

**STANDING COMMITTEE ON ESTIMATES AND  
FINANCIAL OPERATIONS**

**2015–16 ANNUAL REPORT HEARINGS**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
THURSDAY, 27 OCTOBER 2016**

**SESSION TWO  
WORKCOVER WA**

**Members**

**Hon Rick Mazza (Chair)  
Hon Peter Katsambanis (Deputy Chair)  
Hon Alanna Clohesy  
Hon Helen Morton  
Hon Sally Talbot**

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**Hearing commenced at 10.53 am****Hon MICHAEL MISCHIN****Minister for Commerce, examined:****Ms MICHELLE REYNOLDS****Chief Executive Officer, examined:****Mr JOHN HULL****Chief Finance Officer, examined:****Mr HARLEY WHITE****Acting General Manager, Corporate Resources, examined:**

**The CHAIR:** On behalf of the Standing Committee on Estimates and Financial Operations, I welcome you to today's hearing. Can the witnesses confirm that they have read, understood and signed a document headed "Information for Witnesses"?

**The Witnesses:** Yes.

**The CHAIR:** It is essential that all your testimony before the committee is complete and truthful to the best of your knowledge. This hearing is being recorded by Hansard and a transcript of your evidence will be provided to you. It is also being broadcast live on the Parliament's website. The hearing is being held in public, although there is discretion available to the committee to hear evidence in private. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session before answering the question. Agencies and departments have an important role and duty in assisting the Parliament to review agency outcomes and the committee values your assistance with this. Can I get an indication from members as to who has questions? We will start with Hon Kate Doust.

**Hon KATE DOUST:** Thank you, Mr Chair. My first question is really around the legislation. We know that the government had the green bill back in about 2012 to 2013 but nothing has happened. I wonder whether you could perhaps explain why we have not yet got new legislation in place for workers' compensation.

**Hon MICHAEL MISCHIN:** Considerable work had been done to craft a replacement bill. Due to legislative priorities that was put into suspension, although some work was done on the drafting, as I recall—I do not now recall how advanced that was; but a significant amount of work had been done is my recollection—and it is something that will be a priority for the next term of government, but it was simply not practicable to complete the bill and to introduce it in Parliament this year. It will be a complete replacement of the current legislation in order to update it. The legislation, by and large, is working satisfactorily at the moment although it can be improved, and that was the aim of the exercise. Perhaps the director can add to that, if she is minded to.

**Ms Reynolds:** Other than to say that it has been consulted on widely as part of the process for drafting instructions, we are very hopeful that once the priority is provided, we will be able to move through with our key stakeholders and some further consultation. We anticipate it being hopefully non-contentious. We are very keen.

**Hon PETER KATSAMBANIS:** I have questions in this same area.

**Hon KATE DOUST:** Can I just ask my next question, then I will let you go?

**Hon PETER KATSAMBANIS:** Yes, you keep asking.

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**Hon KATE DOUST:** Talking about “Initiative 1: Employer Compliance Strategy” on page 19, I am interested in what WorkCover WA does in relation to engaging with employers about incidents that happen in workplaces. I say this because I recently had discussions with some workers who said to me that, in their workplaces—these were two quite large workplaces—when incidents occur, a lot of workers no longer apply for workers’ compensation; they take sick leave and they said that there is pressure upon them to do that. I wonder what sort of research or analysis you have done to look at where those trends might be coming back. I see that as being quite an archaic practice and one I thought that would have gone by the bye. I am very concerned about getting that sort of feedback from people saying that it is starting to come up again given that, in these particular workplaces, there appears to be a bonus arrangement for management. When the workers’ compensation figures come down, they receive a bonus. I wonder what sort of work the agency does in that regard.

**Ms Reynolds:** Thank you for the question. With regard to non-reporting, we equally would be very concerned that such behaviour was occurring. We are not aware of it organisationally. We have confidential lines where people can phone in and make complaints, and other means of gathering that level of intelligence. It is not something that we hear or have heard about formally. I suppose there is hearsay from time to time but, again, we would always invite any person to report such behaviour because we are very clear about the requirement to report all incidents and for the appropriate action to be taken. We would advise anyone to alert us and we would take action.

