

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO WORKSAFE



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 30 OCTOBER 2017**

Members

**Hon Adele Farina (Chair)
Hon Jacqui Boydell (Deputy Chair)
Hon Ken Baston
Hon Kyle McGinn
Hon Darren West**

Hearing commenced at 10.22 am

Mr STEVEN McCARTNEY

State Secretary, Australian Manufacturing Workers' Union, sworn and examined:

Mr GLENN McLAREN

Assistant State Secretary, Australian Manufacturing Workers' Union, sworn and examined:

The CHAIR: We are commencing a public hearing with the Australian Manufacturing Workers' Union and we have Mr Steve McCartney, the state secretary, and Mr Glenn McLaren, the lead organiser, before the committee as witnesses today. 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 affirmation.]

The CHAIR: You will have signed a document entitled "Information for Witnesses". Have you read and understood the document?

The WITNESSES: Yes.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of the hearing and also be aware of the microphones. Talk into the microphones and do not cover them with paper. I remind you that your transcript will become a matter for the public record. If, for some reason, you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

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

Mr McCARTNEY: Thank you. First of all, thank you very much for giving us the opportunity to talk at this committee, because we believe it is a very important issue and we are very glad that this inquiry has been started and is being looked into, hopefully to the betterment of workers all around Western Australia. We would like to start by saying what we have found with this experience, based on the feedback from our workforce and also 49I investigations, other investigations we have done on the job, plus feedback we get from members. The general feedback, and our observation, is that we just have not got enough people on the ground doing the work that is expected to be done to look after occupational health and safety conditions on the job. Our feedback from members is that you very rarely see an officer on the job doing any routine inquiries, and when we do have inquiries, or official inquiries, on the job, our members get little or no feedback of the outcomes or do not understand the process fully. I do not think there is enough time taken when these issues come up on workplaces that when people are dealing with it, especially our delegates—our OHS delegates I am talking about now—on the job do not have the experience or understanding of the process correctly, and a lot of times our people do not understand their rights under the process. Another factor with that is that they understand their rights under the process, but they do not understand their protection under the new IR act. That confusion creates a dilemma for our HSRs. Our HSRs are

concerned about going forward with issues because of their longevity on the job. We know that the state government in legislation has got some protection clauses in there. We do not think that goes far enough, because it is a very common discussion. I would like to give you an example of a discussion that happened at Bechtel for occupational health and safety training. The Bechtel RTO explained to the occupational health and safety trainees that they had best just use the legislation as a guide and try to convince the boss to change his mind to make it safer, because if they do make a stand, they cannot guarantee that their job will be there at the end of the day.

The CHAIR: That was specifically said to the people undertaking the training course?

Mr McCARTNEY: This is how it was said; it was said this way: "This is the rule, but the reality is this." Now, what we thought, to be perfectly honest, was that the instructor was trying to give them some hometown knowledge that you need to address this—"I know the rules say this, but you need to address it more moderately, because there is a good chance you will go missing." I think that was a bit of advice that was outside the curriculum, but a real indication of where these workplaces are. It is reinforced by the fact that you go for a walk with the superintendent on the job to do a safety walk, and they have regular safety walks. Sometimes they can take up to an hour or sometimes they can take up more time if they find something and have to deal with something or if the superintendent takes a bit of time to get it done. It is all done under the supervision of someone. When they go back to work, they are harassed about the lack of work that has been done on the job, "You are always away doing safety" et cetera. So, all of a sudden there is pressure put on that guy or woman on the job for doing their job.

With the concern about termination lingering in the background and if you look at the statistics, especially on that job, I think it would be worthwhile having a look at how many occupational health and safety operators have either left the job, quit being occupational health and safety reps or been sacked or made redundant. That would give you a bit of an indication about how companies are getting around the occupational health and safety rules for protection of occupational health and safety workers.

The CHAIR: Steve, would you be able to provide the committee with that information, because the evidence that the committee has heard to date is that there is no requirement to register the OSH rep on a work site with WorkSafe, so WorkSafe do not know necessarily who the OSH reps are, and it is a bit hard for the committee to identify who they are and therefore to identify, if they have left the worksite, why they have left the worksite. Would the union be able to provide that information to the committee?

Mr McCARTNEY: I can try to get that information for you. That information, if I got it for you, would be held confidential inside this group.

[10.30 am]

The CHAIR: We will take that as question on notice 1. When you provide that information, ask the committee for the information to be kept private and the committee will consider that request. I can give you a general indication that wherever a request has been made to the committee to keep information quiet, the committee has complied with that, because obviously having the information is important to the committee. If at some future time when we are writing the report we might feel that it is of value to the committee to refer to the information, we will check with the provider of the information before doing so and see whether we can come to some agreement on a format in which it can be provided that tries to observe the privacy and protection of individuals.

Mr McCARTNEY: I just wanted to inform the committee why people have that problem. There is an electronic blacklist out there that all companies go through before they get permission to go on a

construction job. This is one of the bigger overarching problems; that is, those guys will be worried that if they do give evidence, there is a really good chance that if word gets out, they will end up on that list and will not get work again. That is a real problem.

The CHAIR: That is understood.

Hon KYLE McGINN: I just wanted to clarify that the training you are talking about at the Bechtel site is in respect of training to be a HSR and the RTO is delivering that training as per the act.

Mr McCARTNEY: Yes, on the job.

Hon KYLE McGINN: And it has made comments that it is more of a guideline instead of an actual enforcement, which is what the act is actually meant to be used for?

Mr McCARTNEY: I want to reinforce the context it was put in. It was put in as advice after the statement of the act, so the trainer was trying to give them the heads up, I would suggest, that, "Yes, we understand the act, but if you stand too strong with the act, you will go missing."

The CHAIR: So, it was well-intentioned advice?

Mr McCARTNEY: I think the intention was well meant, but it is really wrong, and in my view one of the things I wanted to bring up today was the education of occupational health and safety reps and the standard of that. When the company that owns the RTO delivers the training, there is a good chance there will be a slant towards the company, and we are saying that our view is that the training should be done by a body outside of the company away from any other sort of influence, bar the check at the end of the month to accompany.

The CHAIR: So it is usually the case that that training is done by an RTO controlled by the company?

Mr McCARTNEY: On site, yes.

The CHAIR: Is there a HSR rep elected and a safety and health committee established on all workplaces where your union has members employed?

Mr McCARTNEY: We try to. A lot of people will act in a way where they will tell us about occupational health and safety rather than put their hand up because of that reason—they are scared they are going to get dismissed. There are a lot of people—members—who will feed information to us about what is wrong on a job or what is unsafe, like being herded under a steel workplace instead of put in their lunch room, the smoko room, when there is a storm and lightning around. They get told that this steel is earth, so stand underneath it. Of course if they say, "No, I'm going to the workplace", then they start getting told, "This could be industrial action, that could be a \$10 000 fine." Of course men back off and they stand in the rain. This is where this unfair balance with the legislation is levering against what you are trying to achieve with OH&S.

The CHAIR: So there is actually a reluctance by employees to put their hand up to become HSRs?

Mr McCARTNEY: Very much so.

The CHAIR: How does that section of the legislation actually get implemented if you cannot get people to take on those roles?

Mr McCARTNEY: The only other avenue we have got to rely on when members are too scared to put their hands up and represent other members on the job is information to the union, and 49I to get access to see if we can stop what impending and probable problem is going to be there.

Hon KYLE McGINN: Obviously these sites that do not have committees established, are you aware of WorkSafe, when they do come on site and find out there is not an OH&S committee established, do you find that they push to see one established?

Mr McCARTNEY: If it is above the twenty-sixth parallel, there is a real good chance they will not come on site anyway because there is not anyone up there.

Hon KYLE McGINN: You are referring to above Geraldton?

Mr McCARTNEY: Yes—just above Geraldton.

The CHAIR: Section 45 of the OSH act provides that on entering a workplace, the inspector is to notify the relevant employer of the inspector's presence and the employer is required to notify the relevant HSR of the inspector's presence. To the best of your knowledge and based on what your HSRs tell you, does this occur?

Mr McCARTNEY: It occurs in Perth in factories and workshops. I have not heard of it occurring above the twenty-sixth parallel.

The CHAIR: Do you think that the OSH act should be amended to require the inspector to notify the relevant HSR of his presence at a workplace rather than rely on the employer to do that?

Mr McCARTNEY: I find relying on employers usually disappoints me.

The CHAIR: Should I read that as a yes, Steve?

Mr McCARTNEY: Yes.

The CHAIR: Do you think that the OSH act should be amended to mandate the election of an HSR and a health and safety committee at every workplace and to notify WorkSafe of the contact details of that HSR?

Mr McCARTNEY: I would love to recommend that only on the proviso that you put some real protection in for HSRs or otherwise you are going to line my members up for the kill.

The CHAIR: Do you think the OSH act should be amended to mandate the involvement of the relevant HSR in all investigations or inspections undertaken by WorkSafe inspectors at that workplace?

Mr McCARTNEY: I cannot understand why they do not—so yes, I do.

The CHAIR: Do you think these amendments that I have suggested may place the HSRs at greater risk of termination or discrimination in the workplace by the employer?

Mr McCARTNEY: If we do not have the correct protections in place to ensure that, people will be, one, nervous about being honest about the issues and, two, being part of those inspections and putting a spotlight on themselves.

The CHAIR: I suppose my next question is: what sort of protections should we be providing? I think the drafters of the legislation intended to provide protection, but I accept that the reality is that linking a termination or a future non-employment to a person's activities as an HSR is not always an easy thing to establish.

Mr McCARTNEY: I suppose one of the key things I think the OH&S legislation tries to address is the fact that delegates will be allowed to take time off work to address issues et cetera, but what it does not address is the fact that companies can also create an opportunity that says you will become redundant. So if we had a situation where the elected OH&S representative was on the job until the end of the job, unless he does something—a serious misdemeanour or whatever—what that would do is give that OH&S representative some confidence that when he does bring up an issue, the company would be able to treat it with the respect it deserves, but also treats him or her with the respect that they deserve because they are the representative of the workers on that job for their safety. What we are saying is if they are still elected on the job by workers, then those workers think that they are doing the best job for them and companies should not interfere with that.

