects going on. There are still projects going on now, and there is all sorts of maintenance and upgrade work that is still going on, yet there is not a regulator up there to go and inspect sites and make sure that they are safe, make sure that everyone is doing the right thing and, hopefully, prevent fatal injuries. It is just disgusting. I do not know how they can justify that decision.

[11.50 am]

**Hon KYLE MCGINN:** Do you believe that WorkSafe is still performing inspections to the same standard they were before they removed the inspectors?

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**Mr BENKESSER:** Not at all. How can they?

**The CHAIR:** The CFMEU submission raises serious concerns about the regulation of the management of asbestos at pages 15 to 17 of the submission. The CFMEU states —

Inexperienced asbestos workers are qualified to remove asbestos with little or no training under the “company’s” asbestos license.

Could you please expand on that for the committee and explain how that happens? The workers are not required to be registered or licensed themselves, but they can work under a company license?

**Mr BENKESSER:** They can work under a company license, but under the act they are supposed to have done asbestos awareness training. We still find people who have not had that training. We find that the training that is given to the company of four hours is absolutely preposterous. I just do not know how that is considered acceptable considering the level of risk that is associated with asbestos. I am probably not the best person to give you advice on asbestos. There are other witnesses I think that should have put submissions in that may be able to give you a better idea, but asbestos itself has got to the point, in Perth in particular, where people are blasé about it. We had issues on a job right in the centre of town near the Horseshoe Bridge where we raised the issues, we raised the concerns and the builder called the police to stop us getting access to site. If you have got nothing to hide, why would you do that? WorkSafe were consulted. They never even came down and had a look at the job, from what we were told, and made a decision and gave advice to the builder over the phone or via email; I am not sure how it was done. That is quite a common practice—giving advice without visiting the site. Asbestos is a killer, we all know it is a killer and there should be a lot stricter controls in who you issue the licenses to, the adequacy of the training that you have to undergo to perform the task, and to manage the tasks. I think a lot of work needs to be done in the asbestos arena.

**The CHAIR:** Bob, at the bottom of page 16 of the submission it states that licensed asbestos removalists owning or having interests in asbestos consultancy companies is an issue of concern and that evidence can be provided. Can I ask as a question on notice for that evidence to be provided to the committee? That would be question on notice 7.

**Mr BENKESSER:** Yes.

**The CHAIR:** Then on the next page at the top it states that licensed asbestos removalists and asbestos consultancy companies sharing the same building space and that evidence can be provided. I will put as question on notice 8 for that evidence to be provided please.

**Mr BENKESSER:** Yes.

**The CHAIR:** In the comment on asbestos, CFMEU comment that independent accredited organisations are more effective regulators than WorkSafe when it comes to the management of asbestos and as a result they are frequently not being engaged by companies.

**Mr BENKESSER:** Yes, and the better they are, the less frequently they are engaged, which spells a problem.

**Hon KEN BASTON:** Just going back on asbestos, I am interested: if somebody had just started a small company that was going to deal with asbestos, particularly in the north, how much training did you say? What is the time frame?

**Mr BENKESSER:** Four hours.

**Hon KEN BASTON:** Okay; that is not very long.

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**Hon KYLE McGINN:** With respect to the case you identified earlier, are you aware of an employee who raised their concerns with WorkSafe about asbestos being on the site?

**Mr BENKESSER:** Which one was that?

**Hon KYLE McGINN:** The one that you explained, near the Horseshoe Bridge.

**Mr BENKESSER:** I know an employee raised it with us and I believe that they raised it with WorkSafe as well.

**The CHAIR:** Are you aware whether WorkSafe went out to the site and investigated?

**Hon KYLE McGINN:** He said no.

**The CHAIR:** You said no, did you?

**Mr BENKESSER:** Of that, I am not aware of.

**Hon KYLE McGINN:** Just to refer back to what you said, I think you said that they consulted over the phone, potentially.

**Mr BENKESSER:** That is my belief. I am not aware of them going to site and from what I have been told by different people, they had given advice over the phone.

**The CHAIR:** Subparagraph (d)iv of the CFMEU submission states on page 17 —

WHS Regulations establish 31<sup>st</sup> December 2003 as cut-off date for building survey requirements.