**The CHAIR:** Okay, Hon Peter Katsambanis.

**Hon PETER KATSAMBANIS:** Thank you. We spoke about the proposed new bill—the legislative review. You have clearly stated it on page 22 in your “Strategic Initiatives” that the “Legislative Review 2016/17” is your first goal. You talk about concluding public consultation on a draft bill. What parts of public consultation do you still need to undertake?

[11.00 am]

**Ms Reynolds:** The draft bill has not been completed as yet and at the time of completing the report, we had a timetable for a process that would have arrived at a draft bill hopefully around this time. The consultation we have undertaken has actually been in advance of a draft bill, which is why we are relatively confident that when the bill is finalised, we will be in a position to move it quickly through.

**Hon PETER KATSAMBANIS:** I just want to clarify: is there a need for any further public consultation before the draft bill is finalised, or is the public consultation you are talking about in the annual report post the draft bill being made available?

**Ms Reynolds:** This consultation will be on the draft bill. Our consultation has concluded and drafting instructions completed, but the very nature of our relationship with our stakeholders is that we will always consult with them on any amendments and changes to our legislation.

**Hon PETER KATSAMBANIS:** Sure. You did undertake significant consultation into the act for the final report, which I think was tabled more than two years ago now. Can you provide copies of the submissions made by the people who are listed at appendix 4 of the final report?

**Hon MICHAEL MISCHIN:** I do not know. It would depend on the basis on which those submissions were provided. Perhaps the director can comment on it, but, as a matter of principle, I do not have a problem with it; it just depends on the basis on which those submissions were made. If they were meant to be confidential or contained sensitive information that was for the purpose of informing of problems or dealing with particular cases that are identified, there may be difficulties with that sort of thing. I am not sure what the usual practice is.

**Ms Reynolds:** I wonder if we may take this on notice. I do recall there was a request made through FOI and we did seek State Solicitor’s advice, because the expectation for people providing feedback

to the review was that it would be confidential, although I cannot recall now whether the State Solicitor's advice was that it should or should not be released. So may I take that on notice?

[*Supplementary Information No B1.*]

**Hon PETER KATSAMBANIS:** Can I just clarify around that so we do not end up in a situation where you go away and send back an answer that is really a blank answer, if you like? There are those groups—I think there are 27—that are listed at appendix 4, so obviously the details of the people making the submission have been made public. Then there is a little column that says “Private/individual submissions” as well. So there is a fair few of them that have been made. If you determine that some have been made in a way that can be made public, that is great and you can provide them to the committee. If you determine, on the other hand, that some have been made private and there is an expectation that the entire submission remains private, that is fine and good too. But where there is a grey area, would there be a potential for you to contact the people who have made the submissions and seek their views, I guess—I hesitate to use the word “permission”—as to whether they would be comfortable having some or all of the information released?

**Ms Reynolds:** That is correct. As part of an FOI process, that is actually what would be required. So, yes, we would do that.

**Hon PETER KATSAMBANIS:** You could do that here as part of this information?

**Ms Reynolds:** Again, referring back to the State Solicitor's advice, but if it was that the parties were happy for the release of their report, if it is that the State Solicitor has endorsed that, we would clearly be prepared to release them. I am just not certain what the State Solicitor's advice was.

**Hon SALLY TALBOT:** May I just clarify, Mr Chair, through you? I am not quite clear what the member is asking for. You are not asking for the public release of those submissions, are you? Are you asking for information to be made available to the committee?

**Hon PETER KATSAMBANIS:** Yes, to be provided in the general way to the committee. These were submissions made to a public —

**Hon SALLY TALBOT:** So there is no question of FOI applications. You are asking for information that could be provided to the committee —

**Hon PETER KATSAMBANIS:** To the committee, yes; correct.

**Hon SALLY TALBOT:** — and the committee could still keep that information private.

**Ms Reynolds:** Good.

**Hon PETER KATSAMBANIS:** We could, depending on what you gave back to us.

**Hon SALLY TALBOT:** It would be a determination of the committee.

**The CHAIR:** It would depend on the request and the decision.

**Hon MICHAEL MISCHIN:** I misunderstood. My understanding was that you were asking whether they would be made public, as in somehow published so that everyone could see what those submissions were. But, of course, the committee has got the power to summons those documents, and unless there is a particular objection in respect of them, they can of course be provided.