The CHAIR: Section 45(3) of the OSH act provides that on completing an investigation of a workplace, an inspector shall notify the relevant employer, the HSR and the safety and health committee of any action he or she has taken and any further action he or she requires to be taken as a result of the inspection. To the best of your knowledge and based on what the HSRs have told you, does this happen?

Mr McCARTNEY: Once again, I think it happens fairly regularly. My understanding is that it happens fairly regularly below the twenty-sixth parallel and I have not heard anything about anything above the twenty-sixth parallel where that happens.

[10.40 am]

The CHAIR: The committee has heard evidence from WorkSafe that when a prohibition notice or an improvement notice is issued, the employer is required to display the notice in a prominent place so that employees can read it and be aware of the detail of it and that this fulfils the requirements of section 45(3) of the act. Do you agree that posting a notice adequately satisfies the requirement of section 45(3) to notify the relevant HSR?

Mr McCARTNEY: The irony of that is if lunch is going to be delayed by 20 minutes, there will be a meeting in the morning, there will be a bit of paper given to every member and it will be completely understood that it is going to be delayed 20 minutes. Something like this happens, it will be on a piece of paper on a noticeboard in the HR office. In my belief, companies need to emphasise that they have got a duty of care to tell everyone on site that this is going on and then you might get more than one bit of paper on a HR noticeboard in an office that they do not go to.

The CHAIR: Is it the practice for HSRs to be involved and to participate in any discussions between the employer and the inspector on a workplace in relation to any safety and hazards at that workplace?

Mr McCARTNEY: If they have been called in for a discussion by the inspector, yes. I know that in some cases where HSRs have put issues up about inspections, inspectors have come up to look at the issue and not talked to any of the HSRs.

The CHAIR: Does that happen frequently?

Mr McCARTNEY: I would say in my knowledge it has happened three times that I know about. I could not tell you five times where it has happened properly.

The CHAIR: After the HSR rep lodges a request to attend with WorkSafe, is that HSR able to get information from WorkSafe about the outcome of the inspection or are they usually told to lodge an FOI, which is evidence that the committee has heard?

Mr McCARTNEY: They are not told that information.

The CHAIR: They are not?

Mr McCARTNEY: No.

The CHAIR: Are they told that they need to lodge a freedom of information application in order to access that information?

Mr McCARTNEY: Which would expose them to the company quite severely, I suspect, and they would not do it.

Hon KYLE McGINN: Are you aware if the HSRs are then informed by the employer of the outcomes of the investigation, because the employer is told by WorkSafe —

Mr McLAREN: I will just go back on a couple of points that were raised previously. In relation to the most recent one, whether it is a member of the public or an HSR, they get a complaint number from

WorkSafe and that is the extent of it. As the HSR in a workplace, there is no follow-up with that HSR to say they have even attended site, completed an investigation or issued a prohibition notice. The only time they will see a prohibition notice is if they may glance at a noticeboard in an obscure place. Bear in mind these prohibition notices are only in English. If English is your first language, that is fine. Members of the public who do not work in that workplace, you may witness an incident across the road and be a good citizen and ring the helpline for WorkSafe. You will be given that same complaint number, which is the time and the date the incident is lodged, and that is it. If you have any genuine concern as to, “Did an inspector visit? What actions, if any, were taken? What resolution was made in the workplace”—no. The short answer is no, that does not happen.

Hon KYLE McGINN: Just to follow on from that point there: when they made the complaint, they get the receipt number —

Mr McLAREN: Yes.

Hon KYLE McGINN: Have you had any situations where people have called back, say a week later, to ask to see where it went? Are you aware of what they have been told at that point?

Mr McLAREN: They are told absolutely nothing. The general reason they are given is it is to do with privacy.

Hon KYLE McGINN: So they are not referred to a team manager?

Mr McLAREN: No. They are told absolutely nothing. If I may, I will go back on a couple of other questions that Steve was asked, if I can.

The CHAIR: Absolutely.

Mr McLAREN: You spoke about protections for HSRs in relation to making a complaint. We have a state system and a federal system. In the federal system, it is not perfect by any stretch of the imagination but there are general protections for raising a workplace matter. It is enshrined in the act. If a worker does raise a health and safety issue, they have some protections under the Fair Work Act to protect them under general protections. Under the state system, we do not have that. It does put a bullseye on their back, which then creates a reluctance to step up to be a HSR in the first instance. You also mentioned in relation to inspectors visiting the workplace, contacting the employer, following up with a HSR and then conducting an inspection. That sequence will occur if it is a proactive visit—one of their scheduled visits—if they are targeting forklifts and they will go in and they have spoken to this person and spoken to that person. When it comes to reactionary visits, which is normally due to a complaint, a tip-off or something like that, if they do visit, that is where it all falls over; it just does not happen.

The CHAIR: Why should there be a difference in the procedure that is undertaken between a proactive and a reactive investigation?

Mr McLAREN: There should be none. If you have an HSR on the worksite, they should be involved as well. When you look at a HSR, a HSR in the workplace is an extension of a workplace inspector. They have the same powers, in some respects, as a workplace inspector, so why should they not? Except, they get the bullseye on the back and, you know, there is that genuine fear out there.

Mr McCARTNEY: I have to say, that is not a genuine fear, it is an absolute reality. That is why.

Hon KYLE McGINN: I suppose from the evidence we have heard it seems that it is quite hard to pinpoint down the sackings to being directly related.

Mr McCARTNEY: There will be one in 10 redundancies or there will be one —

Hon KYLE McGINN: Yes, so when you say that they get targeted, you do not mean directly at the actual safety issue they have raised, but in other industrial matters under the act.

Mr McCARTNEY: Outside.

Mr McLAREN: Yes. It can be bundled as a packet. I will use a particular site that is above the twenty-sixth parallel. At its largest it had 8 000 employees or workers on there. It has been going for nigh on four years now. I was up there last week; there are currently about 4 500 workers on that site. WorkSafe has not been to that site in a proactive or reactive way once. We have some very good HSRs up there who had the fear of god put into them by their employer in raising health and safety issues and when they do, there may be a demobilisation of three or four dozen people because the scope of work has changed and it just so happens that the HSR, for some reason or another, is bundled up in that. Then we have to go back and encourage the HSR process again to regenerate itself.

Hon KYLE McGINN: Are you aware, with that scenario you are referring to, whether there have been complaints made to WorkSafe about anything on that site?

Mr McLAREN: There have been questions raised with WorkSafe. I could not put my hand on my heart and say “complaints”, but I know I have raised concerns with WorkSafe about it.

Hon KYLE McGINN: You have, personally?

Mr McLAREN: Yes.

Mr McCARTNEY: Two hundred and fifty people raised a complaint about bullying on that workplace and they all signed a petition to say that there was bullying in place. The company came back saying to everyone that every one of those 250 people had to make an individual complaint before they would assess it.

Hon KYLE McGINN: And that was raised with WorkSafe, with the petition?

Mr McCARTNEY: That was raised with the company with the petition, and now it has been raised with WorkSafe.

Mr McLAREN: It was raised directly with Chris Kirwin and Lex McCulloch, to name names. The petition was put through with 250-plus signatures.

Hon KYLE McGINN: And no-one attended site?

Mr McLAREN: No.

Hon KYLE McGINN: From WorkSafe?

Mr McLAREN: No.

Hon JACQUI BOYDELL: Was it registered on their WorkSafe system? Is that how it was recorded or was it a meeting?

Mr McLAREN: No, they wanted those 250 signatures to actually register 250 individual complaints and get 250 receipt numbers.

Hon JACQUI BOYDELL: Yes, I understand that. What I am asking is if you are saying that that evidence was presented to the people you named, was that at a meeting and then was any follow-up done?

Mr McLAREN: It was done electronically.

Hon JACQUI BOYDELL: Did WorkSafe use their WISE system to record it?

Mr McLAREN: No. From what I understand, it was done via correspondence: “Here is a copy of the petitions that were put out with the signatures upon it and a covering letter explaining the issue.”

It was put through to Lex and Chris. The feedback we got back was general feedback from WorkSafe saying, "The process to follow is XYZ. Thank you very much for your concern." I am happy to provide it to you.

Hon JACQUI BOYDELL: That was not followed up?

Mr McCARTNEY: Nothing gets followed up —

Mr McLAREN: I was back up there last week.

Hon JACQUI BOYDELL: Yes. That is what I am asking.

Mr McLAREN: Yes, I was back up there only last week.

Hon JACQUI BOYDELL: You are in that process of —

Mr McLAREN: We started this process eight weeks ago.

Mr McCARTNEY: Can I just say —

The CHAIR: Just before we continue much further—sorry for interrupting you, Steve—I will just register that as question on notice 2, to get a copy of the petition and the communications between the union and WorkSafe in relation to that complaint of bullying.

[10.50 am]

Mr McCARTNEY: I just wanted to reinforce the fact that the company would not move on this unless people made individual complaints and WorkSafe would not move on it until 250 people made 250 individual complaints and it got registered. The bit that was lost in all that is that the bully is still there and he is still the supervisor. The potential hazard has not been removed until such time as everyone fills out the paperwork correctly. When you have a broad, wide issue like that, harnessing all those and getting all those signatures and getting to encourage those guys that they will not be the next list for the redundancy list is a challenge. The company knows it is a challenge and that is why they have that process working that way. I can guarantee you that if I upset 50 people there, it would only take one complaint and everything would be investigated, no problem at all.

Hon KYLE McGINN: I suppose, I am just a bit interested with the complaint going to WorkSafe individually. They have the ability to anonymously put the complaint forward, I believe; it is their right to do that to WorkSafe. Is there any reason why that option would not have been taken by the employees, to anonymously make the complaint?

Mr McCARTNEY: We just thought it must have been Bechtel; we have seen they have a different set of rules for Chevron. Otherwise there would be more inspections.

Hon KYLE McGINN: No, I meant—you have got 250 people who have signed a petition to make a complaint. Obviously you are saying it could be a bit of an issue to put your name to a complaint, but you have the ability to make a complaint anonymously to WorkSafe and they would not be able to give that information to the employer. Is there any reason —

Mr McCARTNEY: I put it to you, if 250 people put a document into WorkSafe and said, "We didn't want our names broadcast", that would probably equal an anonymous complaint.