But there seems to be some proposal to re-establish 1990 as a cut-off date. Are you able to expand on that, because I am not very clear as to why that would be happening?

**Mr BENKESSER:** More so purely because the product was used well before 2003. There is obviously potential for it to be a lot wider in use than what is considered and what would be picked up by doing it from 2003.

**The CHAIR:** At page 18, subparagraph i of the submission states —

The fact that WorkSafe do not have a system of on the spot fines for Workplace breaches coupled with a lamentable lack of successful prosecutions means that revenue from penalties has fallen from about \$70000 in 2010/11 to 547000 in 2014/15.

Should the \$70 000 be \$700 000 or should the 547 000 figure actually have a dollar sign instead of the five?

**Mr BENKESSER:** It should be \$700 000.

**The CHAIR:** Okay. Thank you. I just wanted to get clarification on that. The figure of \$547 000 is correct.

**Mr BENKESSER:** Yes.

**The CHAIR:** Thank you. Would you like to elaborate a little on on-the-spot fines? Do other jurisdictions use them and why do we not have them here in WA and what would be the benefit?

**Mr BENKESSER:** I am not sure whether other jurisdictions have them at the moment. It is not something I have followed up. But the reason I think we need them here is, firstly, they are a deterrent. Everyone keeps forgetting that this is all about protecting workers—making sure they get home safe at the end of each day and making sure families do not suffer for the loss of a loved one and workmates. Even though it may seem a sort of mediocre-type punishment, if on-the-spot fines were graded depending on the type of offence—let us say, for example, something like electrical leads not being tagged. If you find one electrical lead not being tagged, issue them a notice. Just say,



“Look, you have to get it fixed; you cannot use it until it is fixed. Blah, blah, blah.” If you find multiples on the site, which we are finding, there should be a fine imposed. I do not believe fining the workers is the answer, because they are doing as they are told. Even simple things such as electrical leads, they will report the lead and say, “Lead is not tagged, can I get a new one?” Just do the job. Again, there is that fear of losing their job. The supervisor responsible should be fined. The construction manager or his next superior should be fined but double. It goes up through the hierarchy of command of the company. The only way you are going to deter this and get safety led from the top down is to punish all players in that process. I know people are going to say, “The workers do this; they should be fined too.” Get the playing field right and then if you have offenders in that area, maybe we look at that. We have to really enforce compliance with the culprits and the culprits are the people with control.

**The CHAIR:** I note that at pages 18 and 19 of the submission you have provided the committee with a very helpful list of recommendations, for which the committee thanks you. Do you want to expand on any of those at this time?

[12 noon]

**Mr BENKESSER:** Yes; I would like to expand on all of them if I could. WorkSafe inspectors conducting random unannounced inspections and investigations is critical. They put out a media release saying we are going to do a targeted inspection on, say, working from heights. It goes out and they do let their mates in the MBA know, who let all their members know. What happens is they have a week to get everything fixed up and back to square one. The guys will tell you that on a job. They will say, “Oh, they had a big clean-up here last week and then WorkSafe turned up.” It is a joke. I think that is critical to trying to get back to a level where compliance is. This is all based on getting complaints and maintaining safety for workers at work so they go home safe.

Assess the competency of WorkSafe inspectors: You would have to try to confirm this and ask, but I heard that an inspector was appointed to the job because he was a delivery driver that used to deliver to construction sites. That is not construction experience. They need to get inspectors who are qualified. Like I am saying about supervision, you have to understand the high risk nature of construction work. You have to understand the hazards involved and all about correct controls. They can learn the legislation and that in their training on the job, but that is critical. They have to have relevant industry experience and even five years I think is probably not enough, but it is a starting point.

On-the-spot fines: I think that again is critical to establishing a competent, effective regulator.

Promote self-funding model: I believe that on-the-spot fines and that sort of thing do assist in funding WorkSafe. If they went out and did their job properly, they probably would not need a budget from the government, realistically, given the state of the industry currently. It will take a long time to fix it, but it is a good one for the government to think about and it will have an immediate effect. It will make things happen in a hurry.