**Hon PETER KATSAMBANIS:** This is why I sought to clarify. The request is that they be provided in a format that can be made public, unless there are reasons why some need to be kept private. I am one of these people who thinks that if a committee gets information in private, it potentially compromises the committee and places it in an invidious position. My expectation would be as much as we can public.

**The CHAIR:** We will not debate that now.

**Hon PETER KATSAMBANIS:** I have got a different area.

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**The CHAIR:** If you are going to change the subject, I might move to Hon Sally Talbot to ask a few questions.

**Hon SALLY TALBOT:** Just to conclude that particular point, would you be prepared to give the committee a copy of the drafting instructions?

**Ms Reynolds:** Yes.

*[Supplementary Information No B2.]*

**Hon SALLY TALBOT:** Minister, I take you to the question of the issue that was mentioned on page 20, “Initiative 3: GP Clinical Guidelines for Mental Health Compensation Claims”. Could you or one of your officers give us an outline of what is involved in what looks to me like a research project rather than a completed initiative, unless the completed initiative is to engage in the research?

**Ms Reynolds:** Thank you. No, it is actually 1 of the process. This is a body of research that will go over several years. We are collaborating with Monash University for the development of some clinical guidelines to assist GPs in the management of mental health issues. It is also part of a collaboration with many of our counterparts across Australia as well. So we are very keen to focus some research that will inform our schemes on the area of mental health treatment.

**Hon SALLY TALBOT:** So is the object to improve clinical practice or to improve the management of claims made in relation to mental illness?

**Ms Reynolds:** Clinical practice.

**Hon SALLY TALBOT:** So what role does WorkCover play in the improvement of clinical practice?

**Ms Reynolds:** We do not as an organisation. We endeavour to engage with GPs and other medical practitioners, but this is really an opportunity through the collaboration with some of the other medical bodies, if they sign up to the arrangement, to give a framework which assists GPs and others.

**Hon SALLY TALBOT:** Sign up to which arrangement?

**Ms Reynolds:** Once the guidelines are developed, there will be an opportunity for consultation with the appropriate medical organisations and, as has happened with other medical guidelines in the past, some groups will sign up to adhere to the framework in their efforts.

**Hon SALLY TALBOT:** I am just going to ask you if you could put a little bit more flesh on those bones. Is WorkCover’s interest aligned with the claims part of the whole question about what clinical guidelines relate to the treatment of mental illness? Please feel free to work through a practical hypothetical example if that helps.

**Ms Reynolds:** The management of claims for workers’ compensation in this state is actually managed by insurers and employers, so WorkCover is the regulator and assists with setting guidelines and frameworks for the various participants in our scheme. Our efforts in this research are primarily to assist practitioners understand and possibly to put some focus on areas that they would see in their various practices on a daily basis. It really often involves some broad statements around emphasis, confidentiality or return to work, and ours is really seeking to collaborate with the people who work and deal with injured workers every day and putting some framework around how the treatment might best be managed, because some practitioners may very infrequently see a person who presents with a work-related injury and it really is about their exposure to workers’ compensation. We are just attempting, with others, to see whether we can persist.

[11.10 am]

**Hon SALLY TALBOT:** Is part of this research project about providing clinical practitioners with more understanding about how workers’ compensation operates?

**Ms Reynolds:** No, not necessarily.

**Hon SALLY TALBOT:** You have said it has to do it clinical practice, so I am trying to relate the two.

**Ms Reynolds:** I think initially our keenness to participate in this research is to seek another way of engaging with GPs, because GPs are very key to our scheme. They are the first point of contact when an injured worker presents. In an ideal world, yes, we would very much like all GPs to understand the workers' compensation context and the importance of work in people's lives and the importance of return to work. Regarding these guidelines, it is difficult for me to comment about what they will contain, because part of the engagement process is also consulting with all of the GPs across Australia to determine their experiences and what should really be contained in some guidelines.

**Hon SALLY TALBOT:** Are you looking at releasing those guidelines next financial year?

**Ms Reynolds:** I think it will probably be another two years, because, again, the consultation back with the medical profession will need to be fairly extensive and there will also need to be agreement, really, that people will be signing up to them—and again, it will be a choice.