Mr McLAREN: I am happy to go further on that and you are absolutely right, they do have the ability to put in a complaint anonymously and WorkSafe have offered that: "Go online, register your details or choose the anonymous path and register your complaint there and you will be given the complaint number. Times 250 whatever." But, as Steve has already pointed out, the main issue of raising this in the workplace is that firstly it empowered the workers to stick together and say, "We're going to take on this bully." This bully is a senior supervisor. "We're going to take him on and we're not going to stand for it." They have banded together, they have gone to WorkSafe and

have said, “Here’s our details. We stand behind what we say.” That is very empowering for those workers, only to then be told, “Well, you followed the wrong format and now you need to redo it.” Whether they go back in anonymous or not, the bully is still there.

Hon KYLE McGINN: The issue had been raised with them, regardless of how the format was filed.

Mr McLAREN: It was raised directly with Bechtel.

The CHAIR: Glenn, did you have anything more you wanted to add, because you said you were going back to some of the earlier questions to add a few comments.

Mr McLAREN: No, not just yet. I will go through our submission a little; I have just got a couple of points I wish to expand on our submission. But, please, let us go on.

The CHAIR: Under section 35 of the OSH act, employers are required to make available to the HSRs information about hazards and safety risks at the workplace. Does this happen and is it your experience that HSRs are able to access that information readily?

Mr McCARTNEY: I think it is. I think they do do that.

Mr McLAREN: Not in every incident. If we are talking about things like safe work method statements, SWMS?

The CHAIR: Yes.

Mr McLAREN: No. SWMS are a generic statement that are bought off a shelf and we have seen a lot of instances recently where SWMS are developed for high-risk work, particularly around the construction sector, and a SWMS might be used for completing a task of some description. The person who has written that SWMS might not even be located on that site, they might not even be located in this state, yet the workers who are to perform that work then come up, “Here is your SWMS, here is how you shall complete the work safely.” And the relevance of it is lost. It really is. If we are talking about SWMS being developed, it should be by the crew that is performing the work before they commence it.

The CHAIR: I suppose in those situations, the HSR is not likely to raise a complaint about the SWMS not being produced locally?

Mr McLAREN: It may hold up production.

The CHAIR: Under section 35 of the OSH act, employers are required to notify the relevant HSRs when an accident or dangerous occurrence takes place at the workplace. Does this happen?

Mr McLAREN: I believe there is a lack of knowledge of what is a dangerous occurrence and what is an accident. Years ago it used to be “notifiable reporting requirements”, I believe is the term they used. It was compulsory for the employer to notify WorkSafe within a specified time that an accident of some description, even a near miss, had occurred. I think that has been lost over many, many years—what is an accident. Then there is also the ability or an appetite from some sectors to not report it, due to workers’ compensation issues, and say, “Look, just take it off as income protection”, or an even worse case, “I will look after you and pay your medical bills, we just don’t need the insurance premium going up.”

Hon KYLE McGINN: That is also in regard to LTIs?

Mr McLAREN: Correct.

Hon KYLE McGINN: Would you say that LTIs—I know there has been some things I have heard over the last 10 years of potential reduction in LTIs—lost time injuries, just to clarify. Do you believe that is due to good safety culture, or is there another reason why LTIs have reduced?

Mr McCARTNEY: I used to walk into Woodside's offices during Pluto and all the rest of those construction jobs, and it almost looked like an emergency ward. There were that many injured people in there playing Scrabble so that they did not have a lost time injury. That is how they have zero harm out the front, because if you report any harm, then you are shot as a contractor. They go out of their way to make sure that people do not know about any incidences that happen, if they can get away with it.

Mr McLAREN: To be direct, I do not believe it is due to an increase in safety culture. No, not at all.

The CHAIR: If this is what is happening, are WorkSafe made aware of it and do they try to intervene to make sure that correct reporting and stats are kept? How do you make decisions in terms of future planning for safety risks and managing those safety risks if you are not getting the information being covered up?

Mr McCARTNEY: I have not seen too many of them walking around with sunglasses and labradors, so I am pretty sure that they have seen what is going on.

Mr McLAREN: I put it down to a couple of reasons. The first one is that WorkSafe has been bled dry by previous state governments, and I hope this state government is not going to be one as well. Absolutely bled dry. Inspectors are appointed to a pool for a 12-month period. Their wages are not the best, when you look at comparable skill levels in the private sector, so we are losing good inspectors. WorkSafe inspectors do the best they can with what they have got. This is not an axe to grind against particular people or anything, but the functionality of the whole department has gone downhill in my involvement with WorkSafe, and it is quite substantial. It is not just about the funding. You mentioned the word "reporting" and the business case. Every 12 months they say, "What shall we look at for the next 12 months? What areas are we looking at? Are we seeing a trend in anything?" It is very hard to forecast something when your budget is going down every year. I am sure the committee has seen the regulatory activity report. It comes out by the commission every month and you will see things such as proactive investigations in the country in 2014–15, 2 155; estimated year to date this year will be 1 344. That is nearly 900 fewer country visits. If we look at proactive visits in 2014–15, it was 4 777. This year they are estimated do 3 750; it is down a thousand. The number of inspectors in WorkSafe has remained largely static; it must be another problem. When it comes to reporting, though, the system I think they are using, the WISE system you referred to —

[11.00 am]

The CHAIR: WISE, yes.

Mr McLAREN: It is not very wise. I think it was built probably in the 80s. I have asked for the statistical report about the triaging. A member rings up complaining, gets a complaint number. What is the follow-up? The WISE system is not set up to extrapolate that information out from start to finish. It just gives out datasets. Once again, whether it comes back to the system or the funding of it, I just think funding is a systemic issue there as well.

The CHAIR: Under section 35 the OSH act, the employer is required to allow the HSRs time off work to attend training and to cover the costs of the training. Generally, does this happen?

Mr McCARTNEY: A lot of the work up north is done on the job. They do the training on the job. Sometimes people are doing their training in their time off; on their R and R. I do not think they get paid for that.

Mr McLAREN: They do?

Mr McCARTNEY: They do. That is occurring.

Mr McLAREN: With the training component, it is a three-year term of election for a HSR. The company can wait X amount of time before actually putting on a trainee. It is 12 months before they can actually put them on a training course, and that is if there is one. If it is in a regional area, the added cost to the employer of getting someone local, RTO or flying that person and getting them up to a regional centre to complete the training, but they have got a year to do it. That is one-third of their term. It would be like asking a politician who is elected for a three-year term not to do anything for the first year because you do not have that knowledge or skill base; you just sit there and have the title. It is absurd that we wait one year before we actually put them through training.

The CHAIR: That is prescribed in the regulations.

Mr McLAREN: It is prescribed.

Mr McCARTNEY: They are made responsible day one.

Mr McLAREN: You are responsible from day one, but you do not have the training, the skill set or the knowledge; yet, "I'm not going to put you through any training until maybe a year afterwards."

Hon JACQUI BOYDELL: I note that is one of your recommendations in your report, which I think is a good recommendation. Does the union have any evidence or statistics that the committee can look at around your members not being trained until the end of, say, that 12-month period? Do you have anything we can substantiate that with?

Mr McLAREN: This is something your colleague mentioned earlier; years ago there was a requirement to notify the Commissioner of WorkSafe when there was an HSR election and who was elected, because that would be the commencement of their term. Whether that is still in practice in WorkSafe I am unsure. There was also then a requirement to notify the WorkSafe inspectorate once they had completed their training. Whether the WISE system can pull that information off, I can certainly find out. I will take that as a question on notice and put it through.

The CHAIR: Okay, so we will take that as question on notice No 3.

Hon KYLE McGINN: The comments you made before about asking for statistics from WorkSafe and they said the WISE system cannot pull that. That was when you were asking for feedback on what actually happened to complaints—whether they were actioned or not. At no time you were not told that you were not able to access that information due to the act?

Mr McLAREN: No. I actually sit on the Construction Industry Safety Advisory Committee, which is a tripartite body, Chamber of Commerce and Industry, Master Builders, Housing Industry, UnionsWA representatives and WorkSafe. I have raised it through that forum appropriately several times because a number of my members have contacted me and said, "Glenn, I've rung WorkSafe because I had a concern about X and I followed it up a week later to find out what happened and they won't give me anything, can you try and dig it up." So, I have tried to, and no; the best I got was, "Well, have to do it FOI."

The CHAIR: Where a safety and health committee is established, is it usually the case that the majority of the committee are employer reps so the employer always has a controlling majority on those committees?

Mr McLAREN: There is no need for an election because nine times out of 10 the boss will say, "Look, you're the HSR, you can be the deputy; you can be on the committee." You have to understand that for a health and safety committee to be formed, it requires a reasonably sized workplace. For small to medium enterprises there is no need for a committee when there are only six people in the back of a workshop. That is a bit cumbersome. There is still a need for a health and safety rep, absolutely,

without a doubt. For some small to medium enterprises, what we do say is it is more of a nod and a wink: you can take this role and you do that role and we will all be fine here.

Mr McCARTNEY: Some of the tier 3 and tier 2 manufacturing shops supervise the occ health and safety rep. You are right. I think it should be more aimed towards a majority of the floor than an equal number of company and employer representatives. That is where some of the smaller companies head. They say, "Well, you get two and we'll have two", and it will be the manager and the assistant manager and that is because they care about safety. Also you have two guys talking to the two most senior people in the place about what they are doing wrong, which is sometimes a career-limiting move.

Mr McLAREN: If you are talking about a good functioning health and safety committee, I think it should be equal numbers. But also I think it should have union involvement as well. Sorry. I am talking employer, I am talking employee and I am talking union as well because HSRs have the ability to consult with the union organiser who may have a health and safety background, such as myself. An employer has the ability to ring the Chamber of Commerce and Industry to get their information up to speed as well. It should be a collaborative tripartite approach because health and safety is everyone's business. It is not stacking it with the boss; it is not stacking it with the workers. It is actually a tripartite system that everyone should take equal importance of and value of.

The CHAIR: Glenn, when you say that it should also include a union rep, are you talking about just on large worksites?

Mr McLAREN: It should be a standing invite to the union organiser or union rep on site, if there is one, because if you want to promote a health and safety culture, you cannot do it in isolation. As I say, health and safety is everyone's business. You will have heard the union movement say, "Health and safety is our business." It is; it is part of our core business. It is also part of your core business as well, and we should be involved. Companies should not be trying to keep us out of the bloody gate for health and safety issues; they should be embracing us and picking the knowledge that I have over 22 years of sitting in this chair, and saying, "Well, what's your experience, Glenn? How can we help make this workplace a bit safer? I know my members ring me up and ask me.