Increase and broaden the scope of penalties under the legislation: I think that is happening but I think we have to be really extreme with that. I really do. It has to encompass the chain of command. If you have a look at recent prosecutions, you will see a crane operator was prosecuted, a scaffolder was prosecuted and a supervisor was prosecuted. The only employer I have seen prosecuted lately worked on the job with the fellow that died as a result of the incident there. It is people down the hierarchical chain who are getting prosecuted. It needs to go up. For management to lead safety from the top—I will repeat myself—it needs to be led from the top and if they are not going to suffer a consequence, they will not enforce it down the line. It is critical. There was something else that flashed in my head, and it is gone now, but I will think of it.

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Funding for WorkSafe: They do need funding. To get the resourcing they require, they do need adequate funding. Hopefully, other things like on-the-spot fines and that can eventually take over and produce what they need and maybe some funding from industry itself like they do in the resources industry. The more they have to pay to assist WorkSafe, maybe the more proactive the builders themselves will be. If the information I have been given from WorkSafe is correct, there was an allocation for 93 inspectors in the department. Do not forget these 93 inspectors do not go to just construction sites; it is spread across all industries—across the state—so 93 inspectors are not a lot. Then you have them broken down into an inspection division. I am not sure how many that takes. Over the last few years, they have lost 10 or 12 inspectors. It depends on who you are as to what information you get. I believe they probably need 200 inspectors to do their job properly. Just in construction alone, you could have 20 inspectors running around and they would not be able to keep up with the work that is going on. Considering that if you do your job properly, you will produce a lot of work. You have inspections that have to be closed out properly. You have follow-ups that have to happen. You have fines and prosecutions that you have to go through. There is a lot of work and you need a lot of resources for it and it has just diminished, especially over the last seven or eight years.

The hierarchical control system: I think I have discussed that enough. I am sure you understand that. You cannot penalise those at the bottom; it has to go all the way through.

Accountability to ensure liability for workplace safety and health breaches are not shifted from one party to another: I think that is pretty self-explanatory.

**The CHAIR:** Members do you have any further questions?

**Hon KYLE McGINN:** I might have missed it but number 9—the right to prosecute employers who breach the act. Did I miss the explanation?

**Mr BENKESSER:** No; you did. We believe that we should have the right to prosecute noncompliances. The reason is that, firstly, I believe that we understand the requirements better than the inspectorate themselves. We deal with people out there every day and understand their behaviours and their responses and the complications they get in their own lives through going to work alone by itself in this current industry. I believe it would make a huge difference to getting people home safely each and every day.

**The CHAIR:** Obviously, there are evidentiary rules that would need to be complied with. In order to facilitate that, that would require quite substantial changes to legislation and would require the unions to then have the power that they would need to enter a work site, undertake an inspection, question witnesses, obtain statements and have expertise in making sure that the evidence is protected in a way that would stand up in court. Do you think that that would be too onerous a requirement to place on unions and is there a risk then that more workplaces would lock unions out of the workplace?

**Mr BENKESSER:** No; I actually do not. I think if it was formulated like the Fair Work Act, that would go a long way to establishing the right protocols. I am really frustrated with the industry the way it is and if we do not do something, it is going to get a lot worse. I think we have the ability and we can definitely set up the resourcing to do it. We are not asking that we become the regulator—a long way from it. All we want to do is be able to assist in a cooperative and consultative manner to bring about change. I am not asking for the world. I do not want become the judge and jury as the union. But as a key stakeholder in this industry, we deserve an opportunity to be able to assist in any way possible to improve the conditions that we have got currently.

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**The CHAIR:** I am noting the time. We are drawing to the close of the time that was allocated for the public hearing this morning. Although I do not have any more questions in relation to a public hearing, I do have some questions that need to be taken in a private hearing. I suppose I am asking you initially whether you are happy to proceed into a private hearing now, whether you would prefer a break or whether you would prefer us to reschedule the private hearing to another day, because I appreciate that you have been going for over two hours.

**Mr BENKESSER:** If you are happy, we will just have a quick break for what suits you guys and then we will come back and do it.

**The CHAIR:** We have another hearing scheduled today. Would you like a 15-minute break or would you like a bit longer than that?

**Mr BENKESSER:** No, 15 is fine.

**The CHAIR:** Okay. I will declare that the public hearing is completed and we will resume the meeting at 12.25 pm, and it will be in private session.

**Proceedings suspended from 12.09 to 12.21 pm**

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

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