**Hon SALLY TALBOT:** Who is your engagement with in the research process? Is it with the AMA, the college of GPs or individual practitioners; are there stakeholder groups or something?

**Ms Reynolds:** There are actually stakeholder groups and individual GPs. Because it is a national project, it is really consultation and focus groups, stakeholders and GPs. Maybe I could take this question on notice and provide you with the consultation process and the methodology.

**Hon SALLY TALBOT:** Yes, if you could—as much detail as you can provide.

*[Supplementary Information No B3.]*

**Hon SALLY TALBOT:** I will just carry on briefly and refer to page 59 where you talk about the planned return to work conference in 2017. When is that going to be held?

**Ms Reynolds:** It will be in May 2017. Every two years we run a conference and it really is an opportunity to bring together all of the contemporary thinking, research and applied efforts of people within our scheme and across Australia, so we bring them to Western Australia. It is part of our commitment to injury management.

**Hon SALLY TALBOT:** As far as the component of that conference that focuses specifically on mental health, what is the program for the mental health element?

**Ms Reynolds:** The program is under development, so we will have sessions on mental health; it is too early to call it specifically at this point. We also have some exhibition space and we will be offering those spaces to beyondblue and some other organisations in this particular space at no cost. This is all under development. We are having a consultation process with our key stakeholders at the beginning of December, so we should have a program finalised by the end of December.

**Hon SALLY TALBOT:** What are you anticipating though? I mean, all the current reporting on the statistics suggests that mental illness is at least as big a problem as physical illness and injury.

**Ms Reynolds:** Yes; whether we have dedicated mental illness sessions or whether it will factor mostly in all of our plans, management conversations, discussions and other sessions—it is possibly too early for me to call specifically what we will have in this area, other than the fact that it will be an area of key focus.

**Hon SALLY TALBOT:** Do you think that WorkCover has a role to play in the reduction of stigma in relation to mental illness?

**Ms Reynolds:** I think WorkCover has a role in our legislation as far as preventative efforts go, so, yes, if there are cultures and other organisational barriers to dealing effectively with injuries that present at work, yes I do.

**Hon SALLY TALBOT:** Prevention is an entirely different area though. Although there would be some overlap, it is an entirely different focus, is it not, to removal of stigma?

**Ms Reynolds:** Yes.

**Hon SALLY TALBOT:** I am glad we are in furious agreement on that one! I will watch the development of that with interest.

**The CHAIR:** On page 38 you have the average recommended premium rates and some commentary about the fact that the premiums have reduced by 20 per cent since 2007–08 and that has to do with people with claims. Do you have any information on how WorkCover calculates the premium for each industry?

**Ms Reynolds:** It is a very, very complex formula, and it is a very good result that our premiums are some of the lowest across Australia. Each of the industry sectors have a premium rate that is calculated based on claims experience and the risk factors associated with that particular industry. It is a complex mathematical formula undertaken by the actuaries who support our scheme.

**The CHAIR:** How many different industry categories are there; do you know?

**Ms Reynolds:** They are all ANZSIC coded; and if I may take that on notice.

*[Supplementary Information No B4.]*

**Hon KATE DOUST:** Just running on from there, I am curious. Have you got any detail that you can provide to the committee about the number of Western Australian companies that have exited the state arrangements for Comcare?

**Ms Reynolds:** Yes, we can take that on notice, because the Comcare arrangements have recently been opened for other companies.

*[Supplementary Information No B5.]*

**Hon KATE DOUST:** If there has been a significant increase in the number of companies exiting Comcare, what impact do you think it is going to have upon premiums for those employers in WA who choose to remain under WorkCover?

**Ms Reynolds:** We watch that issue very closely. It is fair to say that there has not been even a minor shift that I can recall towards the Comcare arrangements. It is a particularly different scheme. I think our premium rates make our scheme very attractive, so although some national companies might see some benefit in operating under a single scheme, our arrangements and the very nature of our scheme being so very well managed is, I think, an incentive for people to stay within the Western Australian scheme. But clearly if a large number of employers exited our scheme, it would create some vulnerability, I think, and may well have an impact on premium rates.