The CHAIR: If the union or the HSR is unhappy about lack of communication or the lack of feedback from an inspector, is there a process for lodging a complaint about that lack of feedback or communication from that inspector? What is the process and do you think that process is satisfactory? You will need to speak up.

Mr McCARTNEY: Sorry; we were just saying that that would be a window seat on an aeroplane!

Mr McLAREN: You would be pretty brave to do that as an employee. Sorry.

The CHAIR: If the union or the HSR are unsure about the safest way to complete a task or activity on a workplace, is the union or HSR able to contact WorkSafe to obtain advice and is that advice provided by WorkSafe?

Mr McLAREN: It is very hard for a worker who works on an LNG plant where mobile phones are not allowed, who works a 12-hour shift, starts at 6.00 am, comes off at 6.00 pm, has no access to telecommunications whatsoever to ring a helpline that is only open during business hours. It makes it really hard.

The CHAIR: In that case would that employer contact the union and would the union take on that role?

Mr McLAREN: Normally we would get an email or a phone call after hours, saying, "Glenn, I have observed X, Y and Z; can you look into it. Tell me whether I am on the right track here or the wrong

track.” Once again, you do not really want that member to raise their head above the parapet, so we would normally go out to that site, depending on the urgency of that issue, and do a 49I inspection.

The CHAIR: A 49I inspection, for the record, is?

Mr McLAREN: It is the union’s ability to exercise its right of entry under state-based legislation under the Occupation, Safety and Health Act. Section 49I is conferred under section 49I of the WA Industrial Relations Act.

The CHAIR: Thanks, Glenn.

Hon KYLE McGINN: Would you also notify WorkSafe once you are made aware?

Mr McLAREN: No.

Hon KYLE McGINN: If you are made aware of a potential safety issue on a worksite.

Mr McLAREN: Yes; if I am made aware of a potential safety issue and it is dead set and I know there is merit in it, absolutely I would, absolutely. I like to have a little bit of factual stuff before I start. Health and safety should not be used as a Trojan horse to get onto a site or to bash WorkSafe because we have seen what the media can do to union officials who exercise their power under 49I and all of a sudden they get abused just trying to get onto a building site or whatever it is through a Trojan horse and other reasons. That is not what we do.

[11.10 am]

Hon KYLE McGINN: In the situation where an employee member cannot make the complaint—the six to six issue—and the union has made the complaint, do you get feedback from WorkSafe on what is happening?

Mr McLAREN: No, I get a complaint number.

Hon KYLE McGINN: Have you called back and asked for feedback?

Mr McLAREN: Yes. I get a complaint number.

Hon KYLE McGINN: You get a complaint number and apply for FOI?

Mr McLAREN: Yes.

Hon KYLE McGINN: That is without knowing the status of whether it is being investigated or whether it is being closed?

Mr McLAREN: No. Or whether an inspector has visited a site or whether a provisional improvement notice has been issued or a prohibition notice has been issued or lead to a prosecution?

Hon KYLE McGINN: Do you have any formal correspondence or anything to that effect?

Mr McLAREN: I have got complaint numbers I can give you, and you can chase those rabbits down those rabbit holes, absolutely.

The CHAIR: We take that as question on notice number 4. Thank you.

On that reporting phone line that WorkSafe has, the committee’s understanding is that it is a 24-hour line so that you can phone at any time, 24 hours a day, seven days a week.

Mr McLAREN: It may well be; I may be corrected, but when you are in a regional or remote area where telecommunications may not be the strongest thing—I will give you an example—when you have 6 500 people on a site and 3 500 of them finish shift at exactly the same time, the mobile phone congestion might be a little bit crazy; the same as the email. Everything slows down a bit.

The CHAIR: That is a fair point. I experience it in my electorate office in Bunbury on occasions.

Mr McCARTNEY: You can cure that, by the way, just by more bandwidth.

The CHAIR: Yes. Does WorkSafe's lack of communication and feedback with HSRs affect their ability to help prevent or minimise safety issues on the worksite?

Mr McLAREN: I think so. I also think that what it does is lowers the level of trust between HSRs and WorkSafe, which is more detrimental to them. WorkSafe should not be seen as big brother, the boogiemanager that comes in. WorkSafe should be communicating regularly with HSRs. We have a plethora of legislative changes before us—once-in-a-lifetime legislative changes to fix up a system that is really quite dysfunctional. They should be communicating at every opportunity with their HSRs. Their HSRs are an extension of the inspectorate in the workplace.

Mr McCARTNEY: Could I just add to that. I think what has happened in this last decade or so is a transitioning culture. What I mean by that is once upon a time a WorkSafe inspector was someone you could call in to come and make sure the job was okay. The reality of it now, with the insecurities around calling an OH&S inspector, is almost as if now he is a tool for the boss and people do not see OH&S inspectors as someone that represents them. I think WorkSafe really has to work on its culture to deliver that. I think it is that lack of communication and openness that makes our members feel that way. I do not see anyone going, "You beaut". Once upon a time—I do not know if they exist anymore—there used to be a WorkSafe inspector elected by workers and those workers got real ownership with WorkSafe. They had their own representative they could go to, and I do not think that position exists any more. If it does, it is a pretty quiet one because I do not know about it. Once upon a time when I was on the job, those elections used to be something we all talked about getting involved in to make sure we had the right person. I know reinventing the past is not a good way forward, but I think when we are talking about how we can build a better culture around this, there is one thing to have a set of rules but I think to build a better culture around WorkSafe, workers need to own it more. They need to see that WorkSafe is for all workers and all workplaces, and they represent them and make them safe, because ultimately that is what they do, but I do not think they are getting the recognition or the understanding that that happens.

The CHAIR: How many of your members are HSRs at any given time?

Mr McCARTNEY: I would have to take that as a question on notice.

The CHAIR: We will take that as question on notice 5.

Recommendation 1 of your submission states that regulation 2.2(3) should be amended so that HSRs attend an introductory course within the first six months of being elected. Can I ask the obvious question: why within the first six months?

Mr McCARTNEY: Because sometimes you have to get them into a course, and we thought it would be unrealistic to say three months.

The CHAIR: Would it be unrealistic to say they should have already completed the course before they are elected as a HSR?

Mr McCARTNEY: It might leave a void with HSRs. But what I do say is before a HSR is trained, they should not have the responsibilities that HSRs have to wear from the time they put their hand up.

Mr McLAREN: I will go one step further and say I would love every worker to be trained as a HSR before they take on the role as a HSR so that they are empowered in the workplace as a human being and as an employee. But I think we might get some push-back from the employer groups on that, because a five-day introductory course is not cheap. There is a cost involved. I understand that. But waiting any longer than six months is ludicrous.

The CHAIR: So it is a five-day course?

Mr McLAREN: It is a five-day introductory course, and then if you are re-elected for a subsequent term after that, it is a two-day refresher course. I think all employers should be doing health and safety courses of some description in the workplace as a matter of routine.

The CHAIR: And they do, do they not—do they not do an induction course?

Mr McLAREN: That induction could be on policy and procedure. It is very broad when it comes to health and safety—do not stick your finger out.

Mr McCARTNEY: The occ health and safety induction is around the 10 golden rules, which is the 10 sackable things you are going to get cop if you do it wrong. So they say forewarned when they throw you in the train.

The CHAIR: Just to get clear on this, you say that they should have completed the introductory course within six months, but then you also mention that they should not take on that role until they have completed that course. Is that going to create a problem in the workplace where you might not have a HSR for that six-month period until they complete the introductory course, if you had that further requirement?

Mr McLAREN: I understand the reasoning behind your question. It potentially could cause a problem. But we have got workplaces out there with no HSR whatsoever as we sit here. I would be interested to see the statistics from the WISE system as to how many registered workplaces we have got in Western Australia versus how many HSRs we have got, and the ratio. I think we would be pretty shocked by some of that. That would be surprising to the committee. When it comes to the delay, I think it should encourage employers that as soon as they are planning on having an election or they know a term is coming up, they should be a bit better planned to say, “Look, old mate’s term finishes up at the end of the year; he, or she, has already indicated they don’t want to recommit to another term. Can we sort it out amongst ourselves, or do we need to have an election because we have got two people who want to put their hands up?” It is proper planning. I do not think it is that hard to do.

Mr McCARTNEY: If they had to go through that process, probably less people would end up with the window seat.

The CHAIR: Does WorkSafe actively get involved to encourage the appointment of HSRs on worksites? When they turn up to do a proactive investigation and they find out there is no HSR, do they actually —

Mr McLAREN: I have not accompanied an inspector on a proactive investigation so I honestly could not commit to answering that question.

Mr McCARTNEY: It is pretty rare. You would have to catch one.

Mr McLAREN: I know they do on their roadshows. They do their roadshows. They will travel the regions and do the health and safety shows, and they talk about the benefits of HSRs in the workplace and what have you. But proactive inspections, I could not tell you.

Hon KYLE McGINN: Just to clarify, when you say “roadshow”, do you mean employees are doing that or is that employers?

Mr McLAREN: They normally do a bit of a health and safety roadshow. I know the department of mines do them quite regularly. They will go out to the regions. It might be Mine Safe Week or something like that. They will visit agricultural shows. I believe they have been to your electorate and have come down to Bunbury and done some stuff.

[11.20 am]

Hon KYLE McGINN: Are you aware or have you seen any memos or alerts sent out by WorkSafe to workplaces about health and safety representatives and the election of health and safety representatives?

Mr McLAREN: No.

Hon DARREN WEST: I am curious, but you touched on the relationship between HSRs and WorkSafe inspectors. From where I sit, I would have thought that would be a fairly harmonious relationship, because you are effectively trying to achieve the same end goal, and that is safety in the workplace. Is that how you find that, or do you find a disconnect? What do you consider a true reflection of the relationship in general between HSRs on worksites and WorkSafe inspectors?

Mr McLAREN: There is an absolute disconnect. I would encourage you to look at the average HSR and then ask them how many times have they actually seen a live inspector in the flesh, whether it be proactive or reactive. I think you would be surprised. The figures I have got in front of me for proactive investigations—this is the total, so we are talking country, metro, reactive, proactive, workplaces visited, across Western Australia, estimated year to date—is 6 876 investigations. That is country and metro. I am sure there are more than 6 000 workplaces and I am sure there are more than 6 000 HSRs across our great state. So there is a disconnect, yes, absolutely.

The CHAIR: Recommendation 2 of your submission calls on regulation 2.2(3) to be amended so as to mandate that HSRs complete an introductory course. So even though there is a regulation that says they need to complete the course within 12 months, you are suggesting that that does not always happen.

Mr McLAREN: There are exemptions allowed under that.

Mr McCARTNEY: If you have got 12 months and you become redundant before the end of the 12 months, you do not have to do the course et cetera. On a construction site, you might have two years' work, and that means you have got a construction site with one year without your occ health and safety reps trained, so that is one year, and the potential risk is everywhere because they have not got the correct training but they have got the responsibility, and then the second year they would have them trained if they waited a year. We think that is far too long in an industry that is that dangerous. We believe that we could minimise workplace deaths and serious injuries if that training was brought up-front, especially in those hazardous industries.

Mr McLAREN: It is also because there are exemptions available under the regs for the availability, of the lack thereof, of courses. It really hits people in the country quite hard, and employers more so, because they have to look around their backyard and say who here is scoped as an RTO to run this course, and it is either a cost to the employer to send them to the city, or they have to bring an RTO to the country to train one person. There are exemptions available. So, yes, it should be mandatory; and, yes, it should be within the first six months of their appointment or their election.

The CHAIR: Who grants the exemption?

Mr McLAREN: It has to go through the commission, I believe. I believe it is a subset of the act. I will refer back to the regs when I get back to my office, but the employer can seek an exemption.

Mr McCARTNEY: I think also because there is a genuine belief out there that the advice that the RTO was giving workers, probably with the best intention for workers, was perceived by harder-thinking workers as that was the company trying to soften everybody up around occ health and safety. The more moderate people are sitting there saying, "I'll get the sack if I get this wrong." I do not know if that is an environment they want to create around occ health and safety and HSRs. That is what I mean about the culture.

Hon DARREN WEST: This is a question that you may not be able to answer, but I will try my luck. Given what you have just told us about the fact that your HSRs report to you that they never see the WorkSafe inspectors in the flesh, I am wondering why that could be. We have heard that WorkSafe is not a highly resourced organisation and that—I am only speculating—the WorkSafe inspectors may think there are HSRs on the site, so someone is keeping an eye on health and safety. I wonder about non-unionised sites. Obviously, you are representing workers from the union and would not have members on those sites. But, from your point of view, would you expect that WorkSafe would have a greater presence on those sites because there are no union health and safety people, or do you hear around the traps that they do work those sites a little bit harder because there is not somebody else potentially fulfilling that role?

Mr McCARTNEY: I would love to think that they think that way because our people are so empowered on the job that they can make it safe, but I do not think so. Of those 6 000 visits, or 4 000 visits or whatever the figure was, I would look to see how many of those visits were in shops with less than one in 10 in and above 20, and the break-up of those shops, because I think an inspection of four or five people in a little shop, three or four of them a day, would not be a bad day's work, and a cup of coffee.

The CHAIR: Glenn, did you want to add to that?

Mr McLAREN: No; I will bite my tongue on that one.

The CHAIR: Recommendation 3 of the submission calls on WorkSafe to implement a communication system with HSRs. Based on what the HSRs tell you, how would they describe the communication between HSRs and WorkSafe?

Mr McLAREN: Ad hoc at best.

Mr McCARTNEY: It is issue based.

Mr McLAREN: It is normally WorkSafe has done a proactive round of inspections on vehicle hoists, or over the next six months WorkSafe is going to schedule a visit to workplaces that use hay baling equipment. It is along those lines. Then they will file a report that they visited X amount of workplaces to inspect X amount of hay balers, which may be classified plant, and found X amount of issues, and did Y, and that is it. But, once again, I go back to we are in the digital age. Emails are free, or cheap. We have SMS. Everyone has got—apart from me, it seems—social media. Why not? If you are using these mediums, why not do it for the whole workplace? It is pretty easy to do.

The CHAIR: Recommendation 4 calls on WorkSafe to alter their systems so that when a complaint has been made by a HSR, WorkSafe has to provide the outcome of any report or investigation to the HSR. On the face of it, that sounds like a really good recommendation. I am wondering whether the union has raised this with the minister, with WorkSafe, or with the Commission for Occupational Safety and Health, and what the response has been if you have raised it with them?

Mr McLAREN: With the minister, no; directly with WorkSafe, yes. I have asked that information be conveyed to myself. I have actually put the questions through for the information I have sought, and it has not been forthcoming. It largely comes back to the WISE system. That is the reasoning I am getting, and I am not disputing that reasoning, but it just cannot pull the information from initiation and triaging. When a phone complaint or something comes in, it is triaged. WorkSafe can explain very well that triaging system. For example, it might be that a fatality is an instant turnout. What they believe might be a serious or imminent risk may be 48 hours or 72 hours. Everything else is along a sliding scale. I have asked for that information, and due to the WISE system they use, it is just not able to put it out in the format that we need.

[11.30 am]

The CHAIR: Has it been raised with the Commission for Occupational Safety and Health because their job is to advise the minister and make recommendations on legislative changes, system changes and improvement of health and safety in workplaces?

Mr McLAREN: We have a brand-new, freshly minted Commissioner for Occupational Safety and Health—COSH. I have not raised it with the new commissioner yet, but it is certainly something, once they get their feet under the desk properly, we will be doing. But it is also part of, I think, a bigger picture that we need to look at around funding, around the legislative framework, because you have to remember that running parallel to this is some of the biggest legislative changes we have seen in occupational health and safety since 1984, which is huge. It is once in a lifetime. We have to get this stuff right again. So I think it is part of a suite of arrangements we need to raise with the commission.

The CHAIR: The committee has heard evidence from WorkSafe that they do not produce investigation reports, and that what they produce are legal briefs and therefore they cannot release the legal briefs because of legal professional privilege concerns. Do you have a response to that?

Mr McLAREN: I believe I called it “due to privacy concerns” in my previous remarks to yourself. They call it legal professional privilege. I call it smoke and mirrors, because if it is legal professional privilege, then how many prosecutions are arising as of those briefs? I can tell you, because I have the statistics right here. There are completed investigation reports; in 2014–15, there were 26. This year, it is estimated that we turn out none. That is based because there have been none for the year to date so far. When it comes to that type of stuff, I am a little bit dubious; I am sorry. Everyone hides behind legal professional privilege.

The CHAIR: In relation to recommendations 7 and 8 of your submission, they relate to the utility of advisory boards or committees, and the distinction between the transparency of the Mining Industry Advisory Committee and other advisory committees established under section 15 of the OSH act. Why do you think that there is a distinction between the way the Mining Industry Advisory Committee operates and the other advisory committees?

Mr McLAREN: I sit on both and I am quite well placed to answer that question. It comes down to funding. One is a fully funded, self-service regulator from industry. The other one is on the public purse. When I walk into a MIAC briefing, my agenda pack is chapter and verse very detailed and when I walk into a CISAC meeting, there may be two or three agenda items and the general business. It seems like MIAC at the moment is charged with a lot of really, really important stuff such as the FIFO mental health working group strategies and things like that, which is very important to our union and our members. I only put it back to funding again. The intent of both committees is really pure. It is really to try and make every workplace safer, but it comes down to funding.

The CHAIR: In your submission, you state that the union’s request to WorkSafe about information on their policies and procedures employed when triaging complaints via the reporting line have gone unanswered. Can you provide the committee with details of when these requests were made about the process and policies for triaging and to whom the requests were made?

Mr McLAREN: I can.

The CHAIR: We will take that as question on notice 6. I would like to know to whom they were made, details of the request and whether the requests were in writing; and, if they are, if you could provide the committee with that exchange of written communication. That would be great.

Mr McLAREN: Sure.

The CHAIR: I would like to get an understanding of why the union has asked about the triaging policies and procedures. Is that because you have a concern about WorkSafe's response to requests to attend and whether they are making less on-site visits?

Mr McLAREN: It has largely come off the back of our members. They will make the phone call to ask for an inspector to visit their workplace and there is no defined period as to when that inspector will show up, if at all. It may be that person is on a night shift and has rung and said, "Look, you really need to get out here; there's an issue we've got" and they do not know whether they have been in, on the opposite shift, and come through. It is just that lack of feedback. My concern is also that the triaging can be based around what do they deem critical or imminent risk. To a member of the public walking past, they may think that is absolutely unsafe, but to a trained eye, everything is in place and it is all good. We are talking about someone on the end of a telephone making that judgement without a firsthand look at what is going on on the ground, and that can lead to some catastrophic consequences if not managed properly.

The CHAIR: In your submission, the union raises its frustration about being able to access statistical information from WorkSafe. Would you be able to provide the committee with the sort of details and the sort of statistical information you would like made available by WorkSafe on an annual basis? I am happy for that to be a question on notice so you can give that some consideration. Then we can actually look at that in a bit more detail. It will be question on notice 7.

Mr McLAREN: Believe it or not, that is our union actually going in to bat for WorkSafe because I would like to be able to get up, when I am on the stump in the workplace, and say, "Hang on; WorkSafe's actually done X, Y and Z and visited these places" because a lot of stuff that comes out of WorkSafe, until it is passed off by the Commissioner for Occupational Safety and Health, and then through to CISAC, it is all secret. It is not published. It is not in the public domain. We would like to go out there and beat their drum and say they are doing a really good job and really good work.

The CHAIR: The committee notes that the Australian transport safety board publishes its investigation reports, yet WorkSafe does not and they argue that this would compromise possible future prosecutions. Does the union have a view on whether WorkSafe should publish its investigations and reports into WorkSafe fatalities and serious accidents, and whether the publication of those reports would compromise prosecutions?

Mr McCARTNEY: Probably we are no legal minds to answer that question but I wonder why the transport people do not have the same fear.

Mr McLAREN: The mines department, this is where I am going to really watch—with bated breath, so to speak now it is DMIRS—WorkSafe and the mines department. The mines department actually do an update on incident reporting. It is de-identified, does not name the individual, does not name the site, but it is about what happened, how it can be avoided, and who you can contact for further information. It is about education and it happens quite proactively after an event. I do not see any problem with that. I am not a lawyer but I understand there may be some legalities around the prosecution but surely the state public prosecutor could advise WorkSafe and say, "Hey, look, here's a good one sheet of factual information you can get out to hopefully stop this happening again." I think they should be published, yes.