**Hon PETER KATSAMBANIS:** There are two areas I have questions on. The first one refers to page 72 of the annual report—table 11, “WorkCover WA Board remuneration”. I notice there is a member listed who has a double asterisk next to his name. It states that the member was paid fees retrospective for the period 1 February 2014 to 30 October 2015. I will continue read from the asterisk —

*The payment of these arrears occurred following changes to UnionsWA policy.*

Can you provide any insight into what that policy was and what the changes to that policy were?

**Ms Reynolds:** The arrangement to do with board remuneration is that it is paid to the individual. Part of that challenge then becomes the impact of the remuneration on the individual’s own personal tax arrangements. Because it is a personal payment, it can create some complexities, and

with this particular board member there were just some elements we needed to make some adjustments to and seek some clarification on about how and where we would make payment.

[11.20 am]

**Hon PETER KATSAMBANIS:** Can I get some clarity on that? Where was the payment being made to? Was it made to the union?

**Ms Reynolds:** No, it must be paid to the individual.

**Hon PETER KATSAMBANIS:** Why does a change to UnionsWA policy have any impact on the agency?

**Mr Hull:** At the time, the payment went to the individual and then he reimbursed UnionsWA. At the time, UnionsWA wanted the payment to go back. While that was being debated—that was the period of time—and, eventually, we reached an agreement where we paid, the individual reimbursed UnionsWA, so that particular board member was paid in arrears.

**Hon PETER KATSAMBANIS:** This member sits on the board and the fees for this member flow to UnionsWA.

**Mr Hull:** He reimbursed UnionsWA.

**Hon PETER KATSAMBANIS:** Reimbursed them for what?

**Ms Reynolds:** His time.

**Mr Hull:** His time.

**Hon PETER KATSAMBANIS:** For his fee? So he pays his fee to the union?

**Hon KATE DOUST:** Because he is there representing UnionsWA.

**Mr Hull:** He is representing UnionsWA, so he then subsequently made the payment to UnionsWA.

**Hon PETER KATSAMBANIS:** So the unions get a fee for sending a representative along to sit on the WorkCover WA board, effectively?

**Ms Reynolds:** No, we pay the individual.

**Hon PETER KATSAMBANIS:** You pay the individual and then they pay it through.

**Mr Hull:** They make their own arrangement.

**Ms Reynolds:** Yes.

**Hon PETER KATSAMBANIS:** They make their own arrangement.

**Mr Hull:** Yes.

**Hon PETER KATSAMBANIS:** If they have an arrangement that the fee flows on, does that impact on your organisation in any way?

**Ms Reynolds:** Our obligation is to pay to the individual, so we have a representative board in part and they make arrangements with their organisations, whether it be to pay some or all of their fee for their work time that participating on our board takes up. We could not tell you about any of our members.

**Hon PETER KATSAMBANIS:** You are a member of the board and you are an employee of the authority.

**Ms Reynolds:** Yes.

**Hon PETER KATSAMBANIS:** I note that you are not remunerated for sitting on the board and you are appointed by virtue of office, so who compensates the authority for the time you spend on the board?

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**Hon MICHAEL MISCHIN:** I am not sure if that is necessarily an analogous situation, as part of Ms Reynolds' statutory responsibility ex officio is a member of that board that is created by statute. She is an ex officio member in that regard. Mr Bradley, for example, would be the representative of the Department of Commerce—he has since retired—so he would have received no fee because he would have been as director general of the department, a public servant, again ex officio, and his position has been taken over by Ms Driscoll as the new director general. If I understand it, the question is it is a matter of the arrangement. There is a union representative on this statutory board by virtue of the legislation. Ordinarily they would be entitled to a fee. Whether the arrangement as the representative of that particular organisation is that they keep the fee as an additional emolument for the time they have spent, or whether it is considered part of their employment and hence the fee goes back to their employing body, is another matter that is outside the control of the commission.

**Hon PETER KATSAMBANIS:** The individual involved is not actually individually appointed off his own bat.

**Hon MICHAEL MISCHIN:** As a representative.

**Hon PETER KATSAMBANIS:** He is appointed as a representative of a body that has sought representation on the board.

**Hon MICHAEL MISCHIN:** Not —

**Hon PETER KATSAMBANIS:** I just wanted clarity. This is not an issue for members to take up with the authority; I just wanted clarity. This may or may not be an issue, but it is not an issue for the authority. I just wanted clarity on what was happening.