The CHAIR: When your HSRs have been involved in a WorkSafe inspection on a worksite, do they provide you with feedback about that inspection and what is the general feedback that you get?

Mr McLAREN: There is normally what is called a debrief—a close-out—at the end of the inspection to say, "This is what I've seen. This is what I'd like to do. This is how I'd like to follow it up. Thanks very much for your help."

The CHAIR: What is your view about the number of inspections undertaken by WorkSafe annually? You mentioned earlier that there has been a marked decrease. Have you raised this with WorkSafe and have they provided any explanation?

Mr McLAREN: Every six weeks, I raise it with WorkSafe.

The CHAIR: What is the response that you get?

Mr McLAREN: Every six weeks I am given the statistics, and every six weeks I scrutinise the statistics and the datasets and I go, "There's less going on; there's less inspections going on, there's less prosecutions and there's less provisional improvement notices." Just to give you an example, in 2014–15—we are talking financial year—over 12 000 improvement notices were issued. This year, they are estimating 8 000 improvement notices issued. There is either a really huge safety culture that has just switched on to drop 4 000 improvement notices or there are just less worksites. There is no way to track exactly what it is due to. I like the statistics. It does not lie. It shows where we are going wrong and that is what I want to scrutinise when I ask for the statistics. Why are we seeing this marked drop?

[11.40 am]

The CHAIR: The committee has heard evidence from WorkSafe that one of their explanations as to the decrease in the number of investigations is that their investigations are now more comprehensive, so they take longer to undertake but they are also delivering a better result. Do you have a view about that?

Mr McLAREN: I think the reason they are becoming more comprehensive is because the employers are becoming more bolshie and challenging every decision that the commissioner or WorkSafe may make. It is easier to throw \$100 000 at a couple of lawyers than to face \$150 000 fine because, as we know, the fines under the regs are quite poor in Western Australia. They are way behind the rest of the country.

The CHAIR: Do you think that is the reason why the number of prohibition notices and improvement notices have also decreased?

Mr McLAREN: I also think it is because WorkSafe, when they are out there, rather than just slapping them with the big stick, they are saying, "You need to fix it and you need to fix it now."

Mr McCARTNEY: I suppose if you are financially restrained as an organisation, the amount of prosecutions you take on would be limited.

The CHAIR: Although, in the case of improvement notices and prohibition notices, they do not necessarily result in prosecutions; in fact, I think they very rarely result in prosecutions.

Mr McLAREN: There is a difference between a prosecution and a conviction.

The CHAIR: Yes.

Mr McLAREN: Bear that in mind; there is a number of issues and if you look at the conviction rate of prosecutions, it is largely static. In 2014–15, there was 26 completed investigation reports—I am talking major investigations. There was 18 prosecution notices and 13 convictions. This year, so far there have been no investigative reports. They are anticipating, however, up to 30 prosecution notices and, on those figures, they anticipate there will be, on average, 12 convictions. So it is not the best strike rate. But I also have to say that comes back to the State Solicitor's Office. I am assuming they are advising WorkSafe as to whether they have a good case and do they take it or do they not. Some of the companies they are taking on have got very deep pockets.

The CHAIR: Based on the information that I have seen, it appears to me that inspectors tend to issue a lot of verbal directions as opposed to improvement notices and prohibition notices. Does the union have a view about that? Are they effective? Is there a place for them? Or do you think they are relying on verbal directions too much, and that they are not looking at prosecuting for repeated breaches?

Mr McLAREN: I see it in this light: if it is a first time and it is for an education value, you don't crack an egg with a hammer. Have a chat, educate; that is what it is about. For the second or subsequent, I am sorry; it has to be a provisional improvement notice. If it is for repeated breaches, there has got to be some action taken. But it depends on the severity of the offence. I just think it depends on the severity of what the inspector is looking at.

Mr McCARTNEY: With the amount of inspections they do, you would have to be dead unlucky, would you not, to get a couple in a row? If you get a warning the first time, I do not know how I would take that as a manager because I might not see an inspector for another few years, if it is a verbal. If it is written down, they have to deal with it and they have to come back and make sure it has been done. I suppose, in my view, it is lazy.

Mr McLAREN: Some of these projects that we look after, whether it be a construction site in the Pilbara or a laydown yard down in Henderson, they may only be in existence for three, four or five months. Chances are, if you are a betting man, you would look at the statistics of WorkSafe and say, "I'm going to take a punt; I'm just going to take the punt."

Mr McCARTNEY: The next one is going to be in writing, but there might not be a next one.

The CHAIR: Are you able to tell the committee, on average, how many complaints the union would lodge about safety concerns with WorkSafe, on an annual basis?

Mr McLAREN: Off the top of my head, I could not. We actually try to encourage it back towards the members. At the end of the day, it is their workplace; they know it better than I do. Chances are they can try to resolve it.

The CHAIR: When there is an accident on a workplace, do the employers allow the union reps to participate in that accident investigation?

Mr McLAREN: No.

Mr McCARTNEY: We are always finding great difficulty getting involved in any way with those accidents. They do not let us be part of the investigation. They might give us an overview afterwards, by somebody who was there, or an HR manager, or whatever. I forced the issue some years ago and got quarantined on who I could talk to, what I could do, so it was made a very difficult process by the company, and it was not facilitated by WorkSafe. I have got to say that there is little or no support from WorkSafe to get us around as part of those investigations. Of course, if WorkSafe are not asking for it to happen, the companies will not support it.

The CHAIR: Are the HSRs involved in those accident investigations?

Mr McLAREN: If they are up to it. One of the ones that sticks in my memory is a fatality of a young boilermaker that I actually attended, and the HSR was certainly not in any state to investigate the death of a colleague. When I arrived, along with a colleague of mine, the first person to greet me at the gate was a solicitor, who handed me their business card. Because it was a fatality it was quarantined off, and it was an investigation for the coroner, so it is even out of WorkSafe's jurisdiction. So WorkSafe would do a preliminary inspection and present the brief to the police, so the police would investigate it, and then the coroner. There is not much I could investigate as to the incident of how this young man tragically died. My concern at that stage was for my members who

were in the crib shed, being kept in there for several hours by this stage. I wanted to go in there and make sure that they had access to counselling, but the obstruction and resistance I received from that particular company still haunts me to this day. I do not know what they thought I was going to go in there and do, but it still makes me angry to this day, and it drives me every day to make sure every day is a safe one.

The CHAIR: Have you raised that with WorkSafe? Surely that is a health and safety issue as well.

Mr McLAREN: I raised it with the company in particular—I am not going to name the company—and that company—judicial process followed, as it was.

The CHAIR: Has the union received any feedback from members about the length of time taken by WorkSafe to complete its investigations, particularly in the case of a fatality; and what have they said?

Mr McLAREN: What have they said? “It is out of our hands.”

The CHAIR: Sorry, what have your members said about the length of time it takes WorkSafe?

Mr McLAREN: I think that comes down to the judicial system, really. I think WorkSafe do the best they can with what they have got—prepare the report in conjunction with WAPOL, WAPOL present their report to the coroner, and the coroner does the inquiry. I think the most recent one concluded only a couple of months ago, and it was to do with the fatality of a rigger in Karratha lifting a soakwell lid. Two clutches were used instead of three, and tragically the gentleman died. I think it was four years, or something like that—four years post-date —

Hon KYLE McGINN: It was in 2011.

Mr McLAREN: Even longer—there you go. That is the length of process, but since then we have tried to make recommendations about that process that was used that day, because obviously something occurred, and now, six years later, or five years later, we are now getting the coroner’s report, which is a little bit more in our armoury to make sure that recommendation is changed in the regs.

The CHAIR: What does the union think is more effective deterrence—penalties or negative public exposure for larger companies—you know, naming and shaming?

Mr McCARTNEY: I would say naming and shaming, because it is only money; the other one is only money. They will spend a fortune to minimise their costs. The big money, the St Georges Terrace end of town, will spend hundreds of thousands of dollars to save their name, so I would say they are a little bit more open to being publicly shamed. It would create more impact to them than them spending a couple of hundred thousand dollars on a lawyer to minimise their risk.

[11.50 am]

The CHAIR: The committee has heard evidence that WorkSafe should have the ability to do on-the-spot fines. Does the union have a view about that, and their deterrent value?

Mr McCARTNEY: Give them their ATM thing and let them go for their lives, I say.

The CHAIR: What feedback has the union had from members regarding WorkSafe’s educational materials and safety promotions? Are they adequate; are they regular; are they useful?

Mr McCARTNEY: Do they exist?

The CHAIR: Glenn, do you want to add anything to that?

Mr McLAREN: I think they can be more current, and I say that in the sense that a lot of people’s working lives have changed. I suppose I will pose a bit of a question to yourself. We have now got

what everyone refers to as this gig economy—Airbnb, Airtasker, Uber; all these things—are they covered by the Occupational Health and Safety Act?

The CHAIR: Good question.

Mr McLAREN: So, work that people are traditionally doing is changing, and the educational material that WorkSafe is putting out—I have asked this question, and I am sure that if you ring the helpline and said “Look, I work for Airtasker, and a person over here has employed me to fix their roof. Are they insured? What’s the relationship here?” I do not think we are there yet.

The CHAIR: Have you received feedback from your members about WorkSafe’s website? Is it user-friendly? Does it have the material on it that people are looking for?

Mr McLAREN: I do not go on it. I go on it to check a hirer’s work licence.

The CHAIR: Steve, do you want to add to that?

Mr McCARTNEY: No. It must be exciting, we all do not look at it.

The CHAIR: Steve, earlier you talked about a changing culture at WorkSafe. Would you put that all down to the lack of resourcing and funding, or is it deeper than that?

Mr McCARTNEY: I think it is deeper than that. I think that is part of it, but I think the other part is workers having ownership of OH&S, and I think part of that was having their person they could elect to represent them on the council. I think what that did is—I remember I was on the tools in the days of the member-elected person, and I remember when he came on site everyone wanted to talk to him, and he was the contact number that everyone wanted to ring, because they knew they could ring him, and it would stay with him, or her, but it has always been a him in my experience. That gave that extra level of confidence to members. I think the two things that are playing into the cultural stuff is, one, the industrial environment we live in now, with highly publicised cases where, if people are 10 minutes late back from a safety meeting, they try to put them in jail for six months, and stuff like that. It is not building an environment where safety is going to be discussed in an open and friendly way. And having 10 golden rules for sacking at the top of every safety discussion and message does not make it a proactive environment where people are prepared to report safety incidents, for fear of getting their friends the sack.

Once upon a time I worked for a company who most unions think are a beast, but in reality when I did work for Rio Tinto, when they had a no-blame policy for safety, where I could dob in any person on that job, and know that the worst case scenario for that person was that they would be retrained. It gave everyone confidence that they could make the job safe. They could talk about the job, they could make the job safe, and they could say it could be safer there, because they knew without fear or favour that no-one would get the sack at the other end. That is how those 10 golden rules were developed, off the back of that system. When they changed that system to the 10 rules that will get you sacked off-site, all the other incident reporting et cetera was shut down. If you believe in the triangle of safety like I do, if those incidents at the bottom do not get reported regularly that, one, does not keep the company in tune with occ health and safety and, two, if they do not get reported, nothing gets reported until something major happens. I believe that is part of the contributing factor to why we are having more deaths on site, and I think less incident reporting on the job is because of the fact that if you report somebody, they get the sack. Someone weighs up the fact that, do they lose their 200 grand or 150 grand a year because I think they are working unsafe; and have I got the confidence to make that decision; and do I want his family to bear the price of it? If you build a safety environment where they are the decisions you have to make as a participant in the workplace, it does not become an environment where you would be confident to bring those subjects up, and

I think part of that is part of what has attributed to the culture to create the problems that we have got now.

The CHAIR: Steve, just on a slightly different issue, what is your view about the lack of investigations by WorkSafe into suicides that occur at a workplace, because the committee has heard evidence that, whether or not WorkSafe will investigate a suicide will depend on whether there is a clear connection to the work being the cause of the suicide, and that is obviously not very apparent in most circumstances, and as a result there is an underreporting of workplace suicides?

Mr McCARTNEY: There are a couple of things. One, there is a big push by companies not to report workplace suicides, to the point that when it came out in the FIFO committee hearings—the outcomes—it was the only one that was picked up. When that reporting was picked up, the first thing that companies did was to push back and say, but not on their R&R. So, if you kill yourself when you are at home, they do not have to report it. All that was a statistical push to say that the four weeks they are up there, and the oppression they feel when they are up there, has got nothing to do with the fact that they killed themselves at home, in the week that they are off. I thought that was a bit farcical, but it got let through, so now they only report people who commit suicide on the job. So, if you are in the workplace, and you kill yourself, yes; if you kill yourself on your R&R, it is not classed as a workplace statistic.

Mr McLAREN: Or the camp.

Mr McCARTNEY: Or the camp.

The CHAIR: I was just going to ask that question, Glenn.

Mr McLAREN: The camp is not considered part of the workplace under the act. It is residential, so therefore it is not deemed to be a workplace accident.

Mr McCARTNEY: Anecdotal evidence we have been given, which I cannot substantiate, but I think it is worth it to make you understand the stories that we hear, one particular person tried to hang himself. They usually hang themselves over the toilet door, and the cord broke. He was unconscious on the ground. The cleaner found him. The boss found the guy who attempted suicide, gave him a business card, put him on a plane and sent him off-site. That was the duty of care.

Mr McLAREN: We have all heard the horror stories about self-harm, and some of the most prominent ones that come to my mind is that they do not want their colleagues finding them; they do not want to do it at the workplace, because it will be their mate, their co-worker, who finds them, so they go back to their room, and, tragically, end their own lives there. It is not deemed a workplace incident, which I find obscure—absolutely, fundamentally obscure, because it is not a town, it is not a city, it is a bloody workplace.

Hon KYLE McGINN: Just on that, if you had a member who goes back to the campsite and injured themselves—say, for example, broke an ankle—are they covered by workers' compensation?

[12 noon]

Mr McLAREN: Yes.

Hon KYLE McGINN: Are they deemed to have an injury at work?

Mr McLAREN: Yes.

Hon KYLE McGINN: So why the comments that say it is not the workplace?

Mr McLAREN: That is a question you ask the legislator, not me. If you were to have an injury playing cricket—and I was up at Wheatstone last week and there was a gentleman playing football, and he broke his wrist. It was his half-day Sunday, it is covered by workers' comp.

Hon KEN BASTON: That would be covered?

Mr McCARTNEY: Covered by workers' comp.

Mr McLAREN: It is deemed part of the workplace for workers' compensation; yet, someone commits an act of self-harm, it is not. That is why I am sitting here, shaking my head, because it is just incredible that this is allowed to happen.

The CHAIR: Are you aware of any legislative distinction that has created that distinction, or is it just a practice or an interpretation that the regulatory bodies have chosen to apply to make life easier for themselves, or for whatever reason, because I am not aware of any legislative barrier?

Mr McCARTNEY: I am not sure if it is an understanding or a part of the regulation, because I know that the companies pushed for that to make sure that that was not part of their—what do you call it?—taking the figures, so that was not part of the accounting. They definitely made sure that their KPIs or lost time injury through suicide or death through suicide only got measured at work. We could not understand the logic of the decision, but, then again, we were not part of the whole discussion. We thought, then appealed quite loudly, that that was wrong, but it was still proceeded with. As you know, insurance companies have been trying to bail out of suicide payments, and do quite regularly. I think in a situation where you have the statistics—I will leave the statistics for you guys to find. The statistics of FIFO suicide above the twenty-sixth parallel in Western Australia are quite high. My understanding is that you are around seven times more likely to kill yourself in the Pilbara than you are anywhere else, if you are doing FIFO. So there has to be something; it is not just: yes, there is a whole series of people in the population. When there is a magnifying glass—that is why we took it to the lower house investigation, because we were so concerned about the anomalies that were going on in those particular areas of work. I think the FIFO recommendation has come out with some really good stuff. We were very disappointed with Chevron when they moved to four and one after the FIFO decision came out that they needed to have reduced R&Rs to create a better work environment for families. That was one of the requirements that was brought out. We were very disappointed that they went the opposite way and headed for the money, in our view.

The CHAIR: Members, do you have any further questions? Steve and Glenn, do have anything further you would to say?

Mr McLAREN: I just have one closing comment, and I do not know whether it has been raised in previous submissions, but it is not in mine. It is to do with WorkSafe's interaction with high-risk assessors. High-risk work licences, as the committee knows, are issued by RTOs. They undertake their training. We have seen a number of RTOs—and this was subject to the Auditor General, Des Pearson, his report of some two years ago. TAC, the Training Accreditation Council Western Australia, has done a report on it so it is all out there. When the assessor is doing the high-risk work licence assessment—and this happens onshore, offshore and, in particular, right around Western Australia—the assessor is basically working for WorkSafe, because they are assessing that person to issue a WorkSafe licence of high risk. We have seen so many instances recently of assessors basically corrupting the system, handing out Johnny McTickets to any mate who wants to pay a carton of beer or \$50 or whatever it might be. Good on WorkSafe, because I think there have been a couple of successful prosecutions on that, and well done, because we need to weed that out. But I would also like to see WorkSafe take a more proactive role in the management of those assessors, because a high-risk work licence assessor must be accredited by WorkSafe. They pay a fee. There is 181 of them in this state at the moment, but I can guarantee that WorkSafe would not know what they are training in, where they are going, what they are doing; all they see is the completed assessment form. They take it on face value that that assessor has actually done the right

training, right units of competency and then done the right assessment tool, and then WorkSafe issues out the high-risk work licence. It is a big ask. I would like to see a little bit more policing of that because I have seen too many people come into the resource sector with a high-risk work licence that, you know —

Mr McCARTNEY: Have no idea.

Mr McLAREN: The big end of town has put the squeeze on all the companies around the place to reduce costs. I see a lot of people coming into the city on their R&R, on a five-day break, and walking out with a working at heights, a confined space and maybe a basic rigger's course. Being a trainer and assessor myself, I know that these courses alone, to do them properly, would take a week each, yet people are being squeezed out with three tickets in one week. That is the resource sector putting the squeeze on the RTOs; I understand that. But the assessor is signing it off. WorkSafe really needs to have a look at some of the tickets that are coming through, because what that has then done—I apologise for taking up too much time—it has created a VOC, or a verification of competencies, monster. I am coming down; I am getting a ticket; I am going back on site, saying, "Look, I've got a high-risk work licence" and then the company that has no faith at all in the training you have had, or the assessor you have used, put you through a VOC process again. If companies want to put their hands in their pockets, that is fine as far as I am concerned because it is not coming out of my member's pocket, but does it not make a mockery of the system?

The CHAIR: I think that is a valid point. The committee has heard evidence that you can actually go from a basic high-risk work licence in an area to an intermediate to an advanced with no practical experience.

Mr McLAREN: You can do it all in the classroom—the classroom and the car park.

The CHAIR: Does the union have a view that we should mandate a minimum number of practical hours of experience before you can go for the next level of licence?

Mr McLAREN: There should be. They were there years ago. I am a big fan of the old system where in rigging, for example, from basic, intermediate to advanced, was hold points—you needed to have held that licence for X amount of time. There would have been a logbook; every time you did something, it was signed off. You needed to do X amount of work under a supervising rigger, an advanced rigger, for example, before you would be able to progress to intermediate and advanced. That is no longer there. I have seen people come out with an advanced rigging ticket and they have never been on a construction site. How can that be? But the assessor at the end of the day, when they are doing the assessment, is an employee of WorkSafe—they are a WorkSafe assessor—is signing off on it. How can we allow this to happen? I understand it is part of the training and accreditation and ASQA and TAC and all those RTOs, that is where it is all mixed up.

Mr McCARTNEY: I suppose it is like if you do three days of building and under hang and scaffolding, and you have done that for three days, then the fourth day, they inspect you to do that. You will get a tick-off, no worries at all. But in five months' time, when you are asked to do it again, how much experience have you had? That is the point that we try to make.

Mr McLAREN: I give you a classic example. Scaffolding is actually a recognised trade in certain countries—Australia, including New Zealand. Everyone makes a joke about why there are so many New Zealand scaffolders. It is because they are bloody good because they do it for a period of time actually on the ground. In oil and gas, it is same again. Why do you think there are so many people from the North Sea doing oil and gas scaffolding? Because they are extremely good. They do over-the-water scaffolds because it is a recognised trade. Over here, we treat it as a ticket of competency. Sorry, I do not get it.

The CHAIR: How has this arisen? I mean, I do not understand. Is this a decision made by ASQA and TAC?

Mr McLAREN: No, it is a decision from the resource sector in the 90s going through to the 2000s where, “We need more scaffolders and more riggers; we need more people with working at heights; we need more people with this and we need more people with that.”

Mr McCARTNEY: It is when they were pulling RTOs out of the TAFE system and getting jobs for them.

Mr McLAREN: It created the RTOs.

The CHAIR: But someone had to allow this to happen.

Mr McCARTNEY: Yes; governments—a succession of them.

The CHAIR: So it was just on the basis that we need more licensed scaffolders; therefore, we are just going to make it easier and you just go and do a three-day training course?

[12.10 pm]

Mr McCARTNEY: “It is too slow, we have not got enough people, it is arbitrary.”

Mr McLAREN: “Is it the government’s core business?”

Mr McCARTNEY: “It takes us three years to get a good advanced scaffolder.” No-one is prepared to pay the training. It is a little bit like apprenticeships now, where they expect the apprentices to pay for everything and thank them for the training. It is a little bit like that. I can get an advanced riggers ticket myself now; I can go and get one in six weeks’ time and pass.

The CHAIR: What role does COAG and the harmonisation of health and safety —

Mr McCARTNEY: It was before that. It was way before that.

The CHAIR: I appreciate that it all happened way before that, but is COAG able to intervene to say, “Look, we need to change the system, because it is not good enough”, or can the harmonisation of the occupational health and safety laws deal with this issue to require the apprenticeship-type training so that we ensure that people are not only just completing a three-day course? WorkSafe have told the committee that the fact that a person has a high-risk work licence does not mean they are competent; it means that they have completed the course. That is all it means. To me, that is really concerning because as an employer if I hire someone with a high-risk work licence, I expect them to be competent at what they have been licensed to do, but I have no way of knowing whether they are competent or not.

Mr McLAREN: Until you run through the verification of competency system, which is an extra expense to the employer.

Mr McCARTNEY: I wonder about the value in principle of a competency certificate with no experience and even the right to sell me that. If you are going to sell me a ticket—a lot of RTOs make a lot of money saying, “You need one of these tickets to get on the job”, then they find out they cannot get that job anyway, because they have not had the experience. That is why on-the-job training and getting some length-of-time training on the job is much more beneficial to the worker, to the workforce and the employer, eventually, but more importantly, you are less inclined to hurt yourself if you get experience with training. You cannot get every situation or experience in a classroom.

Mr McLAREN: I use the analogy that my daughter had to do 150 hours of supervised driving to get her P-plates, yet someone can go and get a high-risk work licence and still put other people and themselves at risk in a matter of weeks.

Hon KYLE McGINN: I would also put it to you that it is WorkSafe's obligation to audit the assessors.

Mr McLAREN: Absolutely.

Mr McCARTNEY: Yes, good point.

Hon KYLE McGINN: By the sounds of the evidence we have heard in previous hearings and today, would you say that they are failing in that obligation under the act?

Mr McLAREN: Absolutely they are failing. I do not know too many inspectors—for someone from WorkSafe to assess a high-risk assessor, they need to hold that competency themselves, and not just hold that competency, but it must be current. As I say, work is changing, the nature and the technology —

Hon KYLE McGINN: But I would make it a little bit more clear-cut than that and I would say they must audit the assessors.

Mr McLAREN: Absolutely.

Hon KYLE McGINN: Do you believe that is happening?

Mr McLAREN: No.

Hon KYLE McGINN: So, they are failing their obligation under the act to audit assessors?

Mr McLAREN: No, it is not happening.

The CHAIR: Sorry, Glenn, when you say that it is not happening, are you saying that on-site visual audits are not happening or that even the desktop audits are not?

Mr McLAREN: Even the desktop audits. The desktop audits are largely run in Western Australia by the Training Accreditation Council—TAC. For a national RTO it is run by ASQA. But for the high-risk work licence assessors, who are all state based, I would question out of 181 when was the last time—WorkSafe would be able to pull out that statistic for you out of their system, I am sure of it.

Mr McCARTNEY: They just need the right one!

Mr McLAREN: And say how many assessors have had their competencies re-validated.

Hon KYLE McGINN: I understand that. I was probably asking more from an industry perspective, in your industry that you are involved in.

Mr McLAREN: I do not believe it is. I believe they are failing.

Mr McCARTNEY: I am just wondering, and I am not in a position to know either way, whether the investigation should be: are they failing or is the system failing them? I am not 100 per cent sure.

Hon KYLE McGINN: They do have the obligation under the act to audit assessors.

Mr McCARTNEY: I gather that, I understand that, but when they have got 8c to do it with, it makes it hard.

The CHAIR: The committee has also heard evidence that the assessor is often employed by the RTO that is doing the training and I find that deeply concerning because I would have thought there needed to be some level of independence.

Mr McLAREN: Years ago, the assessors were employed by WorkSafe and now they are employed by the RTO.

Mr McCARTNEY: That was part of the move in the 1990s.

Mr McLAREN: That was part of that. That was the progression, that gradual slide to it all being, “It is not the core business of government.” Now they are employed by the RTO; you are absolutely right. To give an example —

The CHAIR: So, it is highly unlikely that an assessor is going to fail someone, because it is in the RTO’s interest —

Mr McLAREN: They are employed; the RTO would sack them.

Mr McCARTNEY: KPIs versus longevity of employment, I suspect.

Mr McLAREN: You have got to understand that the assessor is probably nine times out of 10 also the trainer, so if you are doing a four-day course, you are trainer and assessor. You are training these people into it and you are assessing them also, as long as you hold that competency.

Mr McCARTNEY: So, at the end of the day he says, “I think I have done a pretty good job training these people, I will give myself a tick.”

Mr McLAREN: For example, you can have a trainer teach anything—rigging—but unless that trainer holds that certification in rigging, they cannot be an assessor. If they hold the competency of advanced rigger, they can train it and assess it, but going back to your point, no, there is no validation to say that there has not been a bit of horse trading going on and they are just passing them for the sake of it.

Hon KYLE McGINN: What concerns me is that it has been raised that it is evident that, as you said then, week-block courses taking one week to do four courses.

Mr McLAREN: No, absolutely, and nothing picked up on it.

Hon KYLE McGINN: And that not being picked up on an audit by an assessor is a big concern.

Mr McLAREN: Yes. By an assessor it has not. The Auditor General picked up on it and I encourage the committee to read the Auditor General’s report. I am happy to forward it through to the committee if you like. It was done by the Auditor General. He raised some concerns. The problem with the WA system, with TAC, is that they give the RTOs a week’s notice before they come in and do an inspection, so, “Let me just give you a tip-off. I am coming in a week’s time, so clean your act up and I will come through and do it then”, whereas ASQA can do it unannounced.

The CHAIR: Glenn, can I just get an understanding. If a person has a high-risk work licence and then they have to do the verification thing —

Mr McLAREN: The VOC, yes.

The CHAIR: The employer does the VOC and comes to the view that the person does not have the experience or the skills that fit the work that needs to be done, even though they should have it based on the fact that they have got the licence, what happens then?

Mr McLAREN: They are not going to be a suitable candidate for the job.

The CHAIR: So, they have not already been employed by the employer?

Mr McLAREN: Nine times out of 10, the VOC process occurs during pre-employment. There is no employment relationship as yet. It is like doing a medical and, “I want you to do a VOC”, or, “I am going to get you to do a weld test et cetera, and if you pass all these and your drug and alcohol and all the rest, there is your contract of employment.”

The CHAIR: Is anyone collecting the stats on how many people do not pass the VOCs?

Mr McLAREN: I do not think Rio and BHP would be that willing to give them over to me, to be honest. I would be very interested to know, because what that would do is show a correlation between the

people out there who have paid good money to an RTO to get job-ready only to be knocked back at the gate by the resource company or whoever it might be because they do not meet their VOC standards. I am all for raising the bar higher. If your standard on site is higher than what the basic competency that you come out with your ticket is, I am all for that, because it just means you are raising the bar. But the competency is this; this is what the act says: "You shall train to this level." If your company wants this, that is fine, but do not knock a person back who has got this, upskill them.

The CHAIR: So, there is no obligation on the employer to say, "Look, we have had 10 applicants for this position and they have all done their training through this particular RTO and got their high-risk work licence and they are just not competent", and to report that WorkSafe so that can be investigated?

Mr McLAREN: No. There are some RTOs out there. If you went to a job interview and you said I did my certificate of competency with this RTO, chances are you would not even get a look in.

Mr MCCARTNEY: They already know them.

Mr McLAREN: They already know who some RTOs are. But we also have a problem with RTOs—what we refer to as phoenixing. A phoenix is something that burns in flames and then rises from the ashes as the mythical creature does, and it could be RTO J today and tomorrow it is RTO Y. The same person is in control of it. A number of RTOs just change names. There is a core group of people out there, myself included, who know who some pretty dodgy ones are, but you cannot go around making spurious accusations.

The CHAIR: I thank you very much for your evidence before the committee today. I certainly found it most enlightening and useful, and I apologise that we have kept you as long as we have. I might just say that the transcript of the hearing will be forwarded to you for correction and if you believe that any correction should be made because of typographical or transcription errors, please indicate that on the transcript and return it to the committee staff. The committee requests that you provide your answers to questions taken on notice when you return the corrected transcript of evidence. If you require a couple of weeks, let us know and that will not be an issue. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence to the committee for our consideration when you return the transcript. Any stage between now and the end of the year will be fine, because we will not be concluding this inquiry this year.

Mr MCCARTNEY: If we were to put those submissions in, do we just contact you first to say we are going to do that or do we just hand them in?

The CHAIR: If you contact Margaret and give the committee an indication, it will be helpful in terms of scheduling our workload and knowing that we should expect that additional information. On that basis, I thank you very much and I officially call the hearing to a close.

Hearing concluded at 12.21 pm