The second area I want to concentrate on is the KPIs on page 94 and 95. Indicator 1.3, “The proportion of disputes resolved within six months”, showed quite an improvement from 2012–13 through to 2014–15 and then there was a bit of a dip in 2015–16 back to the 2011–12 performance figures and a little bit under target. What caused that performance to be under target?

**Ms Reynolds:** Maybe if I start by saying that we have the second highest resolution rate across Australia, so our results in this particular area are quite exceptional. It can be related to just the sheer volume of matters that are coming before us. It is sometimes very difficult to predict or even sometimes to analyse why the variance has occurred, albeit it is quite low still. The new model was implemented in 2011 and we have consistently worked towards improving efficiencies and the more recent review and evaluation of the model to ensure that we are constantly looking to improve the efficiencies in a dispute space, recognising that the longer people are in that environment, the less likely a positive outcome will occur.

**Hon PETER KATSAMBANIS:** I did note, further on in the report, that the average cost of these arbitrations has actually reduced over time and it seems to be a pretty fair cost for the work involved. Is there anything that has come out of your results to indicate that the complexity of these matters has changed to make the time to resolution longer?

**Ms Reynolds:** This particular indicator captures our conciliation process and our arbitration process. The conciliation process is very much about bringing the parties together with an endeavour to see if there can be a resolution. The complexity, I think, then truly occurs in the arbitration, because that is the pointy end of a dispute and usually the parties have a fair way to go before they can come together on a common understanding and possibly resolution. There can be, and often are, matters of law and that is why we have appeal processes through to the District Court.

**Hon PETER KATSAMBANIS:** Is it just simply, really, effectively more a statistical blip than it is an issue?

**Ms Reynolds:** We believe our dispute service is running very effectively.

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**Hon PETER KATSAMBANIS:** Do you have total numbers in this area? How many conciliations and how many arbitrations?

**Ms Reynolds:** Yes, we do have those numbers.

**Hon PETER KATSAMBANIS:** Do you have them with you?

**Ms Reynolds:** I might ask if Harley White has the specific numbers. If we do not have them with us now, we can take this on notice. I think we may take it on notice.

**Hon PETER KATSAMBANIS:** Perhaps take it on notice and provide them across from 2011–12 to 2015–16.

*[Supplementary Information No B6.]*

**Hon SALLY TALBOT:** In relation to your KPI indicators on page 9—I imagine you need to take this on notice—will you be able to tell the committee, in relation to the number of noncompliance events, the proportion of conciliations completed in eight weeks and the proportion of disputes that were completed in six months? Would you be able to give the committee an idea how many of those relate to claims based on a mental illness, recognising that there may well be psychiatric implications of other injuries? I think you can probably, on the basis of a fairly commonsense and generally accepted approach, identify which injuries are to do with issues that do not relate to mental health. Would you be able to give us that breakdown in relation to those three KPI?

**Ms Reynolds:** Yes.

**Hon SALLY TALBOT:** And could you match that with an overall figure so that we can get an idea about total claims?

**Mr White:** Can we just clarify which KPIs you were referring to?

**Hon MICHAEL MISCHIN:** It is table 2 on page 9, is it?

**Hon SALLY TALBOT:** Yes, but I can refer you to more detail; it is table 2 on page 9 but it is also from pages 92 to 94.

*[Supplementary Information No B7.]*

**The CHAIR:** On behalf of the committee, I thank you for your attendance today. The committee will forward the transcript of evidence, which highlights the questions taken on notice, together with any additional questions in writing, after Monday, 31 October 2016. Responses to these questions will be requested within 10 working days of receipt of those questions. Should you be unable to meet this due date, please advise the committee in writing as soon as possible beforehand. The advice is to include specific reasons as to why the due date cannot be met. If members have any unasked questions, I ask them to submit these to the committee clerk at the close of the hearing. Once again, thank you for your attendance today. I remind members that the deadline for submitting additional questions is 12.00 pm—midday—on Monday, 31 October 2016, as stated in paragraph 8.2 of the procedure policy.

**Hearing concluded at 11.30 am**

